

AFTER RECORDING RETURN TO:
Weekley Homes, LLC
1905 NW 169th Place, #102
Beaverton, OR 97006

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
DURHAM HEIGHTS**

DECLARANT

WEEKLEY HOMES, LLC

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
DURHAM HEIGHTS**

THIS DECLARATION is made this ____ day of _____, 20__, by **Durham Land Holdings, LLC**, an Oregon limited liability company and **Weekley Homes, LLC**, a Delaware limited liability company.

R E C I T A L S:

A. Durham Land Holdings, LLC has now recorded the plat of “**Durham Heights**” in the plat records of Washington County, Oregon.

B. Durham Land Holdings, LLC and Weekley Homes, LLC are parties to an agreement through which Weekley Homes, LLC will periodically purchase lots in Durham Heights from Durham Land Holdings, LLC.

C. Durham Land Holdings, LLC and Weekley Homes, LLC desire to subject Lots 1-36 and Tracts A, B, C, D, and E as shown in the plat of “Durham Heights” 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 a Class I planned community project to be known as “**Durham Heights.**”

D. Durham Land Holdings, LLC desires to assign and Weekly Homes, LLC desires to receive all special declarant rights as the developer of Durham Heights, as such rights and obligations are set forth in this Declaration and in the Oregon Planned Community Act. As used herein, Weekley Homes, LLC shall be the “**Declarant**”.

NOW, THEREFORE, Durham Land Holdings, LLC and Declarant hereby declare that the Initial Property (as defined herein) 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 all such persons, and all heirs, successors and assigns of such parties.

Article 1

DEFINITIONS

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

1.1 “**Additional Property**” means any land, whether or not owned by Declarant, that is made subject to this Declaration as provided in Section 2.2.

1.2 “**Architectural Review Committee**” or “**Committee**” means the committee appointed pursuant to Article 7.

1.3 “**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, General Assessments, Special Assessments, Emergency Assessments and Individual Assessments as described in Article 10.

1.4 “Association” means the nonprofit corporation to be formed to serve as the Owners association as provided in Article 8, and its successors and assigns.

1.5 “Board of Directors” or “Board” 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, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Board will be elected by the Owners.

1.6 “Bylaws” means the duly adopted bylaws of the Association as the same may hereafter be amended or replaced.

1.7 “Common Areas” means those Lots or tracts designated as such on any plat of the Property or in this Declaration or any declaration annexing Additional Property to the Property, including any improvements thereon and shall also include Common Easement Areas.

1.8 “Common Easement Areas” means those easements established for the benefit of all Property within Durham Heights pursuant to this Declaration or any plat or declaration annexing Additional Property to Durham Heights.

1.9 “Declarant” means Weekley Homes, LLC, a Delaware limited liability company, and its successors and assigns, if such successor or assignee should acquire Declarant’s interest in the remainder of the Property, 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. Any such successor declarant shall succeed to all of the rights and obligations of the Declarant under this Declaration, including, without limitation, the obligation to complete any improvements required by the City of Durham or applicable jurisdictional authority as part of its subdivision approval.

1.10 “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, including the provisions of any supplemental declaration annexing property to Durham Heights.

1.11 “Design Guidelines” means the guidelines adopted from time to time by the Architectural Review Committee pursuant to Article 7.

1.12 “Durham Heights” means the Initial Property and any Additional Property annexed to this Declaration.

1.13 “Emergency Assessments” means the Assessments described in Section 10.4(c).

1.14 “General Assessments” means the Assessments described in Section 10.4(a).

1.15 “General Plan of Development” means Declarant’s general plan of development of the Property as approved by the City of Durham or applicable jurisdictional authority, as the same may be amended from time to time.

1.16 “Individual Assessments” means the Assessments described in Section 10.4(d).

1.17 “Initial Property” means that certain real property more fully described in Section 2.1 of this Declaration.

1.18 “Lot” means a platted or partitioned lot within the Property (including the Unit located on such Lot), with the exception of the Common Areas and any tract marked on the plat as being dedicated to a public body.

1.19 “Mortgage” means a mortgage or a trust deed; **“Mortgagee”** means a mortgagee or a beneficiary of a trust deed.

1.20 “Occupant” means the occupant of a Unit who is the Owner, lessee or any other Person authorized by the Owner and otherwise permitted by local, state, and federal law to occupy the premises.

1.21 “Operations Fund” means the fund described in Section 10.6.

1.22 “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 contract vendor or other Person holding only a security interest in a Lot. If a Lot is Sold under a recorded real estate installment sale contract, the purchaser (rather than the seller) will be considered the Owner unless the contract specifically provided to the contrary. If an Owner is legally permitted to rent his or her Lot, and such Lot is subject to a written lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising any rights related to such Lot under this Declaration. 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.

1.23 “Participating Builder” Any homebuilder whom Declarant or a successor declarant may designate at a future date.

1.24 “Person” means a human being, corporation, partnership, limited liability company, trustee or other legal entity.

1.25 “Property” means the Initial Development and any Additional Property annexed pursuant to Section 2.2.

1.26 “Reserve Fund” means the fund described in Section 10.7.

1.27 “Rules and Regulations” means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.28 “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.

1.29 “Special Assessments” means the Assessments described in Section 10.4(b).

1.30 “Turnover Meeting” means the meeting called by Declarant pursuant to Section 8.7, at which Declarant will turn over administrative responsibility for the Property, and assign all responsibility under this Declaration, to the Association.

1.31 “Unit” means a building or a portion of a building located upon a Lot within the Property and designated for occupancy as a dwelling, together with any attached garage, courtyard, deck or patio. For clarity’s sake, a “Unit” may include, but is not limited to, detached single-family housing, middle housing types as described in ORS 197A.420, and multifamily housing.

1.32 “Working Fund Assessments” means the Assessments described in Section 10.4(e).

Article 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial 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:

Lots 1-36 and Tracts A, B, C, D, and E in City of Durham, Washington County, Oregon and contained in that certain plat (the “**Plat**”) entitled “Durham Heights” filed in the Plat Records of Washington County, Oregon, on _____, 20____ as Document No. _____.

2.2 Annexation of Additional Property. Declarant may from time to time and in its sole discretion annex to Durham Heights as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Durham Heights. The annexation of such Additional Property shall be accomplished as follows:

(a) The Owner or Owners of such real property shall record a declaration that shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The Additional Property described in any such annexation shall thereby become a part of Durham Heights and subject to this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

(1) establish such new land classifications, modify or exclude any then existing restrictions and such limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property; and

(2) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots or Units that Declarant may create or annex to Durham Heights, except as may be established by applicable ordinances of the City of Durham or applicable jurisdictional authority, and except as otherwise restricted by local, state, or federal rules and regulations. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the City of Durham or applicable jurisdictional authority.

(e) Nothing in this Declaration shall establish any duty or obligation on Declarant to annex any property to this Declaration, and no owner of property excluded from this Declaration shall have any right to have such property annexed to this Declaration or Durham Heights.

(f) Upon annexation to Durham Heights, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3.

(g) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.5.

2.3 Improvements. Declarant does not agree to build any improvements on the Property other than as specified in the final plan as approved by the City of Durham or applicable jurisdictional authority, but may elect, at Declarant's option, to build additional improvements, subject to local, state, and federal rules, regulations, and procedures.

2.4 Withdrawal of Property. Property may be withdrawn from Durham Heights only subject to City of Durham's prior approval, and by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Property or any Additional Property annexed pursuant to a declaration described in Section 2.2 at any time prior to the sale of the first Lot in the Plat of the Initial Property, provided such withdrawal is subject to City of Durham prior approval, or in the case of Additional Property, prior to the sale of the first Lot in the Property annexed by the supplemental declaration, subject to the prior approval of the City of Durham or applicable jurisdictional authority. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Washington County, Oregon. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated among the remaining Lots. Such right of withdrawal shall not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

2.5 Dedications. Declarant reserves the right to dedicate, or otherwise convey a limited property right in over, under, and to any portions of the Property then owned by Declarant to any governmental authority, quasi-governmental entity or entity qualifying under section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as Declarant may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space; recreational facilities; schools; fire, police, security, medical and similar services; and such other purposes as Declarant and such governmental authority or quasi-governmental entity shall determine to be appropriate from time to time. Any consideration received by Declarant as a result of such dedication or by reason of any condemnation or any conveyance in lieu of condemnation shall belong solely to Declarant.

2.6 Subdivisions. Subject to applicable local, state, and federal laws, Declarant reserves the right to subdivide any Lots then owned by it upon receiving all required approvals from the City of Durham or applicable jurisdictional authority. In the event any two or more Lots are so subdivided, they shall be deemed separate Lots for the purposes of allocating Assessments under this Declaration. No other Owner of any Lot in the Property may subdivide any Lot without the prior written approval of the Declarant prior to the Turnover Meeting and thereafter by the Board of Directors, which consent may be granted or denied at the sole discretion of the Declarant or the Board, as applicable.

2.7 Consolidations. Subject to applicable local, state, and federal laws, Declarant shall have the right to consolidate any two or more Lots then owned by it upon receipt of any required approvals from the City of Durham or applicable jurisdictional authority. No other Owner may consolidate any Lots without the prior written approval of the Declarant prior to the Turnover Meeting and thereafter by the Board of Directors, which may be granted or denied at the sole discretion of the Declarant or the Board, as applicable. Any approved consolidation shall be affected by the recording of a supplemental declaration stating that the affected Lots are consolidated, which declaration shall be executed by the Owner(s) of the affected Lots and by the President of the Association. Once so consolidated, the consolidated Lot may not thereafter be partitioned, nor may the consolidation be revoked except as provided in Section 2.6. Any Lots consolidated pursuant to this Section 2.7 shall be considered one Lot thereafter for the purposes of this Declaration, including voting rights and allocation of Assessments.

Article 3

LAND CLASSIFICATIONS

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

- (a) Lots, which shall consist of Lots 1-36 of the Plat.
- (b) Tracts, which shall consist of Tracts A, B, C, D, and E of the Plat.
- (c) Common Areas, which shall be the areas marked as Tracts A, B, C, D, and E on the Plat, plus the Common Easement Areas referred to below. Tracts A and B are open space tracts that will be maintained by the Association, in accordance with all appropriate Clean Water Service standards and other applicable local, state, and federal regulations. Tract A shall be dedicated to the City of Durham before conveyance of the first Lot for protection of natural resources and the 100-year floodplain, while Tract B shall be owned by the Association. In addition, Tract B includes a bike and pedestrian path, with easements as described in Section 3.1(d) below, a half-circle hard surface plaza with a seating area overlooking the storm water facility, and a stone wall with rockery. Tract B shall be dedicated as open space, with no right or permission to construct, install, or maintain any other structure not described in this subsection in such space. Tract C is a storm water facility that will be owned by the Association. The storm water facilities within Tract C, excluding walls and fencing, will be maintained by Clean Water Services. The remaining portion of Tract C, including all walls and fencing, is to be maintained by the Association. Tracts D and E are private street tracts for the benefit of Lots 28, 29, 30, 31, 34, 35, and 36 that will collectively be owned and maintained by the Association in accordance with all applicable local, state, and federal regulations and standards, including corresponding signage requirements and appropriate “no parking” signage along such street. Tract D includes a four foot wide sidewalk on the west side of the Tract. Lots 27, 32, and 33 shall take access off of SW Taylor Lane.

(d) Common Easement Areas, which shall be the portion of Lots 34-36 on which, if any and each to the extent validly permitted by City of Durham rules, regulations, and ordinances, the Association maintained entry monument and monument landscaping is located, the portion of Lots 16 and 17 on which the Association maintained pavement and driveway approach in the public emergency vehicle access easement is located, the planter strips and trees abutting the Common Areas throughout Durham Heights, the fencing, retaining walls, and irrigation in Association maintained areas, and any easements established on the Plat of the Initial Property or in any recorded document for the benefit of the Association. Such easements shall include, but are not limited to, an emergency access easement and a stormwater access easement along the bike and pedestrian path located in Tract B; a storm water facility easement for the benefit of Clean Water Services within Tract C; and the storm and sanitary access easements for the benefit of Clean Water Services within Tracts D and E. The Association shall be responsible for removal and replacement of any entry monument improvements, fencing or landscaping within the Clean Water Services sewer easement recorded in document number 89-00292. The Association shall remove said improvements for the maintenance and repair of the sewer line when requested by Clean Water Services in writing. To the extent such entry monument is permitted by City of Durham rules, regulations, and ordinances, the Owner of Lot 34 will be responsible for the cost to water the entry monument easement areas through their respective water meter. The Association shall have the right to access Lot 34 to inspect, repair, and replace any component related to the irrigation of entry monument areas, if legally permissible. The Owner of Lot 34 shall at all times maintain an account for providing water for irrigation and be responsible to timely pay water meter bills.

Article 4

PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to the provisions of this Article 4, every Owner and their 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. Subject to Article 3, such areas are to be maintained by the Association, and no changes in landscaping will be permitted within such areas without written authorization by the Board of Directors. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Areas. Subject to the requirement of prior notice to and approval of the Association's Board of Directors and further subject to any restrictions found within the Clean Water Service standards, Owners whose Lots contain retaining walls, rockeries or fences that adjoin Common Areas, shall have a right of access over the adjoining Common Area to inspect and maintain the wall, rockery or fence.

4.2 Title to the Common Areas. Except for portions dedicated to the public or any governmental authority, title to the Common Areas, except Common Easement Areas, shall be conveyed to the Association by Declaration AS IS, but free and clear of monetary liens, on or before the Turnover Meeting. In the event Declarant erroneously conveys to the Association any property that is not a Common Area, upon request the Association shall promptly reconvey such property to Declarant or its designee.

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 to all other provisions of this Declaration:

(a) **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:

(1) An easement 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 and any such easement shown on any Plat of the Property.

(2) An easement for construction, maintenance, repair and use of such areas, including any common facilities thereon.

(3) An easement for the purpose of making exterior repairs to the Units and performing any other maintenance required or permitted by this Declaration.

(b) **Public and Utility Easements.** The Common Areas shall be subject to such public and utility easements as may be established in any plat of the Property. In addition, Declarant or the Association may (and, to the extent required by law, 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 and Limited Common Areas shall be subject to such public and utility easements as may be established in any plat of the Property. The Common Areas shall be used for the purposes set forth herein and in any plat of the Property, and 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. No private use may be made of the Common Areas except as otherwise provided in this Declaration. No Owner shall place or cause to be placed on the Common Areas any trash, yard debris, structure, equipment, furniture, package or object of any kind. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas by Declarant or the Association identifying the Property or identifying pathways or items of interest, signs restricting certain uses, or warning, traffic or directional signs, provided that such signs are approved by the Board of Directors and comply with any applicable sign ordinances. The Board shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area, in which event such Common Area shall automatically become a Limited Common Area assigned to the Lots that have access thereto. The Common Areas shall be subject to public and private utility easements for the installation and maintenance of sanitary sewers, waterlines, surface water management, storm drainage and access over their entirety. In addition, Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Common Areas to governmental bodies or other utilities performing utility services and to communications companies, and may grant free access over the Common Areas to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

(d) **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber as security for a debt, sell, transfer or convey 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 voting rights and the Class B Member, if any, have given their prior written approval and the City of Durham or applicable jurisdictional authority has given its approval. The Association, upon approval in writing of at least two-thirds of the Class A voting rights and the Class B Member, if any, and if approved by order or resolution of the City of Durham or applicable jurisdictional authority, may dedicate or convey any portion of the Common Areas to a park

district or other public body. Any sale, transfer, conveyance or encumbrance permitted by this Declaration may provide that the Common Area may be released from any restrictions imposed by this Declaration if the request for approval of the action also includes approval of the release.

(e) **Leases, Easements, Rights-of-Way, Licenses and Similar Interests and Vacations of Roadways.** Notwithstanding the provisions of Section 4.3(d), the Association may execute, acknowledge and deliver leases, easements, rights-of-way, licenses and other similar interests affecting the Common Areas and consent to vacation of roadways within the Common Areas, subject to such approvals as are required by local rules and regulations, and ORS 94.665(4) and (5).

(f) **Limitation on Use.** Use of the Common Areas by the Owners shall be subject to the following:

(1) City of Durham rules, regulations, and ordinances, and all state and federal rules and regulations;

(2) The provisions of this Declaration and any applicable supplemental declaration;

(3) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;

(4) Easements reserved or granted in this Declaration or any supplemental declaration;

(5) The Board's right to:

(A) adopt Rules and Regulations regulating use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;

(B) suspend the right of an Owner to use the Common Areas as provided in this Declaration; and

(C) dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration.

4.4 Delegation of Use. Any Owner may extend the Owner's right of use and enjoyment of the Common Areas to the members of the Owner's family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board of Directors. To the extent that use as a rental is legally permissible, an Owner who leases the Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

4.5 Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots, including, without limitation, advertising and "For Sale" signs in accordance with local rules, regulations, and ordinances. 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; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an

Owner's Lot by the Owner or the Owner's family, tenants, employees, guests or invitees. Declarant may assign such easements to builders purchasing Lots from Declarant for development.

4.6 Easement to Serve Other Property. Declarant reserves for itself and its duly authorized agents, successors, assigns and Mortgagees, and the developers of improvements in all future phases of Durham Heights, an easement over the Common Areas for the purposes of use, access to, and development of the Property subject to the General Plan of Development. This easement includes a right of ingress and egress over the Common Areas for construction, utilities, water and sanitary sewer lines, communication lines, drainage facilities, irrigation systems and signs, and ingress and egress for the benefit of other portions of Durham Heights and any Additional Property that becomes subject to this Declaration. Declarant agrees that such users shall be responsible for any damage caused to the Common Areas as a result of their actions in connection with development of such Property and that such users shall be responsible to restore the Common Areas to at least as good of a condition as they were in prior to any use pursuant to this section. Declarant agrees that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the use of, enjoyment of, or access to the Common Areas by all individuals granted such access.

4.7 Common Easement Areas. The initial Common Easement Areas are listed in Section 3.1(d). No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas without the written consent of the Board of Directors.

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 Declarant shall comply with the restrictions contained in Article 6, 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 and such required Common Easement Areas, as stated in Section 3.1(d), Declarant hereby reserves the following easements for the benefit of Declarant, the Association and Owners, as applicable:

(a) **Right of Entry.** Upon request given to the Owner and any Occupant, any Person authorized by the Association may enter a Lot to perform necessary maintenance, repair or replacement of any property for which the Association has maintenance, repair or replacement responsibility under this Declaration, to make emergency repairs to a Lot that are necessary for the public safety or to prevent damage to Common Areas or to another Lot, or to enforce this Declaration or the Rules and Regulations. Requests for entry must be made in advance and for a reasonable time, except in the case of any emergency, when the right of entry is immediate. An emergency entry does not constitute a trespass or otherwise create a right of action in the Owner of the Lot.

(b) **Encroachments.** Each Lot and all Common Areas shall have an easement over all adjoining Lots and Common Areas for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting or movement of any portion of the Property, or any other similar cause, and any encroachment due to

building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and Common Areas so long as the encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment. The encroachments described in this paragraph shall not be construed to be encumbrances affecting the marketability of title to any Lot. Nothing in this Section 5.2 shall relieve an Owner of liability in the case of the Owner's willful misconduct.

(c) **Utilities.** Each Lot shall be subject to an easement under and across that portion of the Lot not occupied by the Unit for installation, maintenance and use of power, gas, electric, water and other utility and communication lines, facilities and services and for meters measuring such services installed by or at the direction of Declarant or with approval of the Board of Directors; provided, however, that shared or common use utilities shall not run beneath Unit structures. Separate utility services shall be supplied to each individual Unit.

(d) **Utility Inspection and Repairs.** Each utility and communication service provider and its agents or employees shall have authority to access all Lots, but not improvements constructed thereon, and the Common Areas on which communication, power, gas, drainage, sewage or water facilities may be located for the purpose of installing, operating, maintaining, improving or constructing such facilities; reading meters; inspecting the condition of pipes, lines and facilities; and completing repairs. The Owner of any such Lot will be given advance notice if possible. In the case of an emergency, as determined solely by the utility or communication service provider, no prior notice will be required.

(e) **Rain Drains and Storm Sewers.** Each Lot shall be subject to an easement for installation and maintenance of such rain drains and connected storm sewers installed or to be installed (as required by governmental regulatory authorities or as otherwise authorized by the Board of Directors) in or around any Unit or under the surface of any Lot.

(f) **Easements Reserved by Declarant.** Declarant and Declarant's agents, successors and assigns shall have an easement over and upon the Lots as may be reasonably necessary for the purpose of completing or making repairs to existing structures and for the purpose of discharging any other obligation of Declarant or exercising any other special Declarant right, whether arising under the Oregon Planned Community Act or reserved in this Declaration or the Bylaws. For a period of 10 years following completion of construction, Declarant shall have a right to inspect the Common Areas and portions of the Units maintained by the Association and the Association's records regarding inspections and maintenance of each Unit and the Common Areas.

(g) **Land Outside Units.** The Association shall have a right of entry over all portions of each Lot, other than the portion occupied by a Unit, for installation, operation, maintenance and use of utilities and other facilities for the use and benefit of the Owners within Durham Heights.

(h) **Adjoining Walls.** When two Units adjoin each other at the common boundary and either of the adjoining walls is damaged or destroyed, the provisions of Section 9.9 shall apply. If the destroyed wall is not rebuilt, the Association shall install an exterior wall to protect the remaining Unit. Until the Unit is replaced or a wall is installed, the Association shall provide the necessary protection of the remaining wall from the elements.

(i) **Driveway Maintenance Easements.** Each Lot that has any portion of its driveway within three (3) feet of the boundary line of an adjacent Lot shall have an easement over and across that portion of the adjacent Lot as necessary for maintaining, repairing or replacing the driveway of the benefited Lot. The benefited Owner must repair any damage to the adjoining Lot and must restore the

adjoining Lot to a condition similar to that immediately before use of the adjoining Lot and shall otherwise indemnify the Association and Owner of the adjacent Lot from any damage caused by such entry.

(j) **Entry Monument Easement.** The Association has an easement on, under, over and across any Lot on which the Declarant installs an entry monument or signage for the purpose of maintaining, repairing, improving and replacing, the entry monument, signage and any associated landscaping and utilities, together with a non-exclusive right of ingress and egress thereto.

(k) **Rockery, Wall and Fence Easements.** Declarant has constructed or may construct certain rockeries, walls and fences along the property lines of certain Lots. The intention of the Declarant is that each rockery, wall or fence, when constructed, shall be located wholly within one Lot and not on or across the property line. A rockery, wall or fence may not, however, be wholly within a Lot. Therefore, Declarant establishes an easement on each side of each property line, for the encroachment, location, maintenance, repair and replacement of rockeries, walls and fences installed by the Declarant at or along such property line for as long as the rockery, wall or fence exists. The owner of such a rockery, wall or fence shall have the right to maintain, repair and replace any portion of such improvement and shall have reasonable access over the adjoining Lot or Common Area for such purposes. Neither the location of any rockery, wall or fence installed by Declarant, nor any conduct of an owner in maintaining such improvements or the land between the improvements and the property line shall be construed as modifying the property line. The owner of each rockery, wall or fence shall be responsible for keeping the fence in good condition and repair. In doing so, the Owner shall obtain any required approvals by the Board, the County, and the City of Durham. Certain rockeries, walls and fences may have been designed by a professional engineer and may require the services of a professional engineer for major repairs or replacement. No Owner shall take any action to add, construct or place any improvement on their Lot that results in the disturbance of, weakening of, or damage to a rockery or wall, or that increases any engineered load or alters design criteria; or causes damage to the rockery or wall or the surrounding properties. All rockeries, walls and fences must be constructed and maintained in accordance with local rules, regulations, and ordinances.

Article 6

RESTRICTIONS ON USE

6.1 Structures Permitted. No structures shall be erected or permitted to remain on any Lot except structures containing a Unit and structures normally accessory thereto, all of which shall have first been approved by the Architectural Review Committee pursuant to Article 7. 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 that the location of such structure is in conformity with the applicable regulations of the City of Durham or applicable jurisdictional authority and 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. Except with the consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. 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 Section 6.2 shall be deemed to prohibit (a) activities relating to the rental or sale of Lots, if permitted by applicable local laws; (b) the right of Declarant to construct Units on any Lot, to store construction materials and equipment on any Lot in the normal course of construction, and to use one Unit as sales or rental offices

or model homes for purposes of sales or rental within the Property; and (c) the right of the Owner of a Lot to maintain their professional personal library, keep their personal business or professional records or accounts, handle their personal business or professional telephone calls or confer with business or professional associates, clients or customers, in their Unit by appointment only. The Board shall not approve commercial activities otherwise prohibited by local rules, regulations, or ordinances, and shall not approve commercial activities otherwise prohibited by this Section 6.2 unless the Board determines that only normal residential activities would be observable outside of the Unit and that the activities would not be in violation of applicable law. The Board may specify acceptable activities in the Rules and Regulations.

6.3 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried out upon the Property nor shall anything be done or placed upon the Property that interferes with or jeopardizes the enjoyment of the Property, or that is a source of annoyance to Owners or Occupants. As with any common wall building, some amount of sound transmission between Units, including, without limitation, fluid through pipes, music, TVs and other appliances, will occur. Occupants shall use extreme care about creating disturbances, making noises or using musical instruments, radios, televisions, amplifiers and audio equipment that may disturb other Occupants. No unlawful use shall be made of the Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Owners and other Occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, Occupants, guests or invitees, or directed at the managing agent, its agents or employees, or vendors. In no event shall Declarant or the Association permit Owners, other Occupants, or any other individuals to dump yard debris or other materials onto Tracts A, B, or C.

6.4 Trailers, Campers, Boats, Etc. Except as may otherwise be provided in the Rules and Regulations, parking and storage of boats, trailers, motorcycles, buses, trucks, motorhomes, truck-campers and like similar vehicles shall not be allowed on any part of a Lot nor on public or private roads adjacent thereto excepting only within the confines of an enclosed garage, storage port, or behind a solid screening fence or evergreen shrubbery at least six (6) feet in height and in accordance with City of Durham local rules, regulations, and ordinances, which shall in no event be located within three (3) feet of the front building line of any dwelling or garage. Recreational vehicle garages or ports shall not be approved unless said structures can be located and constructed in a manner such that the structure has limited visual impact from the street, is accessed by a hard surface roadway (gravel, asphalt or concrete), and does not distract from the architectural character of the home. Approval of such structures shall be at the sole discretion of the Board of Directors or the Architectural Review Committee and the City of Durham Building Code. No covering of any of the foregoing equipment or material with tarpaulin covers or plastic shall be permitted. Motor homes, trailers, campers, boats and other recreational vehicles may not be kept in driveways or parking spaces except on a temporary basis for loading or unloading, subject to such rules and regulations concerning parking as may be adopted by the Board. No such vehicle shall be used as a residence temporarily or permanently on any portion of the Property. Violations of this Section 6.4 shall subject such vehicles to impound, at the expense and risk of the Owner thereof. The Association may adopt rules and regulations to implement these restrictions and provide guidance to Owners.

6.5 Vehicles in Disrepair. No Owner shall permit any vehicle that is in an extreme state of disrepair or not currently licensed to be abandoned or to remain parked upon any Lot, or on the Common Area for a period in excess of 48 hours. A vehicle shall be deemed to be in an “extreme state of disrepair” when, in the opinion of the Board of Directors, due to its appearance or continued inoperability its presence reasonably offends the Occupants of the neighborhood. Should any Owner fail to remove such vehicle within five days following the date on which notice is mailed to him or her

by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

6.6 Parking. No vehicle of any kind shall be parked on the private roads or drives within the Property, except temporarily in the course of day-to-day activities. Blocking a Common Area, roadway or alley is prohibited. Vehicles parked in violation of this Declaration or the Rules and Regulations may be towed and stored at the direction of the Board of Directors, with the expense charged to the Owner. No vehicle may be parked on any Lot except in driveways and garages. No vehicle parked in any driveway may extend into the streets or sidewalks or otherwise inhibit vehicular or pedestrian traffic or access to any Lot. Vehicles used in the construction of a home are permitted to park in or on a Lot during the construction phase of the home on such Lot.

6.7 Garages. All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage, and shall not be used as office or living space, except that Declarant may use garages as sales offices prior to permanent occupancy of the Units, to the extent authorized and permitted by City of Durham rules and regulations.

6.8 Signs. No signs shall be erected or maintained on any Lot except that not more than one (1) "For Sale" or "For Rent" sign placed by the Owner or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot. The restrictions contained in this Section 6.8 shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or occupant; provided, however, political signs shall be removed within three (3) days after the election day to which the political sign pertains. Real estate signs shall be removed within three (3) days after the sale closing date. The Declarant and any successor to all of the unsold Lots owned by Declarant shall be exempt from the application of this Section. The Board may erect on the Common Areas a master directory of Lots, including Lots that are for sale or lease, and may regulate the size, appearance and location of signs advertising Lots and homes for sale or lease, subject to local rules and regulations.

6.9 Animals. Except as otherwise required by law, no animals, livestock or poultry of any kind, other than a reasonable number of household domestic pets that are not kept, bred or raised for commercial purposes shall be kept or permitted within any Lot. Excluded from the foregoing restriction shall be birds, fish, small reptiles and small animals which are kept in cages or tanks which are permanently kept within the interior of a home. All pets shall be registered and inoculated as required by law. Any Owner who maintains any pet upon any portion of the Property shall be deemed to have agreed to indemnify and hold the Association, each of its members and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet. Such Owner shall further abide by all governmental sanitary laws and regulations, leash and other local and state laws relating to pets and rules or regulations of the Association created by the Board of Directors. The Board of Directors shall have the right to order any person whose pet is a nuisance to remove such pet from the premises upon the delivery of the third notice in writing of a violation of any rule, regulation or restriction governing pets within the Property. Prior to requiring the removal of a pet, the Board of Directors must vote to approve the removal and then 75% of all Owners must also vote to approve the removal. A majority of the Board of Directors may adopt additional rules governing the keeping of animals and the size, number, nature, conduct and impact of animals, which rules shall then be approved by a vote of at least 75% of all Owners, in person or by proxy.

6.10 Appearance. Except to the extent of the Association's responsibility under Section 9.1, each Owner shall maintain such Owner's Unit and Lot in a clean and attractive condition,

in good repair and in such a fashion as not to create a fire hazard. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall be the responsibility of each Owner and shall be restored within a reasonable period of time. No part of any Lot or any part of the Common Areas shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Trash, garbage or other wastes shall be kept only in sanitary containers in the garages, except when outside awaiting pick up the night before and during garbage pickup days.

6.11 Landscape. Each Owner shall be responsible for installing and maintaining the landscaping on their Lot in a neat and well-kept condition and for payment of individual irrigation water usage. An Owner may not make significant changes to the front yard, side yard or rear yard landscaping or install significant additional landscaping on its Lot without the prior written approval of the Board of Directors.

6.12 Antennas and Service Facilities. Exterior antennas and satellite receivers and transmission dishes are prohibited, except to the extent expressly mandated by rules adopted by the Federal Communications Commission. Specifically, ham radio antennas, satellite dishes one meter or larger, television antennas on masts 12 feet or higher and multi-point distribution antennas more than one meter or on masts 12 feet or higher are prohibited. To the extent permitted by Federal Communications Commission rules, the Board of Directors may require all other antennas and dishes to be hidden from view from streets and adjoining dwellings. No outside clotheslines or similar service facilities may be installed without the approval of the Board of Directors.

6.13 Exterior Lighting or Noisemaking Devices. Except with the consent of the Board of Directors, and except for exterior lighting originally installed by the Declarant or builder, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot. Owners shall not tamper with exterior lighting installed by the Declarant or builder except to replace expended bulbs with similar new bulbs. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Rules and Regulations and if removed within 30 days after the celebrated holiday.

6.14 Windows, Decks, Porches and Outside Walls. To preserve the attractive appearance of the Property, the Association may regulate the nature of items that may be placed in or on windows, decks, porches, and the outside walls so as to be visible from the street or Common Areas. Window coverings, curtains, shutters, drapes or blinds, other than those of commercially produced quality, shall not be permitted to be visible from any public or private street, pathway, Common Area or adjacent property. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks.

6.15 Recreational Equipment. Unless approved by the Association, no playground, athletic or recreational equipment or structures, including without limitation, permanently installed basketball backboards, hoops and related supporting structures, shall be placed, installed or utilized on any Lot in view from any street, sidewalk or Common Area within the Property. Portable basketball backboards, hoops, soccer goal nets, and related supporting structures may be used during daylight hours, so long as such equipment is stored out of view from any street, sidewalk or Common Area within the Property.

6.16 Alterations. Owners are expressly prohibited from painting or changing the exterior of a building or other structure after original construction without the written permission of the Architectural Review Committee.

6.17 Construction. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within eight months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to strikes, fires, national emergency or natural calamities, this provision may be extended for a reasonable length of time upon approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage can or other garbage disposal facility on the site during such period. Debris may not be deposited on any other Lot. All construction debris, stumps, trees, etc. must be periodically removed from each Lot by the builder or Owner, and such debris shall not be dumped in any area within the Property unless approved by the Architectural Review Committee. If construction has not commenced upon any Lot within one year after acquisition thereof by an Owner other than Declarant or an affiliate of Declarant, the Owner shall install a sidewalk and landscape the area within 20 feet from the curb. The Owner shall irrigate and maintain this area. The Architectural Review Committee may waive this requirement if it determines that construction will commence within a reasonable time. In any case, all unimproved or unoccupied Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

6.18 Insurance. No Owner shall permit anything to be done or kept in their Unit or in the Common Areas that will result in cancellation of insurance on any Unit or any part of the Common Areas.

6.19 Leasing and Rental of Units. The Units may not be used for hotel or transient purposes, which shall be defined as: (i) rental for a period of less than 30 days, (ii) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services, or (iii) the overnight accommodation of business invitees on a temporary or transient basis (such as a hotel, motel or corporate suites operation). Notwithstanding the foregoing restrictions, to the extent permitted by local rules and zoning regulations, the Board of Directors shall have the authority to enact rules permitting the occasional rental of Units via Airbnb, vrbo.com or other vacation rental websites in a manner that will not violate the requirements of FHA and to prohibit such use if advisable to obtain project approval from such agencies. All leases of a Unit shall be by written agreement specifying that: (i) the tenant shall be subject to all provisions of the Declaration, Bylaws and Rules and Regulations; and (ii) failure to comply with any provision of the Declaration, Bylaws or Rules and Regulations shall constitute a default under the rental agreement. The lessor shall provide each tenant a copy of the Declaration, Bylaws and Rules and Regulations. The Owner shall be responsible for any violations by tenants and shall be directly responsible for either correcting or eliminating such violations or causing the tenant to do the same.

6.20 Pest Control. No Owner shall permit anything or condition to exist upon any portion of the Property that will induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin. Pesticide applications into Tracts A, B, and C on the Plat are prohibited.

6.21 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 prior approval 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 that may damage or interfere with established slope ratios, create erosion or sliding problems, or obstruct, change the direction of, or

retard the flow of water through drainage channels without the prior approval of the Architectural Review Committee, and then only to the extent and in the manner specifically approved.

6.22 Rain Drains and Sewers. All rain drains and storm sewers shall be kept free of debris, and Owners shall not cause any such drains or sewers to become blocked, clogged or otherwise to back up into any Lot. Drainage systems have been designed to meet the drainage requirements of local jurisdictions and may not be changed so as to fail to comply with such requirements or to adversely affect drainage.

6.23 Letter and Delivery Boxes. The Declarant and the United States Postal Service shall determine the location, color, size, design, lettering and all other particulars of all mail or delivery boxes, standards, brackets, and name signs for such boxes.

6.24 Fences. Within six (6) months following the date that a Certificate of Occupancy is issued for a home and associated improvements constructed on a Lot, in accordance with City of Durham rules, regulations, and applicable ordinances, fencing which encloses the rear and side yards of the Lot must be installed. No fencing shall be permitted on any Lots within the development without the express written consent from the Architectural Review Committee prior to any construction or installation of any fencing material. Any fencing shall be maintained in a good condition by the Lot owner and in a condition maintaining its original appearance. No fencing shall be stained or painted without the express written consent from the Architectural Review Committee prior to doing so.

6.25 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 to ensure 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 Board of Directors promptly to each Owner. The Rules and Regulations may be adopted by the Board, except as may be otherwise provided in the Bylaws of the Association. For clarity's sake, Owners shall abide by City of Durham local rules and regulations at all times. If there is a conflict between the Rules and Regulations and a provision of local, state, or federal law, the law shall preempt the Rules and Regulations.

Article 7

ARCHITECTURAL REVIEW COMMITTEE

7.1 **Architectural Review.** No Improvement or landscaping 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, except that construction by Declarant, any affiliate of Declarant, or any Participating Homebuilder that purchases a Lot(s) from Declarant or a successor declarant shall be presumed to have been approved and is thereby exempt from this review. 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 and dimensions of the Improvements; (ii) the exterior design; (iii) approximate exterior color scheme; (iv) location of Improvements on the Lot, including setbacks, driveway and parking areas; and (v) location of existing trees to be removed. These plans and specifications shall be left with the Committee until 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 that were 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 an application. In all cases in which the Architectural Review Committee's consent is required by this Declaration, the provisions of this Article shall apply, except that this Article shall not apply to construction by Declarant or any affiliate of Declarant.

7.2 **Committee Decision.** The Architectural Review Committee shall render its decision with respect to a construction proposal within 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 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. For clarity's sake, such review and decision by the Architectural Review Committee shall be in addition to, and not in lieu of, all required approvals from the City of Durham and all other appropriate public review authorities.

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 Guidelines or design standards that the Committee intends for the project. It is the intent and purpose of this Declaration to ensure quality of workmanship and materials, to ensure harmony of external design with the existing Improvements and with respect to topography and finished grade elevations and to ensure compliance with the setback requirements contained in the conditions of approval of the City of Durham or applicable jurisdictional authority. Considerations 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 Areas, disturbance of existing terrain and vegetation, and any other factors that 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 as Declarant may from time to time appoint. Declarant, at its discretion, may appoint a single Person to serve as the Committee and may remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. 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 members of the Architectural Review Committee shall be appointed by, and serve on behalf of, the Board of Directors, or if the Board of Directors fails to appoint such members, then the Board of Directors shall serve as the Architectural Review Committee. The terms of office for each member appointed by the Board of Directors shall be for one year unless lengthened by the Board at the time of appointment or unless the Board serves as the Committee, in which case the terms of the members shall be the same as their terms as Board members. The Board of Directors may appoint any or all of its members to the Committee and is not required to appoint non-Board members. The Board may appoint one or more members to the Committee who are not Owners, but who have special expertise regarding the matters that come before the Committee. In the sole

discretion of the Board, such non-Owner members of the Committee may be paid for such services, the cost of which may be paid by the applicants or treated as a common expense, as determined by the Board.

