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After Recording Return to:  
The Tree Farm, LLC  
409 NW Franklin Street  
Bend, Oregon 97703  
Attn: Romy Mortensen

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE TREE FARM**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE TREE FARM** (this "**Declaration**"), to be effective upon its recording in Deschutes County, Oregon, is made and executed on the date hereinafter set forth by **The Tree Farm, LLC**, an Oregon limited liability company, hereinafter referred to as the "**Declarant**".

**WITNESSETH**

Declarant is the owner of that certain real property in Deschutes County, Oregon, described on **Exhibit A** attached hereto and incorporated herein by reference, which property was platted pursuant to that certain plat recorded in the real property records of Deschutes County at **2016-44585 on October 27, 2016**.

Declarant desires to create a planned community known as The Tree Farm on the land described on Exhibit A and on such other land as may be added thereto pursuant to the terms and provisions of this Declaration.

NOW THEREFORE, the Declarant declares that the real property described on attached Exhibit A, and any property subsequently annexed into this Declaration (collectively, the "**Property**"), shall held, be sold, hypothecated, and conveyed subject to the covenants, conditions, and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Homesite and other portions of the Property. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

By recordation of this Declaration in the real property records of Deschutes County, Oregon, Declarant is hereby creating a Class I planned community, pursuant to and subject to the Oregon Planned Community Act, ORS 94.550 to 94.783, and applicable successor provisions.

**Article I**

**DEFINITIONS**

1.1 "**Affiliate**" means any entity which controls, is under the common control with or is controlled by Declarant

1.2 "**Architectural Review Committee**" or "**ARC**" shall mean The Tree

Farm Architectural Review Committee, established pursuant to Section 6.1.

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

1.4           **"Association"** shall mean the nonprofit corporation to be formed to serve as an Owners' association as provided in Article II of this Declaration.

1.5           **"Board of Directors"** or **"Board"** shall mean the duly appointed or elected board of directors of the Association.

1.6           **"Bylaws"** shall mean the duly adopted Bylaws of the Association set forth in the attached **"Exhibit B"**, as the same may be amended or replaced.

1.7           **"Common Areas"** shall mean only that portion of the Property, together with all improvements located thereon, that is established for the common use and benefit of property owners within The Tree Farm and identified as "Common Areas" in this Declaration, on a plat of any portion of the Property, in an amendment to this Declaration or in a supplemental declaration or Declaration of Annexation. The Common Areas shall also include all other real and personal property that the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The initial Common Areas shall include Tracts A, C, E, H, I, and M and all Private Roads as shown on the Plat.

1.8           **"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.

1.9           **"Common Maintenance Areas"** shall mean that property and/or Improvements for which the Association bears certain responsibilities as described herein to operate and/or maintain and/or repair and/or replace and/or insure. Common Maintenance Areas include the Common Areas, but also may include other property and/or Improvements owned by third parties. Except for Tract D, the Association shall not be responsible for insuring and/or replacing real property that it does not own, though it may choose to do so, if the Board, in its sole discretion, deems the same to be in the best interests of the Association. The Common Maintenance Areas shall include the following:

- A.     The Common Areas;
- B.     All ornamental lighting on Common Areas;
- C.     Tract D, which will be designated as a Common Area in the future after the dedication of Skyline Ranch Road.
- D.     Any areas within public rights of way that are landscaped and/or irrigated by Declarant and/or the Association;
- E.     Utilities that serve Common Areas and, in the discretion of the Board, that serve Common Maintenance Areas;

F. Any street identification signs, including but not limited to traffic control and parking signs installed by Declarant and/or the Association; and

G. Any areas within public rights-of-way, public easements, tracts, public parks or any other property (including improvements) that the Board deems necessary or appropriate to maintain for the common benefit of the Owners, or for which maintenance is required by written agreement, such as through the Road Maintenance Agreement, including, but not limited to, Sage Steppe Drive and Crossing Drive.

Until the Turnover Meeting, the Declarant shall have the right to (a) designate additional Common Maintenance Areas (which may include additional Common Areas) in the future; and (b) to remove Common Maintenance Areas (but excluding Common Areