

After Recording Return To:
Madras Land Development Company LLC
ATTN: Todd Taylor, Managing Member
409 N.W. Franklin Avenue
Bend, OR 97701

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
YARROW**

MADRAS LAND DEVELOPMENT COMPANY LLC

Declarant

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
YARROW**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (“Declaration”) is dated for reference purposes _____, by **MADRAS LAND DEVELOPMENT COMPANY LLC**, an Oregon limited liability corporation, as the owner of all of the property currently being subjected to this Declaration (**“Declarant”**).

R E C I T A L S

A. Declarant owns certain real property in the City of Madras, Oregon which Declarant proposes to develop as a master planned community development to be known as **“Yarrow”** pursuant to a master plan approved by the City of Madras, Oregon (**“Development Plan”**). Declarant reserves the right to amend the Development Plan, subject to any approvals required by the City of Madras, Jefferson County or any other applicable governmental authority. Yarrow will be a Class I planned community under the Oregon Planned Community Act, ORS 94.550 to 94.783, and applicable successor provisions.

B. All owners, tenants, licensees, invitees and mortgagees of property within Yarrow shall acquire their respective interests in such property subject to this Declaration, as the same may hereafter be amended. By adoption of this Declaration, Declarant is not committing itself to take any action for which it is not specifically obligated under the express terms of the Development Plan or this Declaration. Any Person who acquires a property interest in Yarrow consents to the Development Plan, as the same may hereafter be amended, and shall have no legal right to insist that there be any particular development of Yarrow except as required by this Declaration, the Development Plan or any recorded instruments annexing areas to Yarrow.

C. Declarant anticipates that Yarrow may include a variety of uses. Such uses may include, without limitation, commercial, retail, residential, recreational, and other uses as Declarant may determine to be appropriate. Residential parcels within the Property may include single-family lots, zero lot line or other common wall type structures, condominiums, apartments, manufactured housing and other residential uses in accordance with the Development Plan. Recreational facilities may include a golf course and other facilities for swimming, hiking, bicycling, and other uses that are commonly associated with a multi-purpose development such as Yarrow, but Declarant makes no assurances as to the construction or availability of any specific recreational facility. Some facilities may be privately owned by Declarant or third parties and may be available for use by members only, by the public or both. Finally, Yarrow may include one or more commercial developments all in accordance with the Development Plan, as the same may be amended, but such commercial developments will not be subject to this Declaration.

D. Declarant reserves the right with respect to all or any portion of the Property then owned by Declarant, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of the County of Jefferson or the City of Madras; inclusions within any urban growth area; amendments to the Development Plan; and such licenses, permits and governmental approvals as Declarant may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Property.

E. This Declaration establishes covenants, conditions, restrictions and easements for the benefit of Yarrow. The first such area to be subject to this Declaration is described in the attached

Exhibit A (the “**Property**”). Additional Property may be annexed to the Property in accordance with the provisions of this Declaration. Portions of the Property, but only if and when they are described herein or in a Supplemental Declaration, may be within a “**Neighborhood**” which will either be discrete types of development or share a common type of development.

NOW, THEREFORE, Declarant hereby declares that the Property described in Exhibit A attached hereto shall be owned, sold, conveyed, leased, encumbered, occupied, improved and used subject to this Declaration, which will run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof and their respective successors and assigns.

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, which is made subject to this Declaration as provided in Section 2.2.

1.2 “**Affiliate**” means any entity which controls, is under the common control with or is controlled by Declarant.

1.3 “**Design Review Committee**” means the committee appointed pursuant to Article 8.

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

1.5 “**Assessment Unit**” means a factor assigned to each Unit in accordance with Section 11.2 for purposes of determining such Unit’s prorate share of Assessments.

1.6 “**Assessments**” means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 11.

1.7 “**Association**” means the Yarrow Owners Association, an Oregon nonprofit corporation to be formed to serve as the owners’ association as provided in Article 9, and its successors and assigns.

1.8 “**Board**” or “**Board of Directors**” means the Board of Directors of the Association.

1.9 “**Builder**” means any entity which is a party to a builder agreement with Declarant and is designated as such by Declarant in writing delivered to the Association.

1.10 “**Bylaws**” means the bylaws of the Association as adopted and amended by the Board from time to time.

1.11 “**Common Areas**” means all real and personal property, including easements, that the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, subject to use restrictions that may be described herein or in any Supplemental Declaration. Common Areas shall be designated as such in this Declaration, any Supplemental

Declaration, any plat of the Property, or any conveyance from Declarant to the Association. Common Areas shall include any Improvements thereon, and may be further designated as Public Areas, Restricted Areas, Limited Common Areas, or Neighborhood Common Areas. Common Areas shall also include any Units converted to Common Areas as provided in Section 3.5.

1.12 “**Common Expenses**” shall mean all of the expenses incurred by or on behalf of the Association from time to time including such reserves as the Board may deem appropriate from time to time.

1.13 “**Community-Wide Standard**” means the standard of conduct, quality, maintenance and design generally prevalent in Yarrow. Such standard shall be established initially by Declarant and may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and demands of Yarrow change.

1.14 “**Condominium**” means any property submitted to the Oregon Condominium Act in the manner provided by ORS Chapter 100, as amended.

1.15 “**Declarant**” means Madras Land Development Company LLC, an Oregon limited liability corporation, and its successors and assigns, if a recorded instrument executed by Declarant assigns to the transferee all of the rights reserved to Declarant under this Declaration with respect to all or any portion of the Property.

1.16 “**Declaration**” means this Declaration of Covenants, Conditions, Restrictions and Easements for Yarrow as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.17 “**Design Guidelines**” shall have the meaning given that term in Section 8.3.

1.18 “**Development Period**” means the period of time between the date this Declaration is Recorded and the earliest of (a) when all of the property within the Development Plan has been developed and all of the Units in the last area to be annexed to this Declaration have been conveyed to Persons other than Declarant, a Builder, or an Affiliate; (b) when, in its discretion, Declarant so determines, as evidenced by a Recorded document executed by Declarant to that effect; or (c) December 31, 2037.

1.19 “**Development Plan**” means the Development Plan approved by the City of Madras and Jefferson County, if applicable, as the same may hereafter be amended.

1.20 “**Emergency Assessments**” shall have the meaning given that term in Section 11.3(d) below.

1.21 “**General Assessments**” shall have the meaning given that term in Section 11.3(a).

1.22 “**Golf Course**” means any parcel of land adjacent to, in the vicinity of, or within Yarrow which is privately or publicly owned and operated as a golf course by Persons other than the Association, and related and supporting facilities and improvements operated and/or maintained in connection with or incidental to such golf course.

1.23 “**Golf Course Owner**” means the Person owning any Golf Course.

1.24 “**Governing Documents**” means the Development Plan, this Declaration, the Articles of Incorporation, the Bylaws, any Supplemental Declaration, the Design Guidelines, and any Policies and Procedures adopted by the Board.

1.25 “**Governmental Authority**” means the City of Madras, County of Jefferson, the State of Oregon, the United States of America or other governmental entity or agency that has or acquires jurisdiction over the Property or any portion thereof, or over sales of the Property, from time to time.

1.26 “**Improvement**” means any structure or improvement of any kind, including but not limited to any building, fence, wall, driveway, swimming pool, storage shelter, signage, monumentation or other product of construction efforts on the Property and shall also include landscaping.

1.27 “**Individual Assessments**” shall have the meaning given that term in Section 11.3.(f).

1.28 “**Initial Development**” means the real property identified in Section 2.1.

1.29 “**Limited Common Area Assessments**” shall have the meaning given that term in Section 11.3(e).

1.30 “**Limited Common Areas**” means those Common Areas that are restricted to the exclusive use of the owners or occupants of certain Units as designated in this Declaration or a Supplemental Declaration.

1.31 “**Mortgage**” means a mortgage, deed of trust or real estate installment sale contract.

1.32 “**Mortgagee**” means a mortgagee under a mortgage, a beneficiary under a deed of trust, or a seller under a real estate installment sale contract.

1.33 “**Multi-Family Unit**” means any parcel or lot improved with apartment units or other dwelling units that are not separately owned.

1.34 “**Neighborhood**” means any area or areas designated by Declarant and comprised of discrete types of development, use or ownership within a portion of the Property, as established and restricted in this Declaration or a Supplemental Declaration.

1.35 “**Neighborhood Assessments**” means Assessments levied against Units in a specific Neighborhood to fund Neighborhood Expenses pursuant to Section 11.3(b).

1.36 “**Neighborhood Association**” means any association established for a specific Neighborhood pursuant to a Neighborhood Declaration.

1.37 “**Neighborhood Committee**” means a committee appointed or elected for a Neighborhood pursuant to Section 3.4.

1.38 “**Neighborhood Common Area**” means a portion of the Common Areas within a Neighborhood restricted in whole or in part to common use primarily by or for the benefit of the Owners owning Units within the Neighborhood and their families, tenants, employees, guests and invitees.

1.39 “**Neighborhood Declaration**” means a declaration of easements, covenants, conditions and restrictions and all amendments thereto Recorded by an Owner establishing a plan of Condominium

ownership, zero lot line or other common wall type ownership, planned unit development, or otherwise imposing use restrictions on Units within a particular Neighborhood.

1.40 “**Neighborhood Expenses**” shall mean the portion of the costs and expenses incurred by the Association in connection with the ownership, administration, management, maintenance, repair, insurance and other activities for Neighborhood Common Areas.

1.41 “**Operations Fund**” shall have the meaning given that term in Section 11.6.

1.42 “**Owner**” means the Person, including Declarant, owning any Unit within the Property, but, except as otherwise provided below, does not include a tenant or holder of a leasehold interest or a Mortgagee or other Person holding only a security interest in a Unit. If a Unit 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 provides to the contrary. If a Unit 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, 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 Unit under this Declaration. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from its obligations incurred prior to termination.

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

1.44 “**Policies and Procedures**” 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.

1.45 “**Property**” means that real property described on the attached Exhibit A and any Additional Property annexed to this Declaration, and all existing and future Improvements located thereon, but excluding any property withdrawn from the provisions of this Declaration.

1.46 “**Public Areas**” means any portion of the Common Areas made available for use on a general or conditional basis by members of the public in any conveyance thereof executed by Declarant, in any plat of the Property, in this Declaration or in any Supplemental Declaration.

1.47 “**Recorded**” means filed in the official records of Jefferson County, Oregon.

1.48 “**Reserve Fund**” shall have the meaning given that term in Section 11.7.

1.49 “**Residential Unit**” means those Units to be used for residential purposes, exclusive of rental apartment and hotel, motel and lodge-type projects, and designated as such in this Declaration or in the declaration annexing such Units to Yarrow.

1.50 “**Restricted Areas**” means portions of the Common Areas to which the Owners have limited or no access and which are so designated in any conveyance thereof executed by Declarant, in any plat of the Property, in this Declaration or any Supplemental Declaration, or by the Declarant or Board.

1.51 “**Special Assessments**” shall have the meaning given that term in Section 11.3(c).

1.52 “**Supplemental Declaration**” means an instrument recorded pursuant to Section 2.2 which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional or different restrictions and obligations on the Additional Property described in such instrument. The term shall also refer to an instrument recorded by Declarant to establish Voting Groups.

1.53 “**Turnover Meeting**” means the meeting called by Declarant pursuant to Section 9.6(d) below, at which Declarant will turn over administration responsibility for Yarrow to the Association.

1.54 “**Unit**” means a platted or partitioned lot, tract or Condominium unit within the Property, with the exception of any tract or lot marked on a plat of the Property as being common, a private way or open space or so designated in this Declaration or the declaration annexing such property to Yarrow. A Golf Course is not a Unit for purposes of this Declaration. Unit does not include Common Areas, Neighborhood Common Areas or Public Areas. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. Prior to the recording of a subdivision plan, a parcel of vacant land, or land on which improvements are under construction, shall be deemed to contain the number of Units designated for residential use for such parcel by Declarant in a written notice to the Board and in conformance with the Development Plan.

1.55 “**Voting Group**” means a group of Owners who vote on a common slate for election of directors of the Board, as more particularly described in Section 9.7.

1.56 “**Voting Unit**” means any one or more of the interest in the Property designated in Section 9.3, to which a right to vote in Association matters is allocated.

1.57 “**Work**” shall have the meaning given that term in Section 8.4(a).

1.58 “**Yarrow**” means all property now or hereafter made subject to this Declaration.

Article 2

AREAS SUBJECT TO THIS DECLARATION

2.1 **Initial Development.** The portion of the Property initially made subject to this Declaration is described in the attached Exhibit A and may, but need not, include Neighborhoods, Common Areas, Limited Common Areas, Neighborhood Common Areas, Public Areas, or Restricted Areas.

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex Additional Property to the Property. The annexation of such Additional Property shall be accomplished as follows:

(a) Declarant and, if applicable, the owner or owners of such real property, shall execute and Record a Supplemental Declaration that shall, among other things, describe the real property to be annexed, designate the Neighborhood that such addition creates or of which it is a part, if any, establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property, and declare that such real property is held and shall be held, conveyed, hypothecated, encumbered, used, leased, occupied and improved subject to this Declaration.

(b) The Additional Property described in any such Supplemental Declaration shall thereby become a part of the Property, shall be subject to this Declaration, 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 Supplemental Declaration with respect to any Additional Property may:

(i) modify or exclude any then existing restrictions and establish such new 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

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

(d) There is no limitation on the number of Units which Declarant may create or annex to Yarrow, except as may be established by a Governmental Authority or by any applicable agreement. Similarly, there is no limitation on the right of Declarant to annex Common Areas, except as may be established by a Governmental Authority.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) 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 Yarrow.

(g) Upon annexation, the Owners of such additional Units shall be entitled to Association voting rights that are consistent with the voting rights of Owners of other portions of the Property.

(h) The formula to be used for reallocating the Common Expenses, shall be as set forth in Section 11.4.

2.3 **Withdrawal of Property.** Declarant may withdraw real property from the Property by an amendment to this Declaration executed by Declarant and Recorded. All voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the Common Expenses shall be reallocated to the remaining Units as provided in Section 11.4. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Property initially subject to this Declaration or Additional Property annexed pursuant to a Supplemental Declaration at any time prior to the first sale of a Unit in the property initially subjected to this Declaration, or in the case of Additional Property, prior to the first sale of a Unit in such property so annexed or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Units. In addition, Declarant may withdraw any real property then owned by Declarant or any Common Areas if such withdrawal is a result of any changes in Declarant's plans for Yarrow, provided that such withdrawal is approved by a majority of the voting rights in the Association. If a portion of the Property

is withdrawn, all voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 11.4 below.

2.4 **Annexations into Municipalities and Other Governmental Actions.** Declarant reserves the right with respect to all or any portion of the Property then owned by Declarant, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of a Governmental Authority; inclusions within any urban growth area; amendments to the Development Plan; and such licenses, permits and approvals from any Governmental Authority as Declarant may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Property.

2.5 **Dedications.** Declarant reserves the right to dedicate 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 for habitat, wildlife, waterfowl, fish, vegetation, wetlands or other preservation purposes; 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, by reason of any condemnation or any conveyance in lieu of condemnation, shall belong solely to Declarant.

Article 3

NEIGHBORHOOD DESIGNATION AND LAND CLASSIFICATIONS

3.1 **Creation of Neighborhoods.** The Property may contain one or more Neighborhoods, each of which may contain areas that have common uses, have access to certain Neighborhood Common Areas, are treated similarly for assessment or voting purposes, or share other common characteristics as determined by Declarant. Declarant reserves the right to designate which portions of the Property shall constitute a Neighborhood. Neighborhoods need not comprise the entirety of the Property, nor must all Units be part of a Neighborhood. A Neighborhood may be comprised of more than one housing type. Neighborhoods may include noncontiguous parcels of the Property.

3.2 **Supplemental Declarations** Declarant reserves the right to record against each of the Neighborhoods, as the same may be from time to time delineated in this Declaration or a Supplemental Declaration, or amendments thereto, additional covenants, conditions, restrictions, and reservations governing, expanding or confining the use of any such Neighborhood, reserving additional easements therein, and imposing Neighborhood Assessments upon the Owners of Units in such Neighborhood for the ongoing operation, maintenance, and repair of Neighborhood Common Areas.

3.3 **Neighborhood Associations.** The establishment of a Neighborhood may be accompanied by the formation of a Neighborhood Association. Neighborhood Associations shall be nonprofit corporations with memberships comprised of the Owners of the Units within such Neighborhoods. Declarant or, subject to Declarant's approval pursuant to Section 15.2, any other Owner of all of the property comprising a Neighborhood may elect to cause any such Neighborhood Association to be formed for such purposes at any time after the Neighborhood Declaration is recorded and before any Units therein are conveyed to Owners. Following the Development Period, the Owners of Units within a Neighborhood, by majority vote and with the written consent of the Board, may elect to establish a Neighborhood Association. At the time a Neighborhood Association is formed, or at any time thereafter,

Declarant or the Board may delegate to the Neighborhood Association certain of their respective rights and obligations with respect to the portion of the Property located within the Neighborhood and other Common Areas to which members of such Neighborhood have access. Such rights and duties may include, without limitation, the obligation to maintain Neighborhood Common Areas within the Neighborhood; establish and enforce policies and procedures; and hold title to and administer, manage, operate, and insure property and/or easements located within such Neighborhood. Certain obligations and rights with respect to matters affecting more than one Neighborhood may be delegated by Declarant or the Board to two or more of such Neighborhoods.

3.4 **Neighborhood Committees.** With respect to any Neighborhood within Yarrow that does not have a Neighborhood Association, the Board may appoint a Neighborhood Committee composed of three (3) to five (5) Owners of Units within such Neighborhood, which committee shall be responsible for recommending to the Board any Policies and Procedures pertaining to Neighborhood Common Areas, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Neighborhood Common Areas, and for such other matters pertaining to the Neighborhood as the Board may elect to delegate to the Neighborhood Committee.

3.5 **Conversion of Units into Common Areas.** Declarant may elect to build common facilities on one or more Units and designate such Unit or Units as Common Areas by recording an amendment to this Declaration or by conveying such Units to the Association.

3.6 **Conversion to Different Uses.** Declarant reserves the right to withdraw portions of the Property from any Neighborhood and its related Supplemental Declaration and may also include the portion so withdrawn in a different Neighborhood pursuant to the provisions of a different Supplemental Declaration. Such withdrawal shall be accomplished by and effective upon recording an amendment to the applicable Supplemental Declaration(s).

3.7 **Subdivisions.** Declarant reserves the right to subdivide any Units then owned by Declarant from time to time upon receiving all required approvals from any Governmental Authority. In the event any two or more Units are so subdivided, they shall be deemed separate Units for the purposes of allocating Assessments under this Declaration. No other Owner of any Unit in the Property may subdivide any Unit without the prior written approval of the Declarant during the Development Period and thereafter by the Design Review Committee, which consent may be granted or denied at the sole discretion of the Declarant or Design Review Committee, as applicable.

3.8 **Consolidations.** Declarant reserves the right to consolidate any two or more Units then owned by Declarant upon receipt of any required approvals from any applicable Governmental Authority and recording any necessary amendment to this Declaration or the applicable Supplemental Declaration. No other Owner may consolidate any Units without the prior written approval of the Declarant during the Development Period and thereafter by the Design Review Committee, which may be granted or denied at the sole discretion of the Declarant or Design Review Committee, as applicable. An approved consolidation shall be effected by the Recording of a declaration stating that the affected Units are consolidated, which declaration shall be executed by the Owner(s) of the affected Units and by the president of the Association. Once so consolidated, the consolidated Unit may not thereafter be partitioned nor may the consolidation be revoked except as provided in Section 3.7 above. Any Units consolidated pursuant to this section shall be considered one Unit thereafter for the purposes of this Declaration, including voting rights and allocation of assessments.

3.9 **Condominium Conversions.** Declarant reserves the right to convert any Units then owned by Declarant into a condominium or other form of ownership in any manner permitted by Oregon

law and to otherwise create and terminate any condominium containing Units owned solely by Declarant and other Owners who consent thereto. Any other Owner wishing to so convert Units must have the prior written consent of Declarant during the Development Period.

3.10 **Land Classifications within Initial Development.** The Initial Development contains those land classifications and Neighborhoods as set forth in the attached Exhibit B.

Article 4

OWNERSHIP, EASEMENTS AND FEES

4.1 **Use and Occupancy.** The Owner of a Unit in the Property shall be entitled to the exclusive use and benefit of such Unit, except as otherwise expressly provided in this Declaration, but the Unit shall be bound by and the Owner shall comply with the restrictions made applicable to such Unit by this Declaration, any Supplemental Declaration or any applicable Neighborhood Declaration.

4.2 **Easements Reserved by Declarant.** In addition to any easements shown on recorded plats, Declarant hereby reserves or grants, as applicable, the following perpetual easements:

(a) **Adjacent Common Areas.** The Owner of any Unit which adjoins any Common Areas shall, if the Association elects from time to time to so require, permit the Association to enter upon the Unit to perform the maintenance of such Common Areas. The Owner and occupant of each Unit shall be responsible for controlling such Owner's or occupant's pets so as to not harm or otherwise disturb persons performing such maintenance on behalf of the Association.

(b) **Utility Easements.** Easements for the benefit of Declarant and/or the Association for installation and maintenance of utilities and drainage facilities are reserved over portions of certain Units and Common Areas as shown on the Recorded plat or as otherwise reserved in any Recorded document. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage systems, or in drainage infiltration facilities.

(c) **Utility Inspection and Repairs.** Each utility service provider and its agents or employees shall have authority to access all Units, 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 and facilities, and completing repairs. The Owner of any such Unit will be given advance notice if possible. In the case of an emergency, as determined solely by the utility service provider, no prior notice will be required.

(d) **Easements for Encroachments.** Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Areas and between adjacent Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration and the Design Guidelines) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(e) **Easements for Maintenance, Emergency, and Enforcement.** Declarant grants to the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities. The Association shall also have the right, but not the obligation, to enter upon any Unit (including any dwelling thereon) to perform maintenance, for emergency, security, and safety reasons, and to enter any portion of the Unit other than the dwelling located thereon to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board, any duly authorized agents and assignees of the Association, or any member or duly authorized representative of the Design Review Committee and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

(f) **Rights to Storm Water Runoff and Water Reclamation.** Declarant reserves for itself, and its designees, all rights to ground water, surface water, and storm water runoff within the Property, and each Owner agrees, by acceptance of a deed to a Unit, that Declarant shall have all such rights. Such rights shall include an easement over the Property for access, and for installation and maintenance of facilities and equipment to capture and transport such water and runoff.

(g) **Future Easements.** Declarant reserves the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the development of any of the Property. The location of any such easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

4.3 **Transfer Fee.** At the time of closing the sale of each Unit within the Property, each seller of a Unit (excluding Declarant) shall be subject to a transfer fee (the “**Transfer Fee**”) in the amount of one-quarter percent (0.25%) of the gross sales price of such Unit which shall be payable to the Yarrow Community Enhancement Fund (the “**Fund**”) or such other non-profit corporation as may be designated by Declarant prior to the Turnover Meeting for the purpose of creating and providing activities, services and programs for the common good of Yarrow and surrounding areas. The Transfer Fee shall be paid out of escrow at closing. The Transfer Fee shall not apply to the initial sale by Declarant, but shall apply to all subsequent re-sales or transfers of each Unit within the Property except: (a) sales or transfers to a co-owner of the Unit, (b) sales or transfers to a family trust or partnership controlled by the transferring Owner, (c) transfer by gift, devise or inheritance, (d) transfers to an entity owned or controlled by the transferring Owner, (e) transfers to Declarant pursuant to an exchange agreement for a Unit, and (f) transfers to a institutional lender acquiring the Unit pursuant to foreclosure or deed in lieu of foreclosure; provided, however, that in each such case any non-exempt subsequent transfer shall be subject to the Transfer Fee. In the event that the Yarrow Community Enhancement Fund shall ever cease to exist, the Transfer Fee shall be paid to a non-profit corporation designated by Declarant before the Turnover Meeting or by the Board after the Turnover Meeting. The Fund is not a third-party beneficiary hereof and shall have no rights of enforcement for payment of the Transfer Fee in any case.

Article 5 COMMON AREAS

5.1 **Title to Common Areas.** Except for the portions thereof dedicated to the public or any Governmental Authority, title to the Common Areas (other than easements) shall be conveyed to and shall be accepted by the Association by Declarant AS IS, but free and clear of monetary liens (except for nondelinquent taxes and assessments) on or before the Turnover Meeting.

5.2 **Use of Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type (except utility or similar facilities permitted by Declarant or the Association) shall be constructed on the Common Areas. Except as otherwise provided in this Declaration or other Governing Documents, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. No Owner shall place or cause to be placed on the Common Areas any trash, structure, plantings, 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 any Neighborhood or identifying trails or identifying items of interest, including traffic and directional signs, provided such signs are approved by the Design Review Committee and comply with any applicable sign ordinances. The Board shall have authority to abate or enjoin 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 Supplemental 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 the same shall automatically become Limited Common Areas assigned to the Units having access thereto as described in such Supplemental Declaration.

5.3 **Easements Retained by Declarant.** So long as Declarant owns any Unit, Declarant shall retain an easement over, under and across the Common Areas to carry out management, sales and rental activities necessary or convenient for the sale or rental of Units, including, without limitation, advertising and “For Sale” signs. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant or an Affiliate thereof; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to a Unit by the Owner thereof or such Owner’s family, tenants, employees, guests or invitees.

5.4 **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 Yarrow, a perpetual easement over the Common Areas for the purposes of enjoyment, use, access, and development of the property subject to the Development Plan, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction, utilities, water and sanitary sewer lines, communication lines, drainage facilities, irrigation systems, signs and ingress and egress for the benefit of other portions of Yarrow and any Additional Property that becomes subject to this Declaration or any property in the vicinity of the Property or additional property that is then owned by Declarant or an Affiliate thereof. 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. If the easement is exercised for permanent use by such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance of such facilities. The allocation of costs in any such agreement shall be based on the relative extent of use of such facilities.

5.5 **Owners’ Easements.** Subject to provisions of this Article, and except for the Restricted Areas, every Owner and the Owner’s tenants and guests shall have a right and easement in and to the Common Areas for the uses for which they are established, which easement shall be appurtenant to and shall pass with the title to every Unit. The use of Limited Common Areas, however, shall be limited to the Owners of the Units to which the Limited Common Areas are assigned in this Declaration or any applicable Supplemental Declaration and their respective tenants, invitees and licensees.

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

- (a) The Governing Documents;
- (b) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;
- (c) Easements reserved to Declarant for itself and the Association for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by or with the consent of Declarant or with the approval of the Board and any such easement shown on any plat of the Property and for construction, maintenance, repair and use of Common Areas and any Improvements thereon;
- (d) Easements granted by Declarant or the Association to Governmental Authorities or companies providing utility and communications services and to police, fire and other public officials and to employees of utility companies and communications companies serving the Property;
- (e) The Board's right to:
 - (i) adopt Policies and Procedures regulating use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;
 - (ii) suspend the right of an Owner to use recreational facilities within the Common Areas as provided in this Declaration;
 - (iii) dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational or social facility situated upon the Common Areas;
 - (v) permit use of any recreational or social facilities situated on the Common Areas by persons other than Owners, their families, lessees, and guests with or without payment of use fees established by the Board;
 - (vi) designate areas and facilities of Common Areas as Public Areas or Restricted Areas; and
 - (vii) provide certain Owners the rights to the exclusive use of those portions of the Common Areas designated Limited Common Areas or Neighborhood Common Areas.

5.7 **Enjoyment of Owners' Rights.** 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. 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.

5.8 **Alienation of the Common Areas.** The Association may not encumber as security for a debt, sell or transfer title to the Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless such encumbrance, sale or transfer has been approved by at least eighty percent (80%) of the Class A voting rights and the Class B Member. Such approvals shall not be required for the granting of easements as otherwise permitted in this Declaration.

5.9 **Public, Recreational or Service Areas.** Declarant, at the time Declarant designates Common Areas or conveys Common Areas to the Association, or thereafter the Association, may designate certain portions of such Common Areas as Public Areas which may be used by members of the public on a free or on a fee-paying basis as set forth in such designation or conveyance or as determined by the Board. Such Public Areas may include, by way of example, trails and paths, recreational or certain entertainment areas. Owners shall be permitted to use such Public Areas either on a free basis or for fees that are no higher than those charged to members of the public for an equivalent use or service, as determined solely by the Association. Any proceeds from such Public Areas shall be paid to the Association.

5.10 **Open Space Areas.** Any portion of the Property designated as open space on any plat or in this Declaration is reserved as open space which, except as otherwise shown on the Development Plan, shall be free of Improvements.

5.11 **Restricted Areas.** Declarant or the Association shall have the right from time to time to designate portions of the Common Areas that may not be entered or used by any of the Owners other than Declarant and the Association or such of their respective agents or representatives as may be reasonably required for their preservation, care, maintenance or renewal, to enforce these restrictions, or for such other limited purposes that are permitted by Declarant or the Board. Restricted Areas may include environmentally or historically sensitive areas, riparian corridors, wetlands, and other areas Declarant or Board desire to preserve in their natural state or otherwise preserve for the protection of wildlife, cultural sites, personal safety, security or other mutually beneficial purposes. The Restricted Areas may be removed, enlarged or reduced or other portions of the Property may be added to the Restricted Areas by Declarant or the Board from time to time to the extent reasonably necessary to achieve such purposes.

5.12 **Easements.** Easements may be reserved as part of the Common Areas for signage and visual landscape features, or as otherwise provided in the Supplemental Declaration or other instrument establishing the easement. Such easements are to be maintained by the Association and no changes in landscaping will be permitted without written authorization by the Design Review Committee. 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 easements included in the Common Areas.

5.13 **Limited Common Areas.**

(a) **Purpose** Certain portions of the Common Areas may be designated by Declarant or the Association as Limited Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units. By way of illustration and not limitation, Limited Common Areas may include private access roads and private alleys serving certain Units. All costs associated with maintenance, repair, replacement, and insurance of Limited Common Areas shall be collectively allocated to all Owners of the Units to which Limited Common Areas are assigned.

(b) **Initial Designation.** Limited Common Areas may be designated as such in the instrument by which they are conveyed to the Association or in any Supplemental Declaration annexing

Additional Property to this Declaration, but any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Areas to additional Units.

(c) **Subsequent Assignments.** Limited Common Areas may be converted to Common Areas and Limited Common Areas may be reassigned upon (i) approval by the Board and (ii) the vote of two-thirds of the voting rights of Units to whom any of such Limited Common Areas are then assigned. Any such conversion or reassignment shall also require Declarant's written consent if made during the Development Period.

(d) **Use by Others.** Upon approval of a majority of the voting rights of Owners of Units to which any Limited Common Area is assigned, the Association may permit other Owners to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the expenses attributable to such Limited Common Area.

5.14 **Neighborhood Common Areas.**

(a) **Purpose.** Certain portions of the Common Areas may be designated by Declarant or the Association as Neighborhood Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Neighborhood Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, community gardens or open space. All costs associated with maintenance, repair, replacement, and insurance of Neighborhood Common Areas shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Neighborhood Common Areas are assigned.

(b) **Initial Designation.** Any Neighborhood Common Areas shall be designated as such in the instrument by which they are conveyed to the Association or in any applicable Supplemental Declaration but any such assignment shall not preclude Declarant from later assigning use of the same Neighborhood Common Areas to additional Neighborhoods.

(c) **Subsequent Assignments.** A portion of the Common Areas may be assigned as Neighborhood Common Areas and Neighborhood Common Areas may be reassigned upon (i) approval by the Board, (ii) the vote of a majority of the votes in the Neighborhood or Neighborhoods in which such Common Areas are and will be located, if any, and (iii) for reassignments of Neighborhood Common Areas or conversion of Neighborhood Common Areas to Common Areas, the vote of two-thirds of the voting rights of Units to whom any of such Neighborhood Common Areas are then assigned. Any such assignment or reassignment shall also require Declarant's written consent if made during the Development Period.

(d) **Use by Others.** Upon approval of a majority of the voting rights of Owners of Units within the Neighborhood to which any Neighborhood Common Areas is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Neighborhood Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Neighborhood Common Areas.

Article 6

GOLF COURSE

6.1 **General.** Neither membership in the Association nor any Neighborhood Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Golf Course. Rights to use a Golf Course will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Golf Course. The owners of a Golf Course shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use, and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members, if applicable.

6.2 **View Impairment.** Declarant, the Association, or the owner of any Golf Course, does not guarantee or represent that any view over and across any Golf Course from a Unit adjacent to the Golf Course will be preserved without impairment. Owners of a Golf Course, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right in their sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the Golf Course Owner, may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways, and greens from time to time. Any such additions or changes may diminish or obstruct any view from a Unit, and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

6.3 **Design Control.** Declarant, the Association, any Neighborhood Association, or any Design Review Committee, shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Property which is adjacent to, or otherwise in the direct line of sight of, any Golf Course without giving the Golf Course Owner at least fifteen (15) days prior written notice of its intent to approve the same, together with copies of the request and all other documents and information finally submitted in such regard. The Owner of the Golf Course shall then have fifteen (15) days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval; provided, however, that the final decision with regard to such matter shall be made by the Design Review Committee. The failure of the Owner of the Golf Course to respond to the notice within the fifteen (15) day period shall constitute a waiver of Golf Course Owner's right to object to the matter. This section shall also apply to any work on the Common Area or any Neighborhood Common Area, but shall not apply to any construction, addition, alteration, change or installation by Declarant. This section may not be amended in a manner which would adversely affect the rights of the Golf Course Owner of any Golf Course without such Golf Course Owner's written consent.

6.4 **Limitation on Amendments.** In recognition of the fact that the provisions of this Article are for the benefit of the Golf Course, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Golf Course, may be made without the written approval of the affected Golf Course owner. The foregoing shall not apply, however, to amendments made by Declarant in exercising any rights reserved under this Declaration.

6.5 **Ownership and Operation of Golf Course.** All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other Person with regard to the establishment, ownership or operation of any Golf Course, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by Declarant. Further, the ownership and/or

operation of a Golf Course, if any, may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Golf Course by an independent entity or entities; (b) the creation or conversion of the ownership and/or operating structure of the Golf Course to an “equity” club or similar arrangement whereby the Golf Course or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of Declarant. Declarant may cause any Golf Course to initially be public or private, to convert any public Golf Course to a private Golf Course available to specified members only, and to convert any private Golf Course to a public Golf Course with the approval of the requisite number of the Golf Course members pursuant to the Governing Documents for the Golf Course. No consent of the Association or any Owner shall be required to effectuate such transfer or conversion.

6.6 **Additional Restrictions.** Declarant hereby reserves for itself and grants for the benefit of any Owner of any Golf Course the easements set forth in this Article. Declarant reserves the right to impose such additional restrictions relating to such easements as may from time to time reasonably be required to effectuate the purposes of such easements.

6.7 **Jurisdiction and Cooperation.** It is Declarant’s intention that the Association and any Golf Course Owner shall cooperate to the maximum extent possible in the operation of the Property. The Association shall have no power to promulgate rules and regulations that would materially and adversely affect the typical golfing activities on or use of any Golf Course.

6.8 **Appearance of Golf Course.** Each Owner acknowledges and agrees that neither any Owner nor the Association shall have any right to compel any Golf Course Owner to maintain the Golf Course or any improvements thereon to any particular standard of care and that the appearance of the Golf Course and improvements thereon shall be determined in the sole discretion of the respective owner of the Golf Course. It is Declarant’s intention that the Golf Course Owner shall consider, to the maximum extent possible, the effect its construction and operation of any improvements on the Golf Course may have on the enjoyment of Units or the Common Area including factors such as the siting, shape, size, color, design, height, solar access, harmony of appearance, apparent quality, and materials used in the construction of such improvements.

6.9 **Golf Course Uses.** Any Golf Course is intended to be used for activities typically associated with the game of golf, and except for golf carts and vehicles used by the Golf Course Owner to improve, maintain and repair any Golf Course, no motorized vehicles, including snowmobiles, all terrain vehicles, dirt bikes and other vehicles designed primarily for off-road use shall be permitted on any Golf Course. Additionally, the following provisions relate to any Golf Course and to portions of the Property:

(a) **Common Areas.** All Common Areas immediately adjacent to any Golf Course shall be subject to an easement for Golf Course purposes, including signs, cart paths, irrigation systems and the right of ingress and egress for making improvements and changes to any Golf Course, Golf Course management, Golf Course maintenance and repair, and for players during the regular course of play on any Golf Course.

(b) **Golf Cart Path Easement.** Any easements for golf cart paths or trails designated as such on any plat of the Property or in any Supplemental Declaration annexing Additional Property or any pathway serving any Golf Course that is designated as a cart path by signage or by rules adopted by the Association shall be used for golf cart paths, golfer pedestrian walkways, maintenance and vehicle access, and access to any Golf Course. Nothing shall be placed in or maintained on any golf cart path easement which shall interfere with utilization thereof for the purposes for which it was intended.

(c) **Golf Course Easements over Adjoining Units** Any Golf Course easements over adjoining Units designated as such on any Plat may be developed as part of any Golf Course and may be used as part of the Golf Course. No Owner may landscape or place any Improvement, fence, rope or barrier within a Golf Course easement without the prior written consent of the Golf Course Owner and the approval of the Design Review Committee. Nothing in this provision shall be construed as requiring the Golf Course Owner to water or landscape such easement areas.

(d) **Irrigation System**. The Golf Course Owner, its respective agents, employees, and contractors, successors, and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Property, but not under or through any buildings, for the installation, operation, maintenance, repair, replacement, monitoring, and controlling of irrigation systems and equipment, including without limitation, well, pumps, and pipelines, serving all or portions of any Golf Course. The irrigation system may provide for the use of reclaimed water to irrigate the Golf Course.

(e) **Overspray**. Any portion of the Property immediately adjacent to any Golf Course is hereby burdened with a non-exclusive easement in favor of the adjacent Golf Course for overspray of water from the irrigation system serving such Golf Course to the extent reasonably required for the maintenance of such Golf Course. Under no circumstances shall the Association or the owner of such Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(f) **Golf Course Utilities**. The Golf Course Owner, its respective agents, successors, and assigns, employees, and contractors shall have a perpetual, non-exclusive easement to the extent reasonably necessary, over the Property (but not under or through any buildings) for the installation, maintenance, repair, replacement, and monitoring of utility lines, wires, drainage swales, pipelines and structures serving all or portions of any Golf Course.

(g) **Natural Water Runoff**. The Property is hereby burdened with easements in favor of any Golf Course for natural drainage of storm water runoff from such Golf Course.

(h) **Lakes and Water Features**. The Golf Course Owner may own one or more lakes, water retention ponds or other water features within Yarrow. Notwithstanding the ownership of such lakes or water retention ponds, the Golf Course Owner may use any and all lakes, water retention ponds or other water features within Yarrow for the purpose of irrigating and maintaining the Golf Course with the result that the water level in such lakes, water retention ponds or other water features may from time to time vary. Each Owner of a Unit acknowledges such right on the part of the Golf Course Owner and agrees not to commence any cause of action or other proceeding involving the Golf Course Owner based on the exercise of such right or otherwise interfere therewith.

(i) **Golf Balls**. Each Unit, Common Area and Neighborhood Common Area adjoining or adjacent to any Golf Course shall be subject to an easement permitting (i) golf balls to come onto such property, and (ii) except for any part of Improvements constructed on a Unit, for golfers at reasonable times and in a reasonable manner to come upon such property to retrieve golf balls.

(j) **Golf Tournaments**. Golf tournaments or similar functions may be held at any Golf Course from time to time to which members of the public will be invited as spectators or participants. Each Owner acknowledges that certain inconveniences to Owners may result from holding such tournaments. The types of inconveniences occurring during such tournaments may include, by way of example and not limitation, construction by Declarant, the Golf Course Owner, tournament operators or sponsors, of television towers or other structures on any Golf Course property which would be visible

from a Unit and which may obstruct the view of such Golf Course from a Unit; noise associated with the construction and destruction of structures and equipment associated with such tournaments, encroachment on a Unit by spectators, and other inconveniences relating to or caused by spectators, golfers and others involved with the operation of tournaments. Each Owner, including Owners of Units adjacent to any Golf Course, further acknowledges that no representations are made by Declarant, the Association, the Golf Course Owner, or any other entity that Owners will be afforded any rights to view or attend such tournaments or functions other than such rights as are afforded members of the general public.

(k) **Intrusion Onto Golf Course** Neither the Association nor any Owner shall have any right of entry onto any portion of the Golf Course without the prior written consent of the Golf Course Owner. All permitted entry shall be made only through entry points designated by the Golf Course Owner; no Owner may access any portion of the Golf Course from any adjacent residential Unit. Neither the Association nor any Owner may permit any irrigation water to overspray or drain from its Common Area or Unit onto any portion of the Golf Course without approval of the Golf Course Owner. Neither the Association nor any Owner may permit any fertilizer, pesticides or other chemical substances to overspray, drain, flow or be disposed of in any manner upon any portion of the Golf Course. If the Association or any Owner violates the provisions of this paragraph, it shall be liable to the Golf Course Owner for all damages to the turf resulting from the violation and all damages, including consequential damages suffered by the Golf Course Owner.

(l) **Right of Maintenance and Entry**. If either the Association or an Owner (“Defaulting Party”) fails to maintain any landscaping or Improvements situated adjacent to any portion of the Golf Course and within twenty (20) feet of any portion of the Golf Course, the Golf Course Owner shall have the right, but not the duty, to maintain the landscaping or Improvement at the sole cost and expense of the Defaulting Party. If the Golf Course Owner desires to perform any such maintenance authorized by the preceding sentence, the Golf Course Owner shall first notify the Defaulting Party in writing and provide the Defaulting Party with at least thirty (30) days from the date of the notice to perform such maintenance. If the Defaulting Party fails to commence and complete such maintenance within said thirty (30) day period, the Golf Course Owner shall have the right to enter the Unit, except for any dwelling located on such Unit, or Common Area on which the maintenance is required during reasonable business hours and perform such maintenance. Written notice of the costs incurred by the Golf Course Owner in performing such maintenance and/or repair shall be given to the Defaulting Party who shall have ten (10) days to reimburse the Golf Course Owner in full.

6.10 **Liquor Sales**. A Golf Course may be used for the sale of liquor to be consumed on-site and/or off-site. In addition, special event liquor licenses and other permits may be obtained for activities within the Property from time to time. Special event liquor licenses for events held within the Common Area or for events which utilize Common Area are subject to the approval of the Board; the Board shall have sole and absolute discretion to determine whether to grant approval of any request. By acceptance of a deed to a Unit, each Owner agrees not to contest any application for a liquor license to be used for the sale of liquor within a Golf Course and not to object to any special event liquor license applied for or issued from time to time.

6.11 **Waiver and Indemnity**. In some cases, golf balls may have sufficient force and velocity to do serious harm to Persons, pets, Improvements or personal property. **Each Owner, for such Owner’s family members, visitors, tenants, licensees, invitees and guests, assumes such risk and waives any right any such Persons otherwise would have against Declarant, the Association, the Design Review Committee and the Golf Course Owner, operator and designer, to the fullest extent permissible by law, for each injury resulting from the design of any Golf Course, or the location of a Unit, Common Area or Neighborhood Common Area in relation to any Golf Course, and agrees**

to indemnify and hold Declarant, the Association, the Design Review Committee and the Golf Course Owner, operator, designer and contractor harmless from and against all claims and liability, including without limitation, legal fees and costs, in the event any Person while on or in the vicinity of a Unit, Common Area or Neighborhood Common Area, receives any injury or suffers property damage and thereafter seeks to recover against such Persons or entities for compensation for such injury or damage, whether directly or indirectly, or as a result of a third-party claim or cross claim. Each Owner and such Owner's family members, visitors, tenants, licensees, invitees and guests waives each and every claim or right they may have to claim that the normal and customary operation of any such Golf Course constitutes a nuisance, or that any aspect of any such Golf Course operation should be limited to any specific hours of the day or to any specific days of the week. Each such Person assumes the risks which are associated with the game of golf and the flight of golf balls over and upon their Unit, the Common Areas and Limited Common Areas, including, without limitation, the possibility of damage to their property, real or personal, and injury to themselves, their family, pets, friends, visitors, tenants, licensees, invitees, guests, or any other Person.

Article 7

RESTRICTIONS ON USE OF RESIDENTIAL UNITS

7.1 **Structures Permitted.** No structures shall be erected or permitted to remain on any Residential Unit except structures containing residential dwellings and structures normally accessory thereto as approved by the Design Review Committee. Dwellings constructed on Residential Units within the Property may be subject to minimum and maximum size restrictions. Such dwelling size restrictions shall, if established, be set forth in the Design Guidelines as adopted by the Design Review Committee from time to time.

7.2 **Residential Use.** Residential Units shall only be used for residential purposes. Except with the consent of the Board, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Residential Unit, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Residential Unit. The mere parking on a Residential Unit of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Residential Units, (b) the right of Declarant or any contractor or home builder to construct Improvements on any Residential Unit, to store construction materials and equipment on such Residential Units in the normal course of construction, and to use Residential Units as sales or rental offices or model homes or apartments for purposes of sales or rental in Yarrow, and (c) the right of the Owner of a Residential Unit to maintain his or her professional personal library, keep his personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Residential Unit by appointment only. The Board shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the Residential Unit (which activities may be specified in Policies and Procedures adopted by the Board) and that the activities would not be in violation of applicable governmental ordinances.

7.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Residential Unit, nor shall anything be done or placed on any Residential Unit that interferes with or jeopardizes the enjoyment of other Residential Units or the Common Areas, or that is a source of annoyance to residents. 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 of Residential Units. No unlawful use shall be made of a Residential Unit nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

7.4 **Animals.** Except as provided in any Supplemental Declaration, no animals of any kind shall be raised, bred or kept in or upon any Residential Unit, except dogs, cats and such other household pets as may be approved by the Board, and then only provided they are not kept, bred or maintained for any commercial purposes or in unreasonable numbers and provided they are not prohibited by any Neighborhood Declaration or Supplemental Declaration annexing Additional Property to the Property. Owners of pets shall be responsible for compliance with all City of Madras and Jefferson County leash laws, as applicable, and other laws related to the control of pets. The Association may adopt reasonable Policies and Procedures designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring waste removal, leash controls, occupancy limits based on size and facilities of the Residential Unit and fair share use of the Common Areas.

7.5 **Rental of Residential Units.** Unless an Owner is prohibited from leasing or renting his or her Residential Unit by the terms of another document, an Owner shall be entitled to rent or lease his or her Residential Unit if: (i) there is a written rental or lease agreement specifying that the tenant shall be subject to all provisions of the Governing Documents and a failure to comply with any provision of the Governing Documents shall constitute a default under the agreement; (ii) the period of the rental or lease is not less than thirty (30) days; (iii) the Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Governing Documents; (iv) the Owner gives each tenant a copy of the Governing Documents; and (v) the Residential Unit is rented to not more than one (1) family at any time. Upon satisfaction of the foregoing conditions, all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Residential Unit; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration. No Owner may lease or rent an unimproved Residential Unit.

7.6 **Maintenance of Structures.** Each Owner shall maintain the Owner's Residential Unit and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting or staining, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, fences, walks, lights, privacy screening, and other exterior Improvements and glass surfaces. All repainting or restaining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Design Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time. Any change in appearance must first be approved by the Design Review Committee.

7.7 **Maintenance of Landscape.** Except as otherwise provided in this Declaration or any Supplemental Declaration, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Residential Unit neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Further, each Owner shall maintain the park strip adjacent to the Owner's Residential Unit (the landscaped area between a sidewalk and the paved street), if any, to the same standards as provided in this Section. Clearing sidewalks of snow and debris is also the responsibility of the adjacent Residential Unit Owner.

7.8 **Prohibited Vehicles.** No mobile home, recreational vehicle (including campers), snowmobiles, all terrain vehicles, dirt bikes and other vehicles designed primarily for off-road use,

commercial vehicles, any vehicles exceeding 9,000 pounds in gross vehicle weight, any trailer of any kind, any truck with a rated load capacity greater than one ton, or any boat, shall be kept, placed, maintained or parked for more than 48 hours or such other period as may be permitted pursuant to the Association Policies and Procedures on any Residential Unit or Common Area except in enclosed garages approved by the Design Review Committee, areas designated by the Board, or screened from view in a manner approved by the Design Review Committee. No motor vehicle of any type may be constructed, reconstructed or repaired in such a manner as will be visible from neighboring property, nor may any such vehicle be occupied for residential purposes while located within Yarrow. No stripped down, partially wrecked, inoperative or junk motor vehicle, or sizeable part thereof, shall be permitted to be parked on any Residential Unit or Common Area. Except to the extent specifically authorized in the Policies and Procedures, off-road vehicles may not be operated within the Property. The Association Policies and Procedures may restrict the amount of noise vehicles may generate.

7.9 **Parking and Street Obstructions.** Parking of vehicles of any type whatsoever on any portion of the trails within the Property shall not be permitted. No Owner shall do anything which will in any manner prevent the streets within the Property from at all times being free and clear of all obstructions and in a safe condition for vehicular use. As long as applicable ordinances and laws are observed, any vehicle which is in violation of this Declaration may be removed.

7.10 **Grades, Slopes and Drainage.** Each Owner 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 Residential Unit or Common Area without the express written permission of the Design Review Committee, and then only to the extent and in the manner specifically approved. Except with the express written permission of the Design Review Committee, 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 change the direction of or obstruct or retard the flow of water through drainage and infiltration systems.

7.11 **Subsurface Sewage Disposal Systems and Wells.** Owners are required to hook into municipal or community water and sewer systems. No septic tanks or private wells shall be installed on any Residential Unit, except for temporary systems utilized by Declarant or a Builder, with Declarant's approval, during the Development Period.

7.12 **Signage.**

(a) **General Prohibition; Exceptions.** No sign or billboard of any kind (including, but not limited to, commercial or political signs to the extent such prohibition is permitted by law) shall be displayed on any Residential Unit to public view, except for:

(i) traffic and directional signs established by Declarant or the Board;

(ii) signs that are required for legal proceedings;

(iii) during the time of construction of any Improvement, one job identification sign, the size, color and design of which shall be determined by the Design Review Committee; and

(iv) signs, billboards or other advertising devices or structures used by Declarant or any Builder authorized by Declarant in connection with the development,

marketing, advertising, sale or rental of any interest in a Residential Unit or other portion of the Property.

(b) **Design Review Committee Regulation.** The size, design and placement of the job identification sign shall be in accordance with the Design Guidelines established by the Design Review Committee. Except as provided in Section 7.12(a)(iv), signs shall be prohibited anywhere within the Residential Unit that would be visible from outside the Residential Unit.

7.13 **Outside Storage.** Storage areas, materials, machinery and equipment shall be prohibited upon any Residential Unit, unless obscured from view of neighboring property and streets by an appropriate screen or enclosure approved by the Design Review Committee. Tarps and covers shall be prohibited except as otherwise provided in the Policies and Procedures and the Design Guidelines. Trash cans and other moveable rubbish containers shall be allowed to be visible from the street or adjacent Residential Unit within the Property only during the days on which rubbish is collected and after 8 p.m. of the preceding evening.

7.14 **Completion of Construction.** The construction of any building on any Residential Unit, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of construction so as to present a finished appearance when viewed from any angle and the Residential Unit shall not be occupied until so completed. In the event of undue hardship due to weather conditions or other causes beyond the reasonable control of the Owner, this time period may be extended for a reasonable length of time upon written approval from the Design Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period. All unimproved Residential Units 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 and to be in compliance with forest fuels management and fire prevention practices required by the Association or the applicable Governmental Authority.

7.15 **Fences and Walls.**

(a) **Adjacent to Golf Course.** Except for fencing originally constructed or approved by Declarant, there shall be no fencing constructed, maintained or placed (i) on any portion of the Common Area or any portion of any Residential Unit which adjoins the Golf Course or (ii) on any portion of the Property which, in the judgment of a Golf Course Owner, unreasonably interferes with the view from that portion of the Golf Course. For purposes of the preceding sentence, fencing includes fences, walls, netting, and other similar barriers, including landscaping. Any fencing approved in writing by a Golf Course Owner shall be deemed to not be in violation of this subsection.

(b) **Chain Link Fences.** No chain link fences shall be permitted within the Property except for (i) maintenance or buffer areas located within the Common Area or on portions of the Golf Course, and (ii) those erected by Declarant.

(c) **Other Fences and Walls.** Except as otherwise provided herein, all fences and walls within the Property must conform to the requirements contained in the Design Guidelines.

7.16 **Landscape.** Landscaping plans for each Residential Unit shall be submitted to the Design Review Committee and shall be in compliance with sod and planting limitations and tree preservation guidelines as may be established by such Committee or the Association from time to time. Such landscaping must be completed within nine (9) months from the date occupancy of the dwelling constructed thereon is approved by the applicable Governmental Authority. In the event of undue

hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Design Review Committee.

7.17 **Temporary Structures.** No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings nor any uncompleted building shall be used on any Residential Unit at any time as a residence either temporarily or permanently.

7.18 **Antennas and Satellite Dishes** Over-the-air reception devices are not permitted within the Property except standard TV antennas and satellite dishes are permitted so long as they comply with the Design Guidelines and any other applicable restrictions adopted by Declarant, the Design Review Committee, the Board, or the Association, pertaining to the size, means, method and location of their installation.

7.19 **Limitations on Open Fires.** No incinerators or other open fires shall be kept or maintained on any Residential Unit; provided, however, that the foregoing restrictions shall not apply to outdoor facilities such as propane or natural gas grills, portable barbeque units, gas-burning fire pits or to burning in connection with certain construction and other activities as permitted by the Design Guidelines or the Association Policies and Procedures.

7.20 **Recreational Equipment.** Playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, are permitted so long as they comply with the Design Guidelines and any other applicable restrictions adopted by the Design Review Committee or the Association. No such equipment shall be placed, installed or utilized on any Residential Unit within Yarrow except as permitted in accordance with this Section 7.20.

7.21 **Pest and Weed Control.** No Owner shall permit any thing or condition to exist upon any Residential Unit which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin. Each owner shall control noxious weeds on the Owner's Residential Unit and shall comply with the noxious weed plan for Yarrow as required by the applicable Governmental Authority.

7.22 **Exterior Lighting.** All exterior lighting shall be subject to approval of the Design Review Committee. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Policies and Procedures and if removed within thirty (30) days after the celebrated holiday.

7.23 **Paths and Trails.** No Owner, other than Declarant or the Association, may create any paths or trails within the Property without the prior written approval of the Design Review Committee.

7.24 **Drainage.** Design and construction of drainage facilities for each Residential Unit shall conform to the requirements of the Design Guidelines. The Design Guidelines generally require disposal of stormwater by infiltration and/or dispersion on each Residential Unit. Each Owner shall regularly clear all storm drainage inlets and maintain the capacity and flow of all storm drainage Improvements and drainage swales situated on the Owner's Residential Unit.

7.25 **Reclaimed Water** Some of the irrigation lines installed by Declarant for the Common Area may provide for the use of reclaimed water. The Association shall be permitted to use any such reclaimed water to irrigate the Common Area landscaping.

7.26 **Landscape Irrigation.** Design, construction and operation of landscape irrigation systems shall conform to the requirements of the Design Guidelines and the water utility serving the

Property. The irrigation system and controls installed on each Residential Unit shall be capable of meeting, and be operated to meet, the irrigation efficiency and water conservation goals of the water utility.

7.27 **Solid Waste.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind, and no rubbish, refuse or garbage shall be allowed to accumulate. Disposal of solid waste, including normal household waste, yard waste and household hazardous waste from each Residential Unit, shall conform to the requirements and procedures set forth by the Association. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such materials from any streets or the Property where deposited by such Person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner.

7.28 **Association Policies and Procedures.** In addition to the restrictions in this Declaration, the Association from time to time may adopt, modify or revoke such Policies and Procedures governing the conduct of Persons and the operation and use of Residential Units and the Common Areas as it may deem necessary or appropriate to insure the peaceful and orderly use and enjoyment of the Property. A copy of the Policies and Procedures, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be furnished by the Board to each Owner and shall be binding upon all Owners and occupants of all Residential Units. The method of adoption of such Policies and Procedures shall be as provided in the Bylaws.

7.29 **Time-sharing or Fractional Interest Ownership Prohibited.** No purchaser of a Residential Unit, or interest therein, or use thereof, shall receive a right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of such property annually or on some other periodic basis if four or more such use or occupancy periods over a period of three years or more have been created with respect to such Residential Unit, and any such attempted conveyance shall be void; provided, however, this restriction shall not be interpreted to prevent joint ownership of Residential Units not including such exclusive use periods.

7.30 **Application to Additional Property.** The Supplemental Declaration subjecting Additional Property to this Declaration may establish additional or different restrictions governing the use of such Additional Property.

7.31 **Right to Approve Changes in the Standards Within the Community.** No amendment to or modification of any use restrictions contained in this Declaration or any Supplemental Declaration shall be effective without the prior notice to and the written consent of Declarant so long as Declarant owns property subject to this Declaration or prior to the expiration of the Development Period.

Article 8

DESIGN REVIEW COMMITTEE

8.1 **Design Review Requirements.** Except for Units owned by Declarant, no Improvement shall be commenced, erected, placed or altered on any Unit 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 Design Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the then existing Improvements and as to location with respect to topography and finished grade

elevations. The procedure and specific requirements for review and approval of construction shall be set forth in Design Guidelines adopted from time to time by the Design Review Committee.

8.2 **Membership: Appointment and Removal.** The Design Review Committee shall consist of as many persons, but not less than three, as Declarant may from time to time appoint. Declarant may remove any member of the Design Review Committee at its discretion at any time and may appoint new or additional members at any time. The members of the Design Review Committee need not be Owners or representatives of Owners, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Design Review Committee may be broken into or may form subcommittees to preside over particular areas of review (e.g., a new construction subcommittee and a modifications subcommittee). Any reference in this Declaration to the Design Review Committee should be deemed to include a reference to any such subcommittee. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Design Review Committee. Declarant may at any time delegate to the Board the right to appoint or remove members of the Design Review Committee. In such event, or in the event Declarant fails to appoint a Design Review Committee, the Board shall assume responsibility for appointment and removal of members of the Design Review Committee, or if it fails to do so, the Board shall serve as the Design Review Committee.

8.3 **Design Guidelines.**

(a) **Adoption of Design Guidelines.** Declarant or the Design Review Committee shall prepare Design Guidelines, which may contain general provisions applicable to all of the Property as well as specific provisions which vary from Neighborhood to Neighborhood or any portions of a Neighborhood or Neighborhoods or types of use or Improvements. The Design Guidelines may establish building envelopes for each Unit and will require compliance with fire fuel reduction and fire prevention practices required by the applicable Governmental Authority. The Design Guidelines are not the exclusive basis for decisions of the Design Review Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(b) **Publication of Design Guidelines.** The Design Review Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Property. In Declarant's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(c) **Amendment of Design Guidelines.** Declarant shall have sole and full authority to amend the Design Guidelines during the Development Period notwithstanding a delegation of reviewing authority to the Design Review Committee unless Declarant also delegates the power to amend to the Design Review Committee. Upon termination or delegation of Declarant's right to amend, the Design Review Committee shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

8.4 Approval Procedures.

(a) **Applications.** Except as otherwise stated in this Article, Owners desiring to construct, alter, repair or replace any Improvements shall apply for an approval therefor from the Design Review Committee. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction (the “**Work**”), as applicable. The Design Guidelines or the Design Review Committee may require the submission of such additional information as may be reasonably necessary to consider any application.

(b) **Committee Discretion.** The Design Review Committee may, at its sole discretion, withhold consent to any proposed Work if the Design Review Committee finds the proposed Work would be inappropriate for the particular Unit or incompatible with the Design Guidelines. In reviewing each submission, the Design Review Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. Considerations such as siting, shape, size, color, design, height, solar access, impairment of the view from other Units within Property or other effect on the enjoyment of other Common Areas, disturbance of existing terrain and vegetation, wildlife protection and any other factors which the Design Review Committee reasonably believes to be relevant, may be taken into account by the Design Review Committee in determining whether or not to consent to any proposed Work. In the case of any Unit adjoining, adjacent to or otherwise in a direct line of sight of any Golf Course, the Design Review Committee shall forward the plans and specifications for the proposed Work to the Owner of the Golf Course for review in accordance with Section 6.3 of this Declaration.

(c) **Committee Decision.** The Design Review Committee shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all materials required by it with respect to the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Design Review Committee may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant. In the event the Design Review Committee fails to render its approval or disapproval within thirty (30) working days after the Design Review Committee has received all materials required by it with respect to the proposal, or if no written notice of noncompliance has been given to the Owner within two (2) years after the completion thereof is readily apparent, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with; provided that the Owner must first issue a written notice to the Design Review Committee of the Owner’s intent to proceed without such approval and no response from the Design Review Committee is forthcoming within ten (10) days after such notice is given.

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

(e) **Design Review Committee Fees; Assistance.** The Design Review Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Compliance fees and deposits may also be required. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(f) **Appeal.** At any time after Declarant has delegated appointment of the members of the Design Review Committee to the Board pursuant to Section 8.2, any Owner adversely affected by action of the Design Review Committee may appeal such action to the Board. Appeals shall be made in writing within ten (10) days of the Design Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board of Directors is already acting as the Design 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 within thirty (30) working days after receipt of such notification.

(g) **Effective Period of Consent.** The Design Review Committee's consent to any proposed Work shall automatically be revoked one year after issuance unless construction of the Work has been commenced or the Owner has applied for and received an extension of time from the Design Review Committee.

(h) **Notice to Declarant.** In the event Declarant delegates the right to appoint or remove members of the Design Review Committee to the Board prior to expiration of the Development Period, then until expiration of the Development Period, the Design Review Committee shall notify Declarant in writing within three (3) business days after the Design Review Committee has approved any application relating to proposed Work within the scope of matters delegated to the Design Review Committee by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have five (5) business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the Design Review Committee and the applicant.

8.5 **Variances.** The Design Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Design Review Committee from denying a variance in other circumstances.

8.6 **Approval Exceptions.** No approval shall be required to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of the Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure and modifications to enclose garages as living space shall be subject to approval. Any request to enclose a garage as living space must include plans for a replacement garage on the Unit. If approval of a garage enclosure is granted by the Design Review Committee such approval may be conditional on the construction of a replacement garage.

8.7 **Approval Exemptions.** This Article shall not apply to Declarant's activities during the Development Period. Municipal, state, federal and other governmental or quasi-governmental buildings

and facilities, including post offices, are subject to architectural review under this Article. However, such review shall be binding upon any Governmental Authority only to the extent permitted by law.

8.8 **No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Design Review Committee may refuse to approve similar proposals in the future. Approval of applications or plans and specifications for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans and specifications, or other matters subsequently or additionally submitted for approval.

8.9 **Estoppel Certificate.** Within fifteen (15) business days after written request is delivered to the Design Review Committee by any Owner, and upon payment to the Design Review Committee of a reasonable fee fixed by the Design Review Committee to cover costs, the Design Review Committee shall provide such Owner with an estoppel certificate executed by a member of the Design Review Committee and acknowledged, certifying with respect to any Unit owned by the Owner, that as of the date of the certificate, either: (a) all Improvements made or done upon or within such Unit 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 in the certificate, such matters being conclusive as between Declarant, the Design Review Committee, the Association and all Owners, and such purchaser or mortgagee.

8.10 **Enforcement.** If during or after the construction the Design 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 8.4(f), either the Design Review Committee or the Board may enforce compliance in accordance with the procedures set forth in Section 12.1 below.

8.11 **Limitation of Liability.** Neither the Design Review Committee nor any member of the Design Review Committee 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 Design Review Committee or a member of the Design Review Committee, provided only that the Design Review Committee or the member has, in accordance with the actual knowledge possessed by the Committee or Member, acted in good faith. Any such damages or expenses for which the Committee or any Member is liable and to which any Owner becomes entitled shall be a Common Expense. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Yarrow; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Design Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of

approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value, or size, or of similar design. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

Article 9

OWNERS ASSOCIATION

Declarant shall organize the Association as the association of all of the Owners within the Property. Such Association, and its successors and assigns, shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

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

9.2 **Membership.** Every Owner of one or more Units 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 Units 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.

9.3 **Voting Rights.** Voting rights within the Association shall be allocated as follows:

(a) **Allocation.** Subject to Declarant's right to designate the number of Units attributable to any vacant land prior to its development in accordance with the Development Plan, each Residential Unit shall be allocated one vote for each Assessment Unit allocated to such Unit, and each Multi-Family Unit shall be allocated .5 of a vote for each dwelling unit within the Multi-Family Unit.

(b) **Classes of Voting Membership.** 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 voting rights for each Unit owned computed in accordance with Section 9.3(a) above. When more than one Person holds an interest in any Unit, all such Persons shall be members. Except as may otherwise be specified in the Supplemental Declaration annexing such Unit to the Property, the vote for such Unit shall be exercised as they among themselves determine. In no event,

however, shall more voting rights be cast with respect to any Unit than as set forth in Section 9.3(a) above.

Class B. The Class B Member shall be the Declarant and shall be entitled to ten times the voting rights computed under Section 9.3(a) for each Unit owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) Expiration of the Development Period; or
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

9.4 **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 in this Declaration, accompanied by any required changes in the Articles of Incorporation or Bylaws made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

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

- (a) **Maintenance.** The Association shall provide maintenance for portions of the Property as provided in Article 10 and other provisions of this Declaration.
- (b) **Insurance.** The Association shall obtain and maintain in force certain policies of insurance as determined by the Board.
- (c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Areas or other property which the Association insures, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a

neat and attractive, landscaped condition consistent with the Community-Wide Standard. If insurance proceeds are insufficient to cover the costs of reconstruction, the Board may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of all or some of the Owners, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

(d) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Policies and Procedures as provided in Section 7.28.

(e) **Assessments.** The Association shall adopt budgets and impose and collect certain Assessments as provided in Article 11.

(f) **Community-Wide Standards.** The Association shall have the authority to establish a minimum Community-Wide Standard of maintenance and aesthetic appearance for the Property, including, without limitation, Units, Common Areas and Neighborhood Common Areas. The Association shall have the authority to enforce such standards including, without limitation, the right to levy fines which if unpaid shall constitute an Individual Assessment and a lien on the violator's property as set forth in this Declaration. The Association also shall have the right of self-help to abate any violations or nonconforming use or activity, which shall not be deemed a trespass, and the costs of which shall be recovered by Individual Assessments. The Association shall have the right, but not the obligation, to enforce any provision of this Declaration or the governing documents of a Neighborhood Association if it fails or refuses to do so, provided that the Neighborhood Association shall be the primary entity responsible for enforcing its own Neighborhood Declaration and rules and regulations.

(g) **Enforcement.** The Association may 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 Policies and Procedures adopted by the Association, including, without limitation, enforcement of the decisions of the Design Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(h) **Employment of Agents, Advisers and Contractors.** The Association may employ the services of any Person as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, 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 on any claim in excess of \$100,000 unless the Unit Owners have enacted a resolution authorizing the incurring of such fees or contract by a vote of seventy-five percent (75%) of the total voting rights of the Association. These limitations shall not be applicable to legal fees incurred in defending the Association of the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by ten percent on each fifth anniversary of the Recording of this Declaration.

(i) **Borrow Money.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas and, subject to Section 5.8, encumber the Common Areas as security for the repayment of such borrowed money.

(j) **Hold Title and Make Conveyances.** The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within the Property conveyed to the Association by Declarant.

(k) **Transfer, Dedication and Encumbrance of Common Areas.** Except as otherwise provided in Section 5.8, the Association may sell, transfer or encumber all or any portion of the Common Areas to which it then holds title of record to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for public purposes.

(l) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those who do not assent to such charges and to such other Policies and Procedures 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.

(m) **Joint Use Agreements.** The Association may enter into joint use agreements with other associations, entities or persons relating to the joint use of recreational or other facilities, including the joint use of the Common Areas. The Association may enter into agreements with one or more Neighborhood Associations or other Persons within Yarrow to provide joint use, management, and administrative services, and to perform such other community related activities as may be agreed upon by the Association and such Neighborhood Association(s) or Persons. The expense of providing such services by the Association shall be allocated by agreement between the parties.

(n) **Administration of Particular Areas Within Yarrow.** In addition to its other powers and obligations, the Association may be obligated by Declarant or agreement to provide maintenance, architectural review, assessment collection, rules enforcement, or other services to, and levy assessments against, Owners within particular areas of the Property (e.g., one or more Neighborhoods). In such event, the Association shall provide such services in the manner prescribed, and the expenses of such services shall be allocated and assessed as provided in the covenants, easements, or agreement obligating the Association. In the event of a conflict between such other covenants, easements, or agreements and this Declaration, this Declaration shall control.

(o) **Additional Services.** Any Neighborhood, acting either through a Neighborhood Committee or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the voting rights within the Neighborhood, the Association may provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

(p) **Assumption of Other's Maintenance Responsibility.** The Association may, but shall not be obligated to, assume maintenance responsibility for property which is the responsibility of another Person (e.g., a Neighborhood Association or any local or state governmental authority) if, in the discretion of the Board, the maintenance of such property provides a benefit to the Property and/or such property is not otherwise being maintained in accordance with the Community-Wide Standard. The cost of maintenance assumed in accordance with this section may be a Common Expense to be allocated among all Owners or may be assessed to a Neighborhood Association or as Individual Assessments levied only against the benefited parties.

(q) **Fire Protection.** The Association shall adopt and enforce fire fuels management and fire prevention practices required by a Governmental Authority as applicable to Units and Common Areas within the Property.

(r) **Municipal Services.** In addition to any obligations it may have under this Declaration to share costs, the Association may, but is not obligated by this Declaration to, contribute funds to any Governmental Authority for the purpose of increasing its capacity to provide services, such as, but not limited to, maintenance of roads, storm drainage facilities, sidewalks, lighting, trails and roadside landscaping, and police and fire protection services within the Property.

(s) **Other Services.** The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, garbage and trash removal.

(t) **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.

(u) **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 (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

9.6 **Board of Directors.** The powers and duties of the Association and the affairs of the Association shall be conducted by its Board of Directors duly appointed or elected as provided in this section, except to the extent that a vote of the members is required by this Declaration or the Bylaws.

(a) **Initial Board** Upon incorporation of the Association and until the first annual meeting after fifty percent (50%) of the Units authorized by the Development Plan have been sold and conveyed to individual residential purchasers (as opposed to Builders), the Board shall be composed of three directors, all of whom shall be appointed by Declarant.

(b) **When Fifty Percent (50%) of the Units Have Been Sold.** Commencing on the first annual meeting after fifty percent (50%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after ninety percent (90%) of such Units have been conveyed, the Board shall be composed of three members, two of whom shall be appointed by Declarant and one of whom shall be elected by the Class A Members.

(c) **When Ninety Percent (90%) of the Units Have Been Sold.** Commencing on the first annual meeting after ninety percent (90%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after expiration of the Development Period, the Board shall be composed of five directors, two of whom shall be appointed by Declarant and three of whom shall be elected by the Class A Members.

(d) **Turnover Meeting After Termination of Class B Membership.** The first annual meeting after termination of the Class B membership shall be the Turnover Meeting, at which time Declarant will turn over administrative control to the Owners. Commencing with the Turnover meeting, the Board shall be composed of five directors, all of whom shall be elected by the Owners. The method of election, terms of office and method of removal and filling of vacancies shall be governed by the Bylaws.

9.7 **Voting Groups.** In connection with the election of those directors to be elected by the Class A Members, Declarant may, from time to time, in its discretion, designate Voting Groups consisting of one or more Neighborhoods (or the Units outside any Neighborhood) for the purpose of electing directors to the Board, in addition to any at-large directors elected by all Class A Members. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Owners representing similar Neighborhoods to elect the entire Board, due to the number of Units in such Neighborhoods, excluding the representation of others. The number of Voting Groups within the Property shall not exceed the total number of directors to be elected by the Class A Members. The Owners in Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board. Declarant shall establish Voting Groups, if at all, not later than the termination of Class B membership by filing with the Association and Recording a supplemental declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to termination of the Class B membership. After termination of the Class B membership, the Board shall have the right to Record a supplemental declaration changing the Voting Groups upon the vote of a majority of the total number of directors and approval of a majority of the voting rights in the Association. Neither recordation nor amendment of such supplemental declaration by Declarant shall constitute an amendment to this Declaration and no consent or approval of the Owners shall be required, except as stated in this section. Until such time as Voting Groups are established, all of the members shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Property which are not assigned to a specific Voting Group shall constitute a single Voting Group.

9.8 **Liability.** Neither a member of the Board of Directors nor an officer of the Association or member of the Design 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 damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his 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 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. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third party 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.

9.9 **Neighborhood Associations.** The Board may assist the Neighborhood Associations in the performance of their duties and obligations under their respective Neighborhood Declarations, and the Association shall cooperate with each Neighborhood Association so that each of those entities can most efficiently and economically provide their respective services to Owners. The Association or a Neighborhood Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for Owners within the particular Neighborhood or by an item in the Neighborhood Association's budget which shall be collected through Neighborhood Assessments and remitted to the Association. If a Neighborhood Association fails or is unable to perform a duty or obligation required by its Neighborhood Declaration, then the Association may, after reasonable notice and an opportunity to cure given to the Neighborhood Association, perform such duties or obligations until such time as the Neighborhood Association is able to resume such functions, and the Association may charge the Neighborhood Association a reasonable fee for the performance of such functions.

9.10 **Powers of the Association Relating to Neighborhoods.** Each Neighborhood Committee shall be a committee of the Association. The Board shall have all of the power and control over any Neighborhood Committee that it has under applicable law over other committees of the Association. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Committee or Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or the Owners or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore. A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Neighborhood or Individual Assessments to cover the costs, as well as an administrative charge and sanctions.

9.11 **Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be Recorded.

Article 10

MAINTENANCE

10.1 **Maintenance of Units.** Each Owner shall maintain the Owner's Unit and Improvements thereon in a clean and attractive condition, in good repair, in such fashion as not to create a fire or other hazard and in accordance with the Community-Wide Standard. Such maintenance shall include, without limitation, painting or staining, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the Design Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Unit and on any adjacent park strip (the landscaped area between a sidewalk and the paved street) neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Each Owner shall be responsible for clearing adjacent sidewalks of snow and debris. Damage to the Owner's Unit caused by

fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within such period of time as may be specified in the Design Guidelines, or if no such period is specified, within a reasonable period of time.

10.2 **Maintenance of Common Areas** The Association shall be responsible for exterior lighting for and perform all maintenance upon the Common Areas and Limited Common Areas including but not limited to grass, trees, walks, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. The Association shall also maintain any Reserve Strips dedicated to a governmental entity if such strips are not maintained by the entity. Such areas shall be maintained in a good and workmanlike manner such as to render them fit for the purposes for which they are intended.

10.3 **Maintenance of Utilities**. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for the cost of maintaining utility lines within his or her Unit.

10.4 **Corrective Maintenance**. The Association may assume the maintenance responsibilities set out in this Declaration or any Neighborhood Declaration for any Neighborhood or Owner, after giving the responsible Neighborhood Association or Owner reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against those Owners to which the services are provided and shall be Neighborhood Assessments or Individual Assessments as determined by the Board. The assumption of this responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard.

10.5 **Damage Liability**. Any damage to any Common Area caused by Owners, their children, agents, visitors, friends, relatives, tenants, occupants or service personnel shall be repaired by the Owner within fifteen (15) days following the date on which notice is mailed by the Association informing the Owner of such violation. If the damage has not been repaired within such time, then the Association shall perform such repair and the cost shall be assessed to the Owner as an Individual Assessment.

Article 11

ASSESSMENTS

11.1 **Power to Assess**. The Association may levy Assessments. The Assessments levied by the Association shall be used 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.

11.2 **Apportionment of Assessments**. All Units, other than Units exempted from assessment pursuant to Section 11.5, shall pay a pro rata share of the General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments commencing upon the date such Units are made subject to this Declaration. The pro rata share shall be based upon the number of Assessment Units allocated to each Unit divided by the total number of Assessment Units subject to such Assessment. Notwithstanding the provisions of this section, however, an amendment to this Declaration may specify a special allocation of assessing the costs of operating and maintaining the facility on a Common Area in order to more fairly allocate such cost, taking into the account the extent of use or other factors. Assessment Units shall be allocated as follows:

Residential Units: 1 Assessment Unit per Unit

Multi-Family Units: Multi-Family Units shall be allocated .5 of an Assessment Unit for each dwelling unit within the Multi-Family Unit.

11.3 **Types of Assessments.**

(a) **General Assessments.** The Association is hereby authorized to levy General Assessments against all Units subject to Assessments to fund the Common Expenses. The amount of the General Assessment allocated to each Unit shall be determined in the manner described in Section 11.2. In determining the General Assessments, the Board may consider any Assessment income expected to be generated from any additional Units or changes in the status of the then-existing Units anticipated during the fiscal year. The Board 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 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 11.7. 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 to each Owner a summary of the final budget. If the Board fails to adopt a budget, the last adopted budget shall continue in effect.

(b) **Neighborhood Assessments.** The Association or, after Declarant or the Board delegate the same thereto, a Neighborhood Association, is authorized to levy Neighborhood Assessments against all of the Units within such Neighborhood to fund Neighborhood Common Expenses. The determination of the allocation of Neighborhood Common Expenses may be undertaken in the same manner applicable to the Association with respect to allocating General Assessments, Special Assessments or Emergency Assessments, as applicable, unless otherwise provided in the Neighborhood Declaration.

(c) **Special Assessments.** The Board 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 which in the aggregate in any fiscal year exceed an amount equal to twenty percent (20%) 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 fifty percent (50%) of the Class A voting rights voting in person or by proxy, together with the written consent of the Class B Member. Special Assessments shall be apportioned as provided in Section 11.2 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

(d) **Emergency Assessments.** If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors 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 11.2 above and payable as determined by the Board of Directors.

(e) **Limited Common Area Assessments.** General Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas shall be assessed exclusively and collectively to all of the Units having the right to use Limited Common Areas on a relative Assessment Unit basis.

(f) **Individual Assessments.** Any Common Expense or any part of a Common Expense benefiting fewer than all of the Units may be assessed exclusively against the Units benefited as an Individual Assessment. Individual Assessments shall also include default Assessments levied against any Unit to reimburse the Association or Neighborhood Association for costs incurred in bringing such Unit or its Owner into compliance with the provisions of this Declaration or the Policies and Procedures 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 thirty (30) days after the Board has given written notice thereof to the Owners subject to Individual Assessments.

11.4 **Assessment of Additional Property.** When Additional Property is annexed to the Property, the Units included therein shall become subject to Assessments from the date of such annexation, except for those Units exempt from assessment pursuant to Section 11.5. All other Units shall pay such Assessments in the amount then being paid by other Units. The Board, however, at its option may elect to recompute the budget based upon the additional Units subject to assessment and additional Common Areas and recompute Assessments for all Units, including the new Units, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a Supplemental Declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

11.5 **Exempt Property.** The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments:

(a) All Common Areas, Neighborhood Common Areas, Limited Common Areas and Community Improvements;

(b) Any property dedicated to and accepted by any Governmental Authority or public utility;

(c) Property owned by any Neighborhood Association for the common use and enjoyment of the Owners or the members of a Neighborhood Association or owned by the Association or the members of a Neighborhood Association as tenants-in-common;

(d) Units owned by Declarant or any Affiliate of Declarant until such time as the Unit is occupied for a residential use, except that Units owned by Declarant shall be subject to assessments for reserves under Section 11.7; and

(e) Declarant reserves the right to extend the rights contained in paragraph 11.5(d) to Builders in its sole discretion. The exemption contained in this paragraph 11.5(e) shall not be extended to assessments for reserves as required by Section 11.7.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal

Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

11.6 **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.7, separate and apart from its other funds, in an Operations Fund held in a bank account in the State of Oregon 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 of the Units, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services, repairs, replacements of that portion of the Property for which the Association is responsible.
- (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 which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

11.7 **Reserve Fund.**

(a) **Establishment of Account.** Declarant shall conduct a reserve study as described in paragraph (c) of this section and establish a Reserve Fund in a bank account in the State of Oregon in the name of the Association for replacement of common properties that will normally require replacement in whole or in part in more than three (3) and less than thirty (30) years, for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items. The Reserve Fund need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more 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 Unit 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 Unit. 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 it.

(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 of Directors, in its discretion, may deem appropriate. The reserve study shall include:

- (i) Identification of all items for which reserves are to be established;

(ii) The estimated remaining useful life of each item as of the date of the reserve study;

(iii) The estimated cost of maintenance, repair or replacement of each item at the end of its useful life;

(iv) A thirty (30) year plan for the maintenance, repair and replacement of common property with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) **Use of Reserve Fund.** The Reserve Fund shall be used only for 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 of Directors 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 of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund. In addition to the authority of the Board of Directors under paragraph (c) of this section, following the second year after the Turnover Meeting, the Association may elect to reduce or increase future Assessments for the Reserve Fund by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association and may, on an annual basis by a unanimous vote, elect not to fund the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Units. Sellers of the Units, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

11.8 **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.

11.9 **Commencement of Assessment Obligation; Time of Payment.** The obligation to pay Assessments under this Declaration shall commence as to each Unit, on the first day of the month after such Unit becomes subject to this Declaration, or the Unit ceases to be exempt from Assessments, whichever is later. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence for such Unit.

11.10 **Payment of Assessments.** Assessments shall be paid in such manner and on such dates as the Board 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 his Unit, the Board may require the outstanding balance on all Assessments to be paid in full immediately. Until termination of the Development Period, 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.

11.11 **Advance Payments Upon Sale.** The Association or any Neighborhood Association may require any Owner to obtain, in conjunction with the closing of any sale of such Owner's Unit, a deposit from the purchaser equal to the then estimated amount of assessments for three (3) months due to such Association. Any Owner entering into such a contract shall be obligated to collect or otherwise deposit such Assessments with the appropriate Association upon the closing of such conveyance and shall be liable therefor after such conveyance if those Assessments are ultimately not received by the Association. No failure to require or collect such estimated Assessments shall impair any contract of sale or provide any grounds for a rescission of such sale.

11.12 **Transfer Assessment.** In addition to all other assessments provided for herein, each Person acquiring fee title to a Unit shall pay an assessment or fee in the amount of One Hundred Fifty and no/100 Dollars (\$150.00) to the Association, except that in the case of simultaneous transfers of multiple Units to a single developer for development and resale, only one such fee shall be assessed. Such assessment shall be paid at closing of the purchase of the Unit and shall apply each time the Unit is resold. The Board of Directors may increase the amount of the assessment set forth in this paragraph by no more than three percent each fiscal year. The assessment may be used by the Association to defray the costs of reflecting the Unit ownership change on its books and records or such other expenses as it deems appropriate in its sole and absolute discretion.

11.13 **Personal Obligations for Assessments.** Declarant, for each Unit owned by it within the Property, hereby covenants, and each Owner of any Unit 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 Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Sections 12.3 and 12.4, shall be a charge on the land and shall be a continuing lien upon the Unit 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 Unit 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 12.

11.14 **Voluntary Conveyance.** In a voluntary conveyance of a Unit the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Unit 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 Unit 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.

11.15 **Neighborhood Association's Obligation to Pay Assessments.** A Neighborhood Association shall be jointly and severally obligated with the Owners of Units subject to its jurisdiction for all General, Special and Emergency Assessments levied against such Units. Each such Neighborhood Association shall include as a line item in its common expense budget, and shall be responsible for collecting and paying to the Association, the total amount of all General, Special, Emergency and Limited Common Area Assessments levied by the Association against the Units within its jurisdiction and such amount shall have first priority for payment out of the income of the Neighborhood Association. The obligation of each Neighborhood Association for collection and payment of Assessments to the Association shall be enforceable by the Association, and the Association may bring suit against any Neighborhood Association to collect delinquent Assessments, in addition to any other rights or remedies it may have hereunder or at law or in equity. The foregoing collection remedies shall not, however,

constitute a lien upon all property subject to the jurisdiction of a particular Neighborhood Association. The obligation of each Neighborhood Association to collect and pay such Assessments to the Association pursuant to this section shall not relieve any Owner of liability for its pro rata share of any amounts not paid by the Neighborhood Association.

11.16 **No Waiver.** Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a 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.

11.17 **No Option to Exempt.** No Owner may exempt himself from liability for Assessments by non-use of Common Areas, abandonment of his Unit, 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 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.

11.18 **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 12

ENFORCEMENT

12.1 **Violation of General Protective Covenants.** In the event that any Owner constructs or permits to be constructed on his Unit an Improvement contrary to the provisions of this Declaration, or violates any provisions of the Governing Documents, then the Association acting through the Board 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 fifteen (15) 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 Unit, mailed to the mailing address of each Unit or mailed to the mailing address designated by the owner of each Unit in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

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

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

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

12.2 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days 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 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 Unit in the absence of a foreclosure thereof or court order to such effect.

(b) The Association shall have a lien in accordance with ORS 94.709 against each Unit for any Assessment levied against the Unit, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Unit 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 paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

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

12.3 **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 eighteen percent (18%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Unit, mailed to the mailing address of each Unit 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 of Directors.

12.4 **Costs and Attorneys' Fees.** In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Policies and Procedures, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be

reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

12.5 **Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 12, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Unit, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws 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 ten (10) days written notice to such 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, enter upon and take possession of such Owner's Unit or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing section 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 Unit, or any part thereof, to do the same or similar acts.

12.6 **Nonexclusiveness and Cumulation 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.

12.7 **Dispute Resolution**

(a) **Mediation.**

(i) Except as otherwise provided in this section, 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 Jefferson County, Oregon, 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.

(ii) If the party receiving the offer does not accept the offer within ten (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.

(iii) If a qualified dispute resolution program exists within Jefferson County, Oregon and an offer to use the program is not made as required under paragraph (a) of this section, then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(iv) Unless a stay has been granted under paragraph (c) of this section, if the dispute resolution process is not completed within thirty (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.

(v) 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.

(vi) The requirements of this section 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, the Design Review Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 12.7(a) above or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Section 12.7. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Madras, Oregon, 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 ten (10) days after a party’s demand for arbitration, upon application of any party, the presiding judge of the Circuit Court of Jefferson County, Oregon 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, in the event any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter 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 Jefferson County 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 Section 12.7 (but shall be subject to the applicable provisions of Section 12.7(h) below): (a) 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 (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Section 12.7. 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 Section 12.7.

(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. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration or the Bylaws, to obtain a judicial construction of any provision of the Declaration or the Bylaws, to rescind this Declaration or the Bylaws 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 on 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 prior to 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.

(i) **Survival.** The mediation agreement set forth in this Section 12.7 shall survive the transfer by any party of its interest or involvement in the Property and any Unit therein and the termination of this Declaration.

Article 13

MORTGAGEES

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units. The provisions of this Article apply to both this Declaration and to 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 Unit 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 Unit shall not affect the Assessment lien, but the sale or transfer of any Unit 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 Unit 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 Units 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 Area. 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 Unit of any default in performance of this Declaration by the Owner which is not cured within sixty (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 Unit.

Article 14

DEVELOPMENT RIGHTS

14.1 **Limitations of Restrictions** Declarant is undertaking the work of developing Units and other Improvements within Yarrow. The completion of the development and the marketing, sale, lease, rental and/or other disposition of the Units is essential to the establishment and welfare of the Property and the Additional Property as a mixed-use planned community. In order that the work may be completed and Yarrow be established as a fully occupied as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant or any Builder the rights set forth in this Article 14 with respect to any portion of the Property owned by Declarant or any Builder respectively.

14.2 **Rights of Access and Completion of Construction** Until the expiration of the Development Period, Declarant, its contractors and subcontractors and any Builder and its contractors and subcontractors shall have the right to: (i) obtain reasonable access over and across the Common Area of the Property and/or do within any Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of Yarrow; and (ii) erect, construct and maintain on the Common Area of the Property and/or within any Unit owned by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the community as a residential and commercial mixed-use community, including all businesses established by Declarant, and dispose of the project in parcels by sale, lease, rental or otherwise.

14.3 **Size and Appearance of Yarrow** Declarant shall not be prevented from increasing or decreasing the number or size of Units that may be annexed to Yarrow, changing the exterior appearance of any Improvement, building different product types on similarly situated Units, adding, altering, removing or reconstructing any Improvement located on any property owned by Declarant, adding, realigning or eliminating any proposed street or road, or altering any other matter directly or indirectly connected with Yarrow in any manner deemed desirable by Declarant, if Declarant obtains all governmental consents required by law.

14.4 **Alterations to Plat** At any time within three (3) years from the date that the first Unit within the Initial Development or in the case of Additional Property, within three (3) years from the date the first Unit is sold in such property so annexed, is conveyed to an Owner other than Declarant or a Builder, the boundaries of any Lot or Common Area in such Property may be altered by a lot line adjustment or other change reflected on a subsequently recorded record of survey or subdivision plat, provided that the altered boundaries are approved by Declarant and all Owners of the Property involved in the boundary adjustment (the Board, with respect to property owned by the Association). Any such alteration shall be effective upon recordation of the Record of Survey, subdivision plat or comparable document and, upon such recordation, the boundaries of the altered Unit or Common Area shall be altered for purposes of this Declaration to conform to the boundaries as shown on the Record of Survey, subdivision plat or comparable document.

14.5 **Marketing Rights** Declarant and to the extent approved in its sole discretion by Declarant, each Builder, shall have the right to: (i) maintain model homes, sales, leasing and/or rental offices, storage areas and related facilities in any unsold Units or Common Area within the Property as are necessary or reasonable, in the opinion of Declarant, for the sale, lease, rental or other disposition of the Units; (ii) make reasonable use of the Common Area and facilities for the sale, lease, rental or other reasonable use of the Common Area and facilities for the sale, lease, rental or other disposition of Units; (iii) conduct its business of disposing of Units by sale, lease, rental or otherwise. The Declarant or its designee shall have the right to place temporary signs upon the Common Area (including the entrances to Yarrow) relative to the development and sale of its property within and adjacent to the Property. Declarant or its designee may erect such signs and shall maintain them in a first class condition. Upon substantial completion of the sale of the residential Units in Yarrow the Declarant or its designee shall remove any temporary sign and should it desire permanent signage at the entrance to Yarrow such signage shall be in conformance with the architecture and design of Yarrow. The Declarant or its designee, in its sole discretion, may use any advertising materials, and public relations efforts reasonably necessary in connection with the sale and marketing of its property and/or businesses, including the sale and marketing of any Unit located in Yarrow.

14.6 **Title Rights** This Declaration shall not be construed to constitute a limitation on Declarant's title rights to any property adjacent to Yarrow and owned by Declarant prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any property not a part of Yarrow for any use, including, without limitation, commercial or retail uses. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an annexation to establish additional licenses, easements, reservations, restrictions and rights-of-way for itself, the Association, utility companies or others as reasonably necessary for the proper development and disposition of property owned by Declarant.

14.7 **Amendment** Until the expiration of the Development Period, the provisions of this Article may not be amended without the written consent of Declarant.

Article 15

AMENDMENT AND REPEAL

15.1 **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 thirty percent (30%) 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.

15.2 **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 seventy-five percent (75%) of the voting rights, except that the Class B Member shall have the same voting rights as Class A Members, together with the written consent of the Class B Member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Unit or any uses to which any Unit 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 Unit unless the Owners of the affected Units 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 Unit unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment.

15.3 **Recordation.** Any such amendment or repeal shall become effective only upon Recordation in the Deed Records of Jefferson 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 have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

15.4 **Regulatory Amendments.** Notwithstanding the provisions of Section 15.2 above, 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 any applicable statute, ordinance or regulation or of the Federal Housing Administration; the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon 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.

Article 16

MISCELLANEOUS PROVISIONS

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

16.2 **Right to Approve Additional Covenants.** No Person shall record any declaration of covenants, conditions, and restrictions, declaration of condominium or similar instrument affecting any portion of the Property without Declarant's prior written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force or effect unless subsequently approved in writing by Declarant.

16.3 **Right to Transfer or Assign Declarant's Rights.** Any or all of Declarant's rights and related obligations under this Declaration may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant then

has under this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and Recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment.

16.4 **Joint Owners.** Unless otherwise provided in a Neighborhood Declaration, in any case in which two or more Persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such Persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such Persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such Persons disagree among themselves as to the manner in which any consent shall be given with respect to a pending matter, any such Person may deliver written notice of such disagreement to the Association, and the right of consent involved shall then be disregarded completely in determining the proportion of consents given with respect to such matter.

16.5 **Lessees and Other Invitees.** Lessees, licensees, invitees, 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 his or her Unit 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 such Owner.

16.6 **Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Unit shall give the Association written notice within seven (7) 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 Unit, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.7 **Exclusive Rights to Use Name of Development.** No Person shall use the name "Yarrow" 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 "Yarrow" where such term is used solely to specify that the Owner's property is located within the Property and Neighborhood Associations shall be entitled to use the words "Yarrow" in their names. In no event shall any Owner enter into an agreement with any third party for the sale, rental or management of the Owner's Unit which agreement purports to grant any right to such third party to use the name "Yarrow" or any derivative of such name in violation of this provision.

16.8 **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.

16.9 **Construction; Severability; Number; Captions.** This Declaration shall be governed and construed under the laws of the State of Oregon. It shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory sections of this Declaration. 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.

EXHIBIT A

Property Initially Subject to this Declaration

All of that property within the plat of Yarrow, Phase I, recorded in the plat records of Jefferson County, Oregon, except Lots 42 through 51 and Tract E thereof.

Exhibit A

Yarrow v.2.2

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EXHIBIT B

Neighborhoods and Land Classifications Within Initial Development

Neighborhoods -

Residential Units -

Multi-Family Units -

Common Areas -

Limited Common Areas -