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 or her, 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 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. Appeals shall be made in writing within 10 days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board of Directors is already acting as the Architectural Review Committee, the appeal shall be treated as a request for a rehearing, in which case the Board shall meet and receive evidence and argument on the matter. A final, conclusive decision shall be made by the Board of Directors within 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, or unless the Owner has applied for and received an extension of time from the Committee.

7.10 **Estoppel Certificate.** Within 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.

7.11 **Enforcement.** If during or after the construction, the Architectural Review Committee finds that the work was not performed in substantial conformance with the approval granted, or that the required approval was not obtained, the Committee shall notify the Owner in writing of the

noncompliance, specifying the particulars of the noncompliance. The Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 7.8, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth in Section 11.1, except that construction by Declarant or any affiliate of Declarant shall be presumed to have been approved and is thereby exempt from this review.

Article 8

ASSOCIATION

Declarant has organized, or before conveyance of the first Lot shall organize, an association of all of the Owners within Durham Heights. Such Association, and its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name "**Durham Heights Homeowners Association**," 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, 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, the unincorporated association shall have all the property, powers and obligations of the incorporated association existing immediately prior to dissolution. 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 and shall be served by the members of the Board of Directors and the officers who served immediately prior to dissolution.

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 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 any of the following events, whichever occurs earlier:

(1) When all of the Lots in all phases of Durham Heights have been Sold and conveyed to Owners other than a successor Declarant or a builder for development and Declarant has relinquished the right to annex Additional Property;

(2) The expiration of 20 years after the closing of the sale of the first Lot to an Owner other than a successor Declarant or a builder for development; or

(3) 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 the provisions of this Declaration, accompanied by any required 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, all of 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 determined by the Board of Directors and in accordance with any requirements 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 6.23.

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

(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. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any Person as manager; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such Persons such as, but not limited to, landscape architects, architects, planners, attorneys and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract or any claim in excess of \$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of 75 percent of the total voting rights of the Association. These limitations shall not be applicable to legal fees incurred in defending the Association or the Board from claims or litigation brought against them. The limitations set forth in this paragraph (f) shall increase by 10 percent on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money.** The Association may borrow and repay money for the purpose of performing its duties under this Declaration; provided, however, that such borrowing in any calendar year shall not exceed 15 percent of the estimated budgeted expenses of the Association for that calendar year unless the Owners have enacted a resolution authorizing the project by a majority vote of the members. The Association may pledge Association income to secure such borrowing; and, subject to Section 4.3(d), encumber the Common Areas as security for the repayment of such borrowed money.

(h) **Hold Title to Property.** The Association may acquire and hold title to real and personal property and interests therein, and shall accept any real or personal property, leasehold or other property interests within Durham Heights conveyed to the Association by Declarant.

(i) **Transfer, Dedications and Encumbrances and Easements.** Except as otherwise provided in Sections 4.3(d) and 4.3(e), the Association may sell, transfer or encumber and grant easements upon all or any portion of the Common Areas or other property to which it then holds title to a Person, whether public or private, and dedicate or transfer all or any portion of such Common Area or property to any public agency, authority, or utility for public purposes and subject to any stated restrictions in this Declaration or in the corresponding title and other ownership documents.

(j) **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 without being required to render such services to those of its members who do not assent to such charges and to such related Rules and Regulations as the Board deems proper. In addition, the Board shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(k) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be inferred 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, unless otherwise prohibited by local, state, or federal law.

8.6 Liability. Neither a member of the Board of Directors nor an officer of the Association or member of any committee established by the Board shall be liable to the Association, any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure

to act in the performance of their duties, so long as the individual acted in good faith; believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests; and, in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board or any officer or committee member of the Association is threatened with or made a party to any proceeding because the individual was or is a director, officer or committee member of the Association, the Association shall defend such individual against such claims and 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 one to 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 90 days after termination of the Class B Membership in accordance with Section 8.3. 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 8.7, 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 Before Turnover Meeting. Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than three years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board upon not less than 30 days' notice to the other party given not later than 60 days after the Turnover Meeting. The limitations contained in this Section 8.8 shall not apply to those contracts referred to in ORS 94.700(2).

8.9 Managing Agent or Manager. On behalf of the Association, the Board of Directors shall employ or contract for a professional managing agent or a manager at a compensation to be established by the Board of Directors. The Board of Directors may delegate to the managing agent or manager such duties and powers as the Board of Directors may authorize. The Board of Directors may not terminate professional management and assume self-management unless the decision to do so is approved by at least 75 percent of the total voting power of the Association.

8.10 Bylaws. The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Washington County, Oregon. On behalf of the Association, the Declarant shall adopt and record the initial Bylaws as provided in ORS 94.625.

Article 9

MAINTENANCE, SERVICES, CONDEMNATION, DAMAGE

9.1 Owner's Maintenance Responsibilities. Each Owner shall be responsible to maintain their Lot, Unit and the portion of the street right-of-way between the Lot and the street in a neat and attractive condition in accordance with the community-wide standard of Durham Heights. The Association shall have the authority to require each Owner to keep their respective Lot and Unit at a high standard of maintenance. In the event an Owner fails to maintain their Unit or Lot to the standards

established by the Board of Directors pursuant to the authority of this section, the Association will have the right and the authority at its option, after giving reasonable notice and opportunity to be heard to the respective Owner, to cause such repairs and maintenance to be performed as are necessary to meet the foregoing standards and to charge the respective Owner for such repairs and maintenance.

9.2 Maintenance of Common Areas and Streetscape. The Association shall generally be responsible to maintain the Common Areas and Common Easement Areas in good, safe and attractive condition. In addition, the Association shall be responsible for maintenance of all the improvements located on the Common Areas and within the Common Easement Areas, including, without limitation, signage, fences and walls and the sidewalks and landscaping within the right-of-way of streets adjoining the Common Areas. The City of Durham will own and PGE is responsible for maintaining all street lighting within Durham Heights.

9.3 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of any utilities, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, located in the Common Areas, Common Easement Areas and Lots, except to the extent such maintenance is performed by the utilities furnishing such services, and shall be fully liable for its own maintenance of such utilities. The Association shall not be liable for any interruption or failure of such services. Each Owner shall maintain at such Owner's expense utility lines that serve only that Unit.

9.4 Maintenance Plan and Inspections. The Association shall maintain those portions of the Property to be maintained by the Association in as good or better condition as at the time of the Turnover Meeting. Declarant will initially prepare and thereafter the Board of Directors shall implement, review and update a maintenance plan (the "**Maintenance Plan**") for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration or the Bylaws or the Oregon Planned Community Act. The Maintenance Plan shall describe the maintenance, repair or replacement to be conducted, include a schedule for maintenance, repair or replacement, be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association and address issues that include, but are not limited to, warranties and the useful life of the items of which the Association has maintenance, repair or replacement responsibility. To the extent that the Maintenance Plan involves or implicates property owned or maintained by the City of Durham, the Association shall also provide the Maintenance Plan, and subsequent amendments, to the City of Durham for its review and approval. The operating and reserve budgets of the Association shall take into account such costs. The Board shall review and update the Maintenance Plan as necessary. Changes or updates to the Maintenance Plan shall be based on written advice of competent experts or consultants. In addition, the Board shall cause an annual professional inspection of those portions of the Property to be maintained by the Association pursuant to this Declaration for the purposes of identifying any items needing repair or preventive maintenance and shall cause such repair or preventive maintenance to be implemented. If the Association fails to follow such maintenance and inspection requirements, then neither the Association nor any Owner shall have any claim against Declarant or its design professionals, contractors, subcontractors and suppliers and their consultants, including without limitation, all of their officers, members, managers, directors, employees, agents and brokers, for loss or damage to the extent that they result from such failure to follow the Maintenance Plan or to conduct annual professional inspections, and shall indemnify such Persons and entities from and against claims by Owners or other Persons or entities for loss or damage resulting from such failure. For a period of 10 years following recording of the Declaration, any changes to the Maintenance Plan without the written approval of the Declarant and the original general contractor shall void any applicable warranty and will release them from liability for any damage resulting from such change.

9.5 Utilities and Services. Except as otherwise provided by City of Durham franchise agreements or local rules or regulations, the Association may provide or contract for such utilities and services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, cable, telecommunications, garbage and trash removal and security services.

9.6 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, any managing agent retained by 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, any managing agent retained by the Association, 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.**

9.7 Access at Reasonable Hours. For the purpose solely of performing the maintenance and services provided for in this Article 9, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of the dwelling thereof at reasonable hours. The Association shall also have a right of entry to Units for purposes of effecting emergency repairs or action to prevent imminent damage or injury to other Units, to other Owners and their guests or invitees, or to the Common Areas. In such instances, the Association shall give notice by telephone if reasonably possible prior to entry.

9.8 Condemnation. If any portion of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and to each Mortgagee. The Association shall represent the Owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the Common Areas and each Owner appoints the Association to act as their other attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking of Common Areas shall be payable to the Association. Proceeds shall first be applied to restore or repair any remaining Common Area, including a structure on a Common Area, which may be required to permit the continued enjoyment of such Common Area. Thereafter, the Association shall deposit such sums in the Operations Fund or apply these sums to such capital improvements as shall be authorized pursuant to Section 10.6 of this Declaration.

9.9 Damage or Destruction by Casualty. In the event of damage or destruction that affects a material portion of the Property, timely written notice shall be given to the Owners and their Mortgagees, and the following provisions shall apply:

(a) In the event of damage or destruction by casualty of any structures erected on the Common Areas or to the structure, roof or exterior of any Unit, the damage or destruction shall be repaired, reconstructed, or rebuilt unless, within 14 days of such damage or destruction, the Board of Directors or more than 10 percent of the Owners shall have requested a special meeting of the Association. Such special meeting must be held within 30 days of the date of damage or destruction. At

the time of such meeting, unless all Owners, whether in person, by writing, or by proxy, with the approval of 75 percent or more of the Mortgagees if and as required by this Declaration, vote not to repair, reconstruct, or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed, or rebuilt, with the work commencing as soon as reasonably possible. In the event any portion of the insurance proceeds paid to the Association are not used to repair, reconstruct, or rebuild the damaged or destroyed Common Areas or Units, the Association shall distribute the proceeds attributable to Units to the Owners and Mortgagees thereof, as their interests may appear. The proceeds attributable to Common Areas shall be deposited in the Operations Fund or applied to such capital improvements as shall be authorized pursuant to Section 10.6 of this Declaration. If the insurance proceeds are not sufficient to pay the entire cost, the Board of Directors, if necessary, may assess the Owner of each Unit such additional amounts as required to pay the cost of restoration. The responsibility for payment of the amount of the deductible in the Association's insurance policy may be prescribed by resolution adopted by the Board of Directors.

(b) If, due to act or neglect of an Owner or a member of their family or their household pet or of a guest or other unauthorized Occupant or visitor of such Owner, damage shall be caused to the Common Areas or maintenance, repairs or replacements shall be required that would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance (including any deductible), as an Individual Assessment.

9.10 Option to Provide Maintenance Services Through Association. Upon request of an Owner, the Association may provide maintenance and repair services which would otherwise be the responsibility of such Owner under this Article, provided that the respective Owner shall reimburse the Association, as an Individual Assessment, for such services immediately upon completion. Alternatively, upon proposal by the Board of Directors and approval by 51 percent of the total voting power of the Association, the charge for such maintenance and repair services may be designated a common expense of the Association to be paid with funds collected from the Owners pursuant to the assessment procedures set forth in Article 10. In the event the Owners elect to designate any such maintenance and repair services as a common expense of the Association, (i) such designation shall identify specifically which services are to become included as common expenses (with any maintenance and repair responsibilities not so included to remain the obligation of the Owners under Section 9.1); and (ii) the Association may add a charge to such common expenses sufficient to cover the costs of administering, coordinating and invoicing for such additional maintenance and repair services.

9.11 Tree Removal. Prior to any tree removal, the Owner, Association, or any other qualified individual shall obtain a tree removal permit from the City of Durham based on a tree protection and mitigation plan prepared by a certified arborist. The arborist shall re-evaluate the impacts of the removal of any existing wind breaks on the Property and Common Areas, assess whether pruning would be a viable alternative to full removal, and consider a level-3 risk assessment test of the tree to be removed.

Article 10

ASSESSMENTS

10.1 Purpose of Assessments. The Association may levy 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 and those portions of the Lots to be maintained by the Association.

10.2 When Lots Become Subject to Assessment.

(a) **Lots Owned by Declarant; Builder for Development.** Lots owned by Declarant, any affiliate of Declarant or Lots conveyed to a homebuilder for development shall not be subject to General Assessments (excluding assessments for reserves), Special Assessments or Emergency Assessments until such time as the Lot is occupied for residential use. In the event of any operating expense shortfalls, Declarant, any affiliate of Declarant or a homebuilder who owns a Lot(s) for development, will contribute funds to the Association's budget to offset the shortfall based on a relative percentage of Lots each entity or party owns. With regard to the reserve portion of the General Assessments, Lots owned by Declarant or any affiliate of Declarant shall not be subject to the reserve portion of General Assessments until such Lots are occupied for residential use. Lots conveyed to a homebuilder for development are subject to the reserve portion of the General Assessments commencing upon the date such Lots are conveyed to the homebuilder for development, but any such homebuilder may elect to defer payment of the accrued reserve assessments for a Lot until the sooner of the Lot is sold for residential use or the Turnover Meeting.

(b) **Other Lots.** All Lots other than Lots owned by Declarant, any affiliate of Declarant or Lots conveyed to a homebuilder for development shall be subject to assessment and shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments. Notwithstanding the provisions of this Section 10.2, however, a supplemental declaration annexing a specific Common Area facility may specify a special allocation of assessing the costs of operating and maintaining the facility on such Common Area in order to more fairly allocate such cost, taking into account the extent of use or other factors. 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 their own action, may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use or enjoyment of any of the Common Areas 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.

10.3 Allocation of Assessments. All Lots subject to assessment shall pay an equal share of the General Assessments, Special Assessments and Emergency Assessments.

10.4 Type of Assessments. The Association is authorized to levy the following types of Assessments:

(a) **General Assessments.** The Association may levy General Assessments for the common expenses incurred by or on behalf of the Association in accordance with this Declaration. The Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over-assessment and any common profits of the Association. The budget shall take into account the number 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 may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund. 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 10.7. General Assessments for such operating expenses and reserves shall then be apportioned among the Lots as provided in Section 10.2. The Board may revise the budget and adjust the General Assessment from time to time during the year. Within 30 days after the adoption of a

final budget by the Board, the Board shall send a copy of the final budget to each Owner. If the Board fails to adopt a budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

(b) **Special Assessments.** The Board of Directors may levy during any fiscal year a 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 General Assessments. Special Assessments for acquisition or construction of new capital improvements or additions that in the aggregate in any fiscal year exceed an amount equal to 15 percent 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, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than 50 percent 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 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

(c) **Emergency Assessments.** If the General 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 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 Assessments shall be apportioned as set forth in Section 10.4(c) and payable as determined by the Board.

(d) **Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed as Individual Assessments exclusively against the Lots benefited. Individual Assessments shall 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, Individual Assessments shall be due 30 days after the Board has given written notice thereof to the Owners subject to the Individual Assessments.

(e) **Working Fund and Reserve Account Assessments.** Upon the first sale of a Lot to a purchaser other than a successor Declarant and Participating Homebuilder and upon any subsequent sale of such Lot, the purchaser shall pay to the Association a Working Fund Assessment in the amount of three (3) times the then-current monthly or quarterly General Assessment. The Board of Directors may deposit Working Fund Assessments either in the Operations Fund or in the Reserve Fund, at the discretion of the Board. The Board of Directors may elect to alter the amount of the Working Fund Assessment through a vote and resolution of the Board.

10.5 Assessment of Additional Property. When Additional Properties are annexed to Durham Heights, the Lots included therein shall become subject to Assessments as provided in Section 10.2. The Board of Directors, however, at its option may elect to recompute the budget based upon the additional Lots subject to Assessment and additional Common Areas and recompute General Assessments for all Lots, including the new Lots, for the balance of the fiscal year.

10.6 Operations Fund. The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.7 or Working Fund Assessments deposited in the Reserve Fund, separate and apart from its other funds, in an Operations Fund in a bank account in the name of the Association. The Association shall use such fund 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 the Lots, including but not limited to:

- (a) Payment of the cost of operation, maintenance, utilities, services, repairs and replacements as provided in Article 9.
- (b) Payment of the cost of insurance maintained by the Association.
- (c) Payment of taxes assessed against the Common Areas and any improvements thereon.
- (d) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including, but not limited to, accounting, legal and secretarial services.

10.7 Reserve Fund.

(a) **Establishment of Account.** Declarant, on behalf of the Association, shall conduct an initial reserve study as described in this Section 10.7 and establish a Reserve Fund in a bank account in the name of the Association to fund major maintenance, repair or replacement of those items that if the Association has responsibility to maintain, including items required by the Maintenance Plan established pursuant to Section 9.4, that will normally require major maintenance, repair or replacement in whole or in part in more than one and less than 30 years, including, without limitations, exterior painting. The Reserve Fund need not include those items that can reasonably be funded from the general budget or other funds of the Association or for those items for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(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 General Assessment for the Lot. The Reserve Fund shall also include Working Fund Assessments to the extent so allocated by the Board of Directors pursuant to Section 10.4(e). The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into the account. The Board of Directors or the Owners may not vote to eliminate funding the Reserve Fund unless the Board determines that the Reserve Fund will be adequately funded for the following year, except that after the Turnover Meeting the Board, with the approval of all Owners, may, on an annual basis, elect not to fund the Reserve Fund for the following year.

(c) **Reserve Studies.** The reserve portion of the initial Assessment determined by Declarant shall be based on a reserve study described in this paragraph (c) or other sources of information. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements, and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board, in its discretion, may deem appropriate. The annual reserve study shall:

- (1) Identify all items for which reserves are to be established;
- (2) Include the starting balance of the Reserve Fund for the current fiscal year;
- (3) Include the estimated remaining useful life of each item for which reserves are or will be established, as of the date of the reserve study;
- (4) Include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of its useful life of each item for which reserves are or will be established;
- (5) Include the rate of inflation during the current fiscal year; and
- (6) Include returns on any invested reserves or investments.

(d) **Use of Reserve Fund.** The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, 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 unexpected increases in expenses if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. 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.

10.8 Declarant's Subsidy. Declarant may, but shall not be obligated to, reduce the General Assessments for any fiscal year by payment of a subsidy (in addition to any other amounts then owed by Declarant), which may be either a contribution, an advance against future Assessments due from Declarant or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the Association's budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years unless otherwise provided in a written agreement between the Association and Declarant.

10.9 Commencement of Assessment Obligation; Time of Payment. The obligation to pay Assessments under this Declaration shall commence as to each Lot on the first day of the month after such Lot becomes subject to Assessment. The first annual General Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence for such Lot.

10.10 Payment of Assessments. Assessments shall be paid in such manner and on such dates as the Board of Directors may establish. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on their Lot, the Board may require the outstanding balance on all Assessments to be paid in full immediately. Until the Turnover Meeting, any obligation of Declarant to pay Assessments may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

10.11 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Property, hereby covenants, 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, late charges, expenses or attorneys' fees imposed pursuant to Article 11, 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.

10.12 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 an Owner or Owner's agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

10.13 No Waiver. Failure of the Board of Directors to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification or release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

10.14 No Option to Exempt. No Owner may exempt himself or herself from liability for Assessments by nonuse of Common Areas, abandonment of their Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board of Directors to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

10.15 Certificate. Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Article 11

ENFORCEMENT

11.1 Violation of Protective Covenants. In the event that any Owner violates any provision of this Declaration, the Bylaws or the Rules and Regulations, then the Association acting through the Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is 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 14 days after issuing written notice to the Owner, then the Association acting through the Board shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, 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 that 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 of the Rules and Regulations to be towed and impounded at the Owner's expense;

(d) Suspend the voting rights, any utility or communication 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 the Owner's Lot in the absence of a lien foreclosure or court order to such effect; 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 30 days after 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 or communication service 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 General Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot in the absence of a lien foreclosure or court order to such effect.

(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, and may foreclose such lien in the manner provided in ORS 94.709.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments under this Declaration without foreclosing or waiving the lien described in Section 10.11. 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 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 that is the greater of 18 percent 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, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid Assessments, including attorneys' fees (whether or not suit is instituted). 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.

11.4 Costs and Attorneys' Fees. In the event of any suit or action to enforce this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act, or to collect any money due hereunder or to foreclose a lien, the prevailing party in such suit or action shall be entitled to recover all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and 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.

11.5 Assignment of Rents. As security for the payment of all obligations owing to the Association pursuant to this Article 11, each Owner hereby grants to the Association, to the extent permitted by law, the right to collect the rents, issues and profits of the Owner's Lot; provided, however, that the Owner shall retain the right, prior to any default by such Owner in performance of the Owner's obligations under this Declaration, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after 10 days' written notice to the Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply them, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of such indebtedness to the Association, and in such order as the Association may determine. Such action shall not cure nor waive any default under this Declaration or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this Section 11.5 shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second Mortgage on any Lot to do the same or similar acts.

11.6 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.

11.7 Enforcement by City of Durham. The provisions of this Declaration relating to preservation and maintenance of Common Areas and creation and existence of the Association shall be deemed to be for the benefit of the City of Durham as well as the Association and Owners of Lots, and the City may enforce such provisions by appropriate proceedings at law or in equity or may cause such

maintenance to be performed, the costs of which may become a lien upon the Property, or may be brought against the Association, Owners of Lots, or any other responsible individual, as appropriate. For clarity's sake, the City of Durham shall be entitled to rely on, shall be an express third-party beneficiary of, and shall be entitled to enforce, the provisions of this Declaration regarding the Common Areas, the preservation and maintenance of the Common Areas, and the creation and continued existence of the Association, including, but not limited to, Article 3, Article 4, Section 8.1, and Section 9.4. In addition, Section 9.1 may be enforced by the City to facilitate the maintenance, repair or replacement of common property line fire walls, and may be facilitated by application of City housing or nuisance abatement ordinances, or any existing building or property maintenance codes.

Article 12

DISPUTE RESOLUTION

12.1 Claims Other Than for Defective or Negligent Construction or Condition. The following provisions of this Section 12.1 shall apply to any claim, controversy or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the manager or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws or the Property, other than claims relating to defective or negligent construction or condition as provided in Section 12.2:

(a) **Mediation.**

(1) Except as otherwise provided in Section 12.1, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within the City of Durham or applicable jurisdictional authority that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(2) If the party receiving the offer does not accept the offer within 10 days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(3) If a qualified dispute resolution program exists within the City of Durham or applicable jurisdictional authority and an offer to use the program is not made as required under Section 12.1(a)(1), then litigation, arbitration or an administrative proceeding may be stayed for 30 days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this Section 12.1(a)(3), both parties shall participate in the dispute resolution process.

(4) Unless a stay has been granted under Section 12.1(a)(3), if the dispute resolution process is not completed within 30 days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(5) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(6) The requirements of this Section 12.1(a) do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

(b) **Arbitration.** Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association, committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 12.1(a) or otherwise, and if not timely settled by mediation, shall be resolved by arbitration in accordance with this Article 12, and shall be conducted by and pursuant to the then effective arbitration rules, except as modified herein, of the Arbitration Service of Portland, Inc. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in the Portland, Oregon, metropolitan area or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action (“lis pendens”).

(c) **Selection of Arbitrator.** The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator’s prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within 10 days after a party’s demand for arbitration, upon application of any party, the presiding judge of the Circuit Court of the Washington County or applicable jurisdictional authority shall designate the arbitrator.

(d) **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of this Article 12, in the event any claim, controversy or dispute related to the Property or this Declaration involves a claim by any party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then the party asserting the claim against a third party hereby waives trial by jury and agrees that such claim(s) shall be determined by a judge sitting without a jury.

(e) **Discovery.** The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Washington County or applicable jurisdictional authority Circuit Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions, including, without limitation, award against a party for failure to comply with any order.

(f) **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except when any of the parties is absent in default or has waived its right to be present.

(g) **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 12 (but shall be subject to the applicable provisions of Section 12.1(h): (i) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); and (ii) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 12. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 12.

(h) **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations; to rescind this Declaration; or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and upon any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

12.2 Claims for Negligent or Defective Construction or Condition. The following alternative dispute resolution procedures shall apply to any claim by the Association or any Owner against Declarant or its affiliates, members or managers, or any contractor, subcontractor, supplier, consultant or design professional of every tier performing any work or services in connection with the Property, and their agents, brokers, successors, employees, affiliates, representatives, officers, directors, managers and members, and any of their insurers and reinsurers, related to the design, construction or condition of the Property, including, but not limited to, claims for defective or negligent construction or design or failure to disclose a defective condition.

(a) **Initial Dispute Resolution Procedures.**

(1) In the event of a claim for a construction defect governed by ORS 701.560 to 701.595, the parties shall first comply with the provisions contained therein. In the event the claim is not for a construction defect governed by such provisions, but relates to a claimed defect in the condition of the Property, the parties shall follow the same procedures as set forth in such provisions, except that the notice of defect shall include a statement of the basis upon which the recipient is claimed to be liable for the defect.

(2) In the event the claim is for a matter not governed by Section 12.2(a)(1), the parties shall first attempt in good faith to resolve the claim through direct discussions following receipt of written notice of the claim. If the parties are unable to resolve the matter within 180 days of the

assertion of the claim, then following expiration of such period the parties shall proceed with mediation as provided in Section 12.2(b).

(3) Compliance with the procedures contained in this Section 12.2(a) shall be a condition precedent to mediation, arbitration or litigation of any such claims.

(b) **Mediation.** If the initial dispute resolution proceedings under Section 12.2(a) do not resolve the claims, the parties shall then engage in mediation to resolve the claims. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. Completion of the mediation process under this Section 12.2 shall be a condition precedent to the filing of any arbitration or litigation proceedings under this Section 12.2(b) or any claims relating to the matter with the Oregon Construction Contractors Board, and the claimant waives any right to file any such claims if the claimant has not fully complied with this Section 12.2(b). The mediation shall be conducted in accordance with the following procedures:

(1) Within 60 days after completion of the proceedings under Section 12.2(a) and delivery of a demand for mediation by one of the parties to the other parties, the parties shall agree upon a neutral mediator. If the parties are unable to agree on a mediator within that period, upon application of any party, the Presiding Judge of the Circuit Court of Washington County or applicable jurisdictional authority shall designate the mediator.

(2) Within 60 days after appointment of the mediator, the parties shall exchange with each other all inspection and consultant's reports in their possession pertaining to the claims, which reports and materials shall be considered and remain confidential mediation communications under ORS 36.220(1).

(3) The parties shall have 90 days after exchanging reports in which to perform additional inspections. Any additional reports resulting from such inspections shall be furnished to the other parties prior to mediation, which reports and materials shall be considered and remain confidential mediation communications under ORS 36.220(1).

(4) The mediation shall be conducted after completing parts (2) and (3) above, but within 180 days following appointment of the mediator. The mediator may elect to adjourn the mediation to additional sessions if the mediator determines that further sessions would be beneficial in resolving the disputes.

(5) Each party shall send to the mediation a representative with authority to settle the dispute.

(6) Any settlement agreed upon in mediation shall be documented and executed within 60 days following completion of the mediation.

(c) **Arbitration.** All claims that have not been resolved by the initial dispute resolution procedures set forth in Section 12.2(a), or mediation pursuant to Section 12.2(b), shall be submitted to final and binding private arbitration in accordance with Sections 12.1(b) through 12.1(h). Each party shall be responsible for its own costs and attorneys' fees in any suit, action or arbitration brought under this Section 12.2, and the prevailing party shall not be entitled to an award of costs, disbursements, expert witness fees or attorneys' fees, in the arbitration, upon any motion for reconsideration, upon petition for review, on appeal or otherwise.

(d) **Confidentiality.** The parties shall keep all discussions of disputes, settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties other than their attorneys and consultants, unless compelled to do so by an order of a court of competent jurisdiction. In the event of a breach of this confidentiality obligation, the other party shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance, and the breaching party waives any claim or defense that the other party has an adequate remedy at law for any such breach, and such party shall not be required to post any bond or other security in connection with any such equitable relief.

(e) **Time Periods Within Which Claims Must Be Asserted.** Any claims under this Section 12.2, including, without limitation, allegations of property damage or personal injury claims arising out of fungus, spores, or mold, any water intrusion or dampness, or otherwise, regardless of the legal theory or basis of alleged causation, including but not limited to negligence, misrepresentation, construction defect, professional errors or omissions, strict liability or breach of contract, must be commenced under Section 12.2(a) by providing written notice on the earlier of (i) expiration of the applicable statute of limitations, (ii) within 90 days after the date the Association or the Owner(s) knew or reasonably should have known of facts sufficient to put the Association or the Owner(s) on notice of the claim, (iii) within 90 days after the date the Association or the Owner(s) first discovered or in the exercise of reasonable care should have discovered the injury or damage, (iv) with respect to the Unit, by no later than the first anniversary of the closing date of the sale of the Unit to the first purchaser, or (v) with respect to the Common Areas, by no later than the first anniversary of the date of the first conveyance of a Unit to an Owner other than Declarant. Any arbitration or litigation based upon such claim(s) must be instituted on the earlier of (i) 60 days after completion of the mediation proceedings under Section 12.2(b), or (ii) one year after expiration of any express warranty or the applicable statute of limitations. Any and all such claims not brought within these time periods will be deemed time barred, regardless of when the Association or Owners actually discovered the alleged basis for the claim. For purposes of this Section 12.2(e), a claim is “instituted” when arbitration is formally initiated or a complaint is filed in the appropriate court and served promptly on the parties.

12.3 Survival. The mediation and arbitration agreement set forth in this Article 12 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

Article 13

MORTGAGEES

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article 13 apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

13.1 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 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 or nonjudicial sale thereunder shall extinguish any lien of an Assessment, notice of which was recorded after the recording of the Mortgage. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

13.2 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 Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas. First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

13.3 Notification of First Mortgagee. If a first Mortgagee has requested such notice in writing from the Association, the Board shall notify such Mortgagee of any individual Lot of any default in performance of this Declaration by the Owner which is not cured within 60 days after notice of default to the Owner.

13.4 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

13.5 FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), if this Declaration was previously approved by such agencies: annexation of Additional Properties other than as provided in the General Plan of Development, mergers and consolidations, mortgaging or dedication of Common Areas, dissolution of the Association, and amendment of this Declaration or the Articles of Incorporation or the Bylaws of the Association.

Article 14

AMENDMENT AND REPEAL

14.1 How Proposed. Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding 30 percent or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

14.2 Approval Required. 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 75 percent 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. To the extent required by Section 13.5, such amendment shall also require the prior written approval of the FHA and VA. In addition, to the extent that such proposed amendment impacts the rights of any third party beneficiary to this Declaration, such amendment shall also require the prior written approval of such third party beneficiary. In no event shall an amendment under this Section 14.2 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 under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot, 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 75 percent 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, repair, upkeep and replacement and access to shared or common use building elements or utilities or the existence of an entity responsible for

accomplishing the same, such amendment shall be approved by Washington County, the City of Durham, or the responsible agency.

14.3 Recordation. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Washington County, Oregon of a certificate of the President and Secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal has been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

14.4 Regulatory Amendments. Notwithstanding the provisions of Section 14.1, until the Turnover Meeting 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 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, the City of Durham and its associated rules and regulations, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment must be approved by the Association in accordance with the approval provisions of this Declaration or the Bylaws, as applicable.

Article 15

MISCELLANEOUS PROVISIONS

15.1 No Implied Obligations. Nothing in this Declaration shall be construed to require Declarant or any successor Declarant to subject Additional Property to this Declaration or to improve or develop any of the Property or to do so for any particular uses.

15.2 Notice of Sale or Transfer of Title. Any Owner selling or otherwise transferring title to their Lot shall give the Association written notice within seven days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.3 Exclusive Rights to Use Name of Development. No Person shall use the name “Durham Heights” or any derivative of such name in any printed, digital (i.e., internet) or other promotional or commercial material without Declarant’s prior written consent. However, an Owner may use the name “Durham Heights” where such term is used solely to specify that the Owner’s property is located within the Property. In no event shall any Owner enter into an agreement with any third party for the sale, rental or management of the Owner’s Lot if such agreement purports to grant any right to such third party to use the name “Durham Heights” or any derivative of such name in violation of this provision.

15.4 Lessees and Other Invitees. Lessees, employees, invitees, licensees, contractors, family members, guests 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 their 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.

15.5 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.

15.6 Construction and Severability. This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof 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.

15.7 Terminology and Captions. 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 in this Declaration are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

15.8 Notices. All notices to the Association or to the Board of Directors shall be sent care of the manager or, if there is no manager, to the principal office of the Association or to such other address as the Board may designate from time to time. All notices to any Owner shall be sent to such address as may have been designated by such Owner from time to time, in writing, to the Board or, if no address has been designated, to the Owner's Lot. In the discretion of the Board, any notice, information or other written material required to be given to an Owner or director under this Declaration or the Bylaws or pursuant to the Oregon Planned Community Act, may be given by electronic mail, facsimile or other form of electronic communication acceptable to the Board, except for the following notices: failure to pay an Assessment, foreclosure of an Association lien under ORS 94.709, or an action the Association may take against an Owner. An Owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the Board to provide notice in any other manner permitted under this Declaration or the Bylaws or the Oregon Planned Community Act.

15.9 Private Agreement. This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Durham Heights. This Declaration does not restrict Washington County, City of Durham, or authority to adopt or amend its development regulations. It is the duty of every Person engaged in development or remodeling of a Lot and/or improvement in Durham Heights to know the requirements of this Declaration and the covenants and agreements contained herein. There may be conflicting requirements between this Declaration and regulations of the City of Durham or applicable jurisdictional authority. In the event there is a conflict between a regulation of the City of Durham or applicable jurisdictional authority and this Declaration, any question regarding which provision controls shall be directed to the Architectural Review Committee. In each case, the City of Durham or applicable jurisdictional authority will limit its review of a development application to the requirements of its regulations and will not be liable for any approvals or permits that are granted in compliance with the regulations of the City of Durham, Washington County, the State of Oregon or any other jurisdiction, but that are not in compliance with this Declaration. Declarant, the Committee and/or the Association will not be liable for any approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of the City of Durham, Washington County, the State of Oregon or any other jurisdiction.

IN WITNESS WHEREOF, Declarant and Durham Land Holdings, LLC have executed this Declaration as of the date set forth above.

WEEKLEY HOMES, LLC,
a Delaware Limited Liability Company

By: _____

Its: _____

STATE OF _____)
County of _____) ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of WEEKLEY HOMES, LLC, a Delaware Limited Liability Company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 202__.

Notary Public for _____
My commission expires: _____

Commission No. _____

DURHAM LAND HOLDINGS, LLC, an
Oregon limited liability company

By: _____

Its: _____

STATE OF _____)
County of _____) ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of DURHAM LAND HOLDINGS, LLC, an Oregon Limited Liability Company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 202__.

Notary Public for _____
My commission expires: _____

Commission No. _____

EXHIBIT A

**BYLAWS OF
DURHAM HEIGHTS HOMEOWNERS ASSOCIATION**

**BYLAWS OF
DURHAM HEIGHTS HOMEOWNERS ASSOCIATION**

Article 1

DEFINITIONS

15.10 **Association.** “Association” means Durham Heights Homeowners Association, a nonprofit corporation organized and existing under the laws of the State of Oregon.

15.11 **Articles of Incorporation.** “Articles of Incorporation” means the Articles of Incorporation of the Association.

15.12 **Declaration.** “Declaration” means the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Durham Heights to which these Bylaws are attached, as the same may be subsequently amended or supplemented pursuant to the terms thereof.

15.13 **Incorporation by Reference.** Except as otherwise provided herein, the terms that are defined in Article 1 of the Declaration are used in these Bylaws as therein defined.

Article 16

MEMBERSHIP

16.1 **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 ownership, 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. The Association shall have two classes of membership, Class A and Class B, as set forth in the Declaration.

16.2 **Membership List.** The Secretary shall maintain at the principal office of the Association a membership list showing the name and address of the Owner of each Lot. The Secretary may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Board of Directors.

Article 17

MEETINGS AND VOTING

17.1 **Place of Meetings.** Meetings of the members of the Association shall be held at such reasonable place convenient to the members as may be designated in the notice of the meeting.

17.2 **Turnover Meeting.** Declarant shall call the first meeting of the Owners to organize the Association within 90 days after termination of the Class B Membership as provided in Section 17.7. Notice of such meeting shall be given to all Owners as provided in Section 17.5. If a quorum of the Owners is present, the Owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the Board of Directors. If the Declarant fails to call the meeting, the meeting

may be called and notice given by any Owner or Mortgagee of a Lot. The expense of giving notice shall be paid or reimbursed by the Association. In the event of a lack of quorum at such Turnover Meeting, it may be adjourned as provided in Section 17.6. Nothing in this Section 3.2 shall be construed as preventing Declarant from calling the Turnover Meeting before such date or from calling informal, informational meetings of the Owners.

17.3 Annual Meeting. The annual meeting of the members for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors or, if the Board should fail to designate a date by the first day of September, then at 7:30 p.m. on the second Thursday in October. The first annual meeting shall be held within one year after the date of the Turnover Meeting.

17.4 Special Meetings. A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called by the President or Secretary upon receipt of a written request stating the purpose of the meeting from members having at least 30 percent of the voting rights entitled to be cast at such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting.

17.5 Notice of Meeting.

(a) Written or printed notice stating the place, day and time of the meeting, the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, any proposal to remove a director or officer and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 or more than 50 days before the date of the meeting. Such notice shall be given either personally, by mail or, to the extent permitted by law, by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, by or at the direction of the President, the Secretary, or the Persons calling the meeting, to each member entitled to vote at such meeting and to all Mortgagees who have requested such notice. For a period of 10 years following recording of the Declaration, notices of meetings (including agendas) shall also be given to Declarant (or any designee of Declarant specified in any written notice to the Association) in the same manner as given to Owners, and Declarant or a representative of Declarant shall be entitled to attend such meetings. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at their most recent address as it appears on the records of the Association or to the mailing address of their Lot.

(b) When a meeting is adjourned for 30 days or more, or when a redetermination of the Persons entitled to receive notice of the adjourned meeting is required by law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases, no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

17.6 Quorum. At any meeting of the Association, members having at least 20 percent of the voting rights entitled to be cast at such meeting, present in person, by proxy or by absentee ballot, if permitted by the Board of Directors, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn

the meeting from time to time not less than 48 hours or more than 30 days from the time the original meeting was called until a quorum is present.

17.7 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:

(1) When all of the Lots in the final phase of development of Durham Heights have been sold and conveyed to Owners other than a successor Declarant or a builder for development and Declarant has relinquished the right to annex Additional Property; or

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

17.8 Fiduciaries and Joint Owners. An executor, administrator, guardian or trustee may vote or grant consent with respect to any Lot owned or held in such capacity, whether or not the specific right shall have been transferred to their name; provided that such person shall satisfy the Secretary that such person is the executor, administrator, guardian or trustee, holding such Lot in such capacity. Whenever any Lot is owned by two or more Persons jointly, according to the records of the Association, the vote of such Lot may be exercised by any one of the Owners, in the absence of protest by a co-Owner. In the event of disagreement among the co-Owners, the vote of such Lot shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

17.9 Tenants and Contract Vendors. Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Lot shall be exercised by the Owner. Unless otherwise stated in the contract, all voting rights allocated to a Lot shall be exercised by the vendee of any recorded land sale contract on the Lot.

17.10 Casting of Votes and Consents. The voting rights or consent of an Owner may be cast in person at a meeting of the Association or, at the discretion of the Board of Directors, by proxy in accordance with paragraph (a) of this section, by absentee ballot in accordance with paragraph (b) of this section, by written ballot in accordance with paragraph (c) of this section, or by any other method specified in the Declaration, these Bylaws or the Oregon Planned Community Act.

(a) **Proxies.** A proxy must be dated and signed by the Owner, is not valid if it is undated or purports to be revocable without notice, and terminates one year after its date unless the proxy specifies a shorter term. The Board of Directors may not require that a proxy be on a form prescribed by the Board. An Owner may not revoke a proxy given pursuant to this paragraph except by actual notice of revocation to the Person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting. A copy of a proxy in compliance with this paragraph provided to the Association by facsimile, electronic mail or other means of electronic communication utilized by the Board of Directors is valid.

(b) **Absentee Ballots.** An absentee ballot, if authorized by the Board of Directors, shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by absentee ballot shall include instructions for delivery of the completed absentee ballot, including the delivery location and instructions about whether the ballot may be canceled if the ballot has been delivered according to the instructions. An absentee ballot shall be counted as an Owner present for the purpose of establishing a quorum. Even if an absentee ballot has been delivered to an Owner, the Owner may vote in person at a meeting if the Owner has returned the absentee ballot and canceled the absentee ballot, if cancellation is permitted in the instructions given under this paragraph.

(c) **Ballot Meetings.** At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting by written ballot to the extent and in the manner provided in ORS 94.647.

(d) **Electronic Ballots.** To the extent authorized by the Board of Directors and permitted by the Oregon Planned Community Act, any vote, approval or consent of an Owner may be given by electronic ballot.

(e) **Mortgagees.** An Owner may pledge or assign such Owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the Owner is entitled under these Bylaws and to exercise the Owner's voting rights from and after the time that the Mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

17.11 Majority Vote. The vote of a majority of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy, at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

17.12 Rules of Order. Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

Article 18

DIRECTORS: MANAGEMENT

18.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors of three to five persons. All directors, other than interim directors appointed by Declarant, shall be Owners or co-Owners of Lots. For purposes of this Section 4.1, the officers of any corporate Owner, the members of any limited liability company and the partners of any partnership shall be considered co-Owners of any Lots owned by such corporation or partnership.

18.2 Interim Directors. Upon the recording of the Declaration, Declarant shall appoint an interim board of one to three directors, who shall serve until replaced by Declarant or until their successors have been replaced by the Owners as provided below.

18.3 Transitional Advisory Committee. Unless the Turnover Meeting has already been held, Declarant shall call a meeting of the Owners for the purpose of forming a Transitional Advisory

Committee. The meeting shall be called within 60 days after the date Declarant conveys 50 percent or more of the Lots then existing in Durham Heights to Owners other than a successor Declarant. The committee shall consist of two or more Owners elected by the Owners other than Declarant and not more than one representative of Declarant. The members shall serve until the Turnover Meeting. The Transitional Advisory Committee shall be advisory only, and its purpose shall be to enable ease of transition from administrative control of the Association by Declarant to control by the Owners. The committee shall have access to any information, documents and records that Declarant must turn over to the Owners at the time of the Turnover Meeting. If Declarant fails to call the meeting to elect a Transitional Advisory Committee within the time specified, the meeting may be called and notice given by any Owner. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

18.4 Election and Tenure of Office.

(a) At the Turnover Meeting, the interim directors shall resign and the members shall elect three directors, two to serve for two years and one to serve for one year. The two nominees receiving the greatest number of votes shall serve for two years. In the event of a tie, term selection shall be by random means. Thereafter, the successors to each director shall serve for terms of two years each.

(b) Upon a majority vote of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy at a meeting or ballot meeting at which a quorum is present, the Board of Directors may be increased from three directors to five directors. At the next annual meeting or a special meeting called for such purpose, two additional directors shall be elected, one to serve for a two-year term and one to serve for a one-year term. Term selection shall be in the same manner as provided in paragraph (a) above.

(c) All directors shall hold office until their respective successors shall have been elected by the members. Election shall be by plurality.

18.5 Vacancies.

(a) A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the members fail at any annual or special meeting of members at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting.

(b) Vacancies in the Board of Directors, other than interim directors, may be filled by a majority of the remaining directors even though less than a quorum, or by a sole remaining director. Each director so elected shall hold office for the balance of the unexpired term and until their successor is elected. Vacancies in interim directors shall be filled by Declarant.

18.6 Removal of Directors. All or any number of the directors, other than interim directors, may be removed, with or without cause, at any meeting of members at which a quorum is present, by a vote of a majority of the number of votes entitled to be cast at an election of directors. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

18.7 Powers. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the

Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to, those set forth in Section 8.5 of the Declaration and the following:

- (a) Carry out the program for maintenance, upkeep, repair and replacement of any property required to be maintained by the Association as described in the Declaration and these Bylaws.
- (b) Determine the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.
- (c) Prepare a budget for the Association, and Assessment and collection of the Assessments.
- (d) Employ and dismiss such personnel as may be necessary for such maintenance, upkeep and repair.
- (e) Employ legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of 75 percent of the voting rights. These limitations shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitations set forth in this paragraph shall increase by 10 percent on each fifth anniversary of the recording of the Declaration. To the extent required by the Oregon Planned Community Act, the Board shall notify the Owners before instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the Board shall periodically report to the Lot Owners as to the status (including settlement offers), progress, and method of funding such litigation. Nothing in this paragraph shall be construed as requiring the Board to disclose any privileged communication between the Association and its counsel.
- (f) Open bank accounts on behalf of the Association and designate the signatories required therefor.
- (g) Prepare and file, or cause to be prepared and filed, any required income tax returns or forms for the Association.
- (h) Purchase Lots at foreclosure or other judicial sales in the name of the Association or its designee.
- (i) Sell, lease, Mortgage, vote the votes appurtenant to (other than for the election of directors), or otherwise deal with Lots acquired by the Association or its designee.
- (j) Obtain insurance or bonds pursuant to the provisions of these Bylaws and review such insurance coverage at least annually.
- (k) Make additions and improvements to, or alterations of, the Common Areas, or modify, close, remove, eliminate or discontinue use of any common facility, including any improvement or landscaping, except that any such modification, closure, removal, elimination or discontinuance (other

than on a temporary basis) of any swimming pool, spa or recreational or community building must be approved by a majority vote of the members at a meeting or by written ballot held or conducted in accordance with these Bylaws.

(l) From time to time adopt, modify, or revoke such Rules and Regulations governing the details for the operation of the Association, the conduct of Persons and the operation and use of the Property as the Board of Directors may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. Such action may be overruled or modified by vote of not less than 75 percent of the voting rights of each class of members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of Rules and Regulations will be under consideration.

(m) Enforce by legal means the provisions of the Declaration, these Bylaws and any Rules and Regulations adopted hereunder.

(n) In the name of the Association, maintain a current mailing address of the Association, file annual reports with the Oregon Secretary of State, and maintain and keep current the information required to enable the Association to comply with ORS 94.670(7).

(o) Subject to Section 8.8 of the Declaration, enter into management agreements with professional management firms.

18.8 Meetings.

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other Persons calling the meeting.

(b) Annual meetings of the Board of Directors shall be held within 30 days following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two directors.

Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Board of Directors shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

18.9 Open Meetings.

(a) All meetings of the Board of Directors shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (i) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (ii) personnel matters, including salary negotiations and employee discipline; (iii) negotiation of contracts with third parties; and (iv) collection of unpaid Assessments. Except in the case of an emergency, the Board of Directors shall vote in an open meeting on whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in the executive session shall be included in the minutes of the meeting, and any contract or action considered in executive session shall not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which shall be reasonably identified in the open meeting and included in the minutes.

(b) Meetings of the Board of Directors may be conducted by telephonic communication or by other means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the Lots are principal residences of the Occupants, then: (i) for other than emergency meetings, notice of each Board of Directors' meeting shall be posted at a place or places on the Property at least three days before the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Owners of such meeting; and (ii) only emergency meetings of the Board of Directors may be conducted by telephonic communication. The meeting and notice requirements of this Section 4.9 may not be circumvented by chance, social meetings, or any other means.

18.10 Notice of Meetings.

(a) Notice of the time and place of meetings shall be given to each director orally, or delivered in writing personally, by mail or to the extent permitted by the Oregon Planned Community Act, by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, at least 24 hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or sent electronically not less than 72 hours before the meeting. If mailed, the notice shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the Person giving the notice. Such notice need not be given for an adjourned meeting if such time and place are fixed at the meeting adjourned. For a period of 10 years following recording of the Declaration, notices of meetings (including agendas) shall also be given to Declarant in the same manner as given to the directors.

(b) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

18.11 Quorum and Vote.

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

(c) A director who is present at a meeting of the Board of Directors at which action is taken on any Association matter is presumed to have assented to the action unless the director votes against the action or abstains from voting on the action because the director claims a conflict of interest. When action is taken on any matter at a meeting of the Board of Directors, the vote or abstention of each director present must be recorded in the minutes of the meeting. Directors may not vote by proxy or by secret ballot at meetings of the Board of Directors, except that officers may be elected by secret ballot.

18.12 Right of Declarant to Disapprove Actions. So long as Declarant or any affiliate of Declarant owns any property within Durham Heights, directly or indirectly, in whole or in part, Declarant shall have a right to disapprove any action, policy or program of the Association, the Board of Directors and any committee which, in the sole judgment of the Declarant, would tend to impair the rights of Declarant or builders under the Declaration or these Bylaws, or interfere with development, construction or marketing of any portion of the Property, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board of Directors or any committee as may be granted to the Class B Member or Declarant in the Declaration or these Bylaws.

(a) The Declarant shall be given written notice of all meetings of the Association, the Board of Directors or any committee thereof and of all proposed actions of the Association, the Board of Directors or any committee thereof to be approved at such meetings or by written request in lieu of a meeting. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies with the requirements for Board meetings set forth in these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions, but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Association unless such action or counteraction countermands an action, policy or program that was not properly noticed and implemented. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

18.13 **Liability.** Neither a member of the Board of Directors nor an officer of the Association or a member of the Architectural Review Committee or any other committee established by the Board of Directors shall be liable to the Association, any Owner or any third party for any damages, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of their duties so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer or committee member of the Association is made a party to any proceeding because the individual is or was a director, officer or committee member of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

18.14 **Compensation.** No director shall receive any compensation from the Association for acting as such.

18.15 **Executive, Covenants and Other Committees.** Subject to law, the provisions of the Declaration and these Bylaws, the Board of Directors may appoint an Executive Committee, a Covenants Committee to be responsible for covenant enforcement as provided in Section 18.16, and such other standing or temporary committees as may be necessary from time to time consisting of Owners and at least one member of the Board of Directors and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

18.16 **Enforcement Procedures** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration, these Bylaws or the Rules and Regulations. To the extent specifically required by the Declaration, the Board of Directors shall comply with the following procedures prior to the imposition of sanctions:

(a) **Notice.** The Board of Directors or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator shall have 14 days to present a written request for a hearing before the Board of Directors or a Covenants Committee appointed by the Board of Directors, if any; and (iv) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 14 days of the notice.

(b) **Response.** The alleged violator shall respond to the notice of the alleged violation in writing within such 14-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board of Directors in writing within such 14-day period the Board of Directors may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions by any person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided, however, that the Board of Directors or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 14-day period. Any response or request for a hearing shall be delivered to the Association's manager, President or Secretary, or as otherwise specified in the notice of violation.

(c) **Proof of Notice.** Prior to the effectiveness of sanctions imposed pursuant to this Section 4.16, proof of proper notice shall be placed in the minutes of the Board of Directors or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

(d) **Hearing.** If a hearing is requested within the allotted 14-day period, the hearing shall be held before the Board of Directors or the Covenants Committee, as applicable. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing (i.e., the decision) and the sanction, if any, to be imposed.

(e) **Appeal.** Following a hearing before the Covenants Committee, if applicable, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President or Secretary within 10 days after the hearing date.

(f) **Enforcement Policies.** The Board of Directors, by resolution, may adopt additional policies and procedures governing enforcement of the Declaration, these Bylaws or the Rules and Regulations.

Article 19

OFFICERS

19.1 Designation and Qualification. The officers of the Association shall be the President, the Secretary, the Treasurer, and such Vice Presidents and subordinate officers as the Board of Directors shall from time to time appoint. The President shall be a member of the Board of Directors, but the other officers need not be directors. Any two offices, except the offices of President and Secretary, may be held by the same person.

19.2 Election and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one year and until their respective successors are elected. If any office shall become vacant by reason of death, resignation, removal, disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

19.3 Removal and Resignation.

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever, in their judgment, the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

(b) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective, provided, however, that the Board of Directors may reject any postdated resignation by notice in writing to the resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.

19.4 President. The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have powers of general supervision, direction and control of the business and affairs of the Association. Such person shall preside at all meetings of the members and of the Board of Directors. Such person shall be an ex officio member of all the standing committees, including the Executive Committee, if any, shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

19.5 Vice Presidents. The Vice Presidents, if any, shall perform such duties as the Board of Directors shall prescribe. In the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Senior Vice President as designated by the Board of Directors.

19.6 Secretary.

(a) The Secretary shall keep or cause to be kept a book of minutes of all meetings of directors and members showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at Board meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

(b) The Secretary shall give or cause to be given such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. The Secretary shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) If there are no Vice Presidents, then in the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary.

19.7 Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. The Treasurer shall disburse or cause to be disbursed the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of the Treasurer's transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

19.8 Compensation of Officers. No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members. The Board of Directors may fix any compensation to be paid to other officers.

Article 20

ASSESSMENTS, RECORDS AND REPORTS

20.1 Assessments. As provided in the Declaration, the Association, through its Board of Directors, shall do the following:

(a) Assess and collect from every Owner Assessments in the manner described in the Declaration.

(b) Keep all funds received by the Association as Assessments, other than reserves described in the Declaration, in the Operations Fund and keep all reserves collected pursuant to the Declaration in the Reserve Fund and use such funds only for the purposes described in the Declaration. All Assessments shall be deposited in the name of the Association in a separate federally insured account at a financial institution as defined in ORS 706.008, other than an extranational institution. All expenses of the Association shall be paid from the Association's bank account.

(c) From time to time, and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred with adequate allowance for reserves based upon the reserve study required by the Declaration, and determine whether the Annual Assessment should be increased or decreased. Within 30 days after adopting a proposed annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt a budget, the last adopted annual budget shall continue in effect.

(d) Fix the amount of the Annual Assessment against each Lot at least 30 days in advance of each Annual Assessment period. Written notice of any Assessment shall be sent to every Owner subject thereto and to any first Mortgagee requesting such notice. The due dates shall be established by the Board of Directors, which may fix a regular flat Assessment payable on a monthly, quarterly, semiannual or annual basis. The Board of Directors shall cause to be prepared a roster of the Lots showing Assessments applicable to each Lot. The roster shall be kept in the Association office and shall be subject to inspection by any Owner or Mortgagee during regular business hours. Within 10 business days after receiving a written request, and for a reasonable charge, the Association shall furnish to any Owner or Mortgagee a recordable certificate setting forth the unpaid Assessments against such Owner's Lot. Such certificate shall be binding upon the Association, the Board of Directors, and every Owner as to the amounts of unpaid Assessments

(e) When Additional Properties are annexed, the Board of Directors shall assess any Lots included therein in accordance with Article 10 of the Declaration.

(f) Enforce the Assessments in the manner provided in the Declaration.

(g) Keep records of the receipts and expenditures affecting the Operations Fund and Reserve Fund and make the same available for examination by members and their Mortgagees at convenient hours; maintain an Assessment roll showing the amount of each Assessment against each Owner, the amounts paid upon the account and the balance due on the Assessments; give each member written notice of each Assessment at least 30 days before the time when such Assessments shall become due and payable; and for a reasonable charge, promptly provide any Owner or Mortgagee who makes a request in writing with a written certificate of such Owner's unpaid Assessments.

20.2 Records. The Association shall keep within the State of Oregon correct and complete financial records sufficiently detailed for proper accounting purposes, keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors, and retain all documents, information and records turned over to the Association by Declarant. All documents, information and records delivered to the Association by Declarant pursuant to ORS 94.616 shall be kept within the State of Oregon.

20.3 Statement of Assessments Due. The Association shall provide, within 10 business days after receipt of a written request from an Owner, a written statement that provides: (a) the amount of Assessments due from the Owner and unpaid at the time the request was received, including regular and Special Assessments, fines and other charges, accrued interest, and late-payment charges; (b) the percentage rate at which interest accrues on Assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed-rate charge for late payment. The Association is not required to comply with this Section 6.3 if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

20.4 Inspection of Books and Records. Except as otherwise provided in ORS 94.670(5), during normal business hours or under other reasonable circumstances, the Association shall make reasonably available for examination and, upon written request, available for duplication, by Owners, lenders, and holders of any Mortgage of a Lot that make the request in good faith for a proper purpose, current copies of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, amendments or supplements to such documents and the books, records, financial statements and current operating budget of the Association. The Association shall maintain a copy, suitable for purposes of duplication, of each of the following: (a) the Declaration, these Bylaws, the Rules and Regulations and any amendments or supplements thereto, (b) the most recent financial statement of the Association, and (c) the current operating budget of the Association. The Association, within 10 business days after receipt of a written request by an Owner, shall furnish copies of such documents to the requesting Owner. Upon written request, the Association shall make such documents, information and records available to such Persons for duplication during reasonable hours. The Board of Directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs for furnishing the documents, information or records.

20.5 Payment of Vouchers. The Treasurer or managing agent shall pay all vouchers for all budgeted items and for any nonbudgeted items, up to \$1,000, signed by the President, managing agent, manager or other Person authorized by the Board of Directors. Any voucher for nonbudgeted items in excess of \$1,000 shall require the authorization of the President or a resolution of the Board of Directors.

20.6 Execution of Documents. The Board of Directors may, except as otherwise provided in the Declaration, Articles of Incorporation, or these Bylaws, authorize any officer or agent to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Association by any contract or engagement, to pledge its credit, or to render it liable for any purpose or for any amount.

20.7 Reports and Audits. An annual financial statement consisting of a balance sheet and an income and expense statement for the preceding year shall be rendered by the Board of Directors to all Owners and to all Mortgagees who have requested the same within 90 days after the end of each fiscal year. Commencing with the fiscal year following the Turnover Meeting, if the Annual Assessments exceed \$75,000 for the year, then the Board of Directors shall cause such financial statements to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or if the Annual Assessments are \$75,000 or less, shall cause such review within 180 days after receipt of a petition

requesting such review signed by at least a majority of Owners. The Board of Directors need not cause such a review to be performed if so directed by an affirmative vote of at least 60 percent of the Owners, not including votes of Declarant with respect to Lots owned by Declarant. From time to time, the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the members. At any time any Owner or holder of a Mortgage may, at their own expense, cause an audit or inspection to be made of the books and records of the Association.

Article 21

INSURANCE

21.1 Types of Insurance. For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

(a) **Property Damage Insurance.**

(1) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and “all risk” endorsements, and such other coverages as the Association may deem desirable.

(2) The amount of the coverage shall be for not less than 100 percent (100%) of the current replacement cost of the exterior elements of the Units that the Association has responsibility for maintaining, if any, and any improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible as determined by the Board of Directors not to exceed \$10,000.

(3) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association, together with all fixtures, improvements and alterations comprising a part of each Unit for which the Association has maintenance and repair responsibility.

(4) Such policy or policies shall name the Association, for the use and benefit of the individual Lot Owners, as insured, and shall provide for loss payable in favor of the Association, as a trustee for each Owner and each such Owner’s Mortgagee, as their interests may appear. The policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) which is commonly accepted by institutional mortgage investors in Oregon.

(b) **Liability Insurance.**

(1) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, and the managing agent, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omissions of such Owner and liability incident to the ownership and/or use of the part of the Property as to which such Owner has the exclusive use or occupancy.

(2) Limits of liability under such insurance shall not be less than \$1,000,000 on a combined single-limit basis.

(3) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Insurance.**

(1) The Board of Directors may cause the Association to maintain blanket fidelity insurance for all officers, directors, trustees and employees of the Association and all other Persons handling or responsible for funds of, or administered by, the Association. In the event that the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association.

(2) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the Board of Directors.

(3) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the insurers of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days' prior written notice to the Association.

(e) **Directors' and Officers' Liability Insurance.** The Association shall maintain a policy of directors' and officers' liability insurance with coverage in the amount of not less than \$1,000,000 subject to a reasonable deductible, which deductible shall be the responsibility of the Association. Such insurance shall cover both interim and regular directors and shall include coverage for claims brought by the Association, Owners and/or third parties, including, without limitation, claims arising out of construction defects or failure to maintain adequate reserves. Directors and officers will be accepting such positions in reliance upon such insurance protection being maintained by the Association. Therefore, in the event the Association fails to carry such insurance or amends these Bylaws to delete or reduce these insurance requirements, the Association and Owners shall be deemed to have released such claims and deemed to have covenanted not to sue or prosecute any claims against its current or former directors or officers that would have been insured under such a policy.

(f) **Insurance by Lot Owners.** The Association has no responsibility to procure or assist in procuring property loss insurance for any Owner or tenant for (i) damage to a Unit not covered by the Association's policy (because of the deductible amount or because the claim for loss or damage is one not covered by fire and property loss insurance policies required by these Bylaws or held by the Association); or (ii) any damage or loss to the Owner's or tenant's personal property. Owners must be responsible for purchasing insurance policies insuring their Units (including for the deductible amount applicable to Association-maintained elements of the exterior) and for insuring their own personal property for any loss or damage. Owners and tenants of all Units must procure and maintain comprehensive liability policies having combined limits in amounts reasonably set by the Board of

Directors no more often than every three years. Such insurance must provide coverage for, without limitation, the negligent acts of the Owner and tenant and their guests or other Occupants of the Unit for damage to the Common Areas and other Units and the personal property of others located therein. Each Owner shall obtain, at their own expense, homeowner's insurance covering the Unit on the Owner's Lot and liability resulting from use or ownership of the Lot.

21.2 Planned Community Act Requirements. The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780.

Article 22

GENERAL PROVISIONS

22.1 Seal. The Board of Directors may, by resolution, adopt a corporate seal.

22.2 Waiver of Notice. Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, a waiver of notice in writing signed at any time by the Person entitled to notice shall be equivalent to the giving of the notice.

22.3 Action Without Meeting. Any action that the law, the Declaration, the Articles of Incorporation or the Bylaws require or permit the members or directors to take at any meeting may be taken without a meeting or ballot meeting if a consent in writing setting forth the action so taken is signed by all of the members or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the members or directors, shall be filed in the records of minutes of the Association.

22.4 Conflicts. These Bylaws are intended to comply with the Oregon Planned Community Act, the Oregon Nonprofit Corporation Law, the Declaration and the Articles of Incorporation. In case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

Article 23

AMENDMENTS TO BYLAWS

23.1 How Proposed. Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or members holding at least 30 percent of the voting rights entitled to be cast for such amendment. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or be attached to any request for consent to the amendment.

23.2 Adoption.

(a) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or the members and may be approved by the membership at a meeting called for such purpose, or by written consent of the members. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by members holding a majority of the voting rights, together with the written consent of the Class B Member, if any, and, as long as there is a Class B Member, by the Federal Housing Administration or the Veterans Administration, if these Bylaws were previously approved by such agencies. Amendment or

repeal of any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration.

(b) Notwithstanding the provisions of the preceding paragraph, until the Turnover Meeting has occurred, Declarant shall have the right to amend these Bylaws in order to comply with the requirements 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 that 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.

23.3 Execution and Recording. An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws and ORS 94.625 and recorded in the Deed Records of Washington County, Oregon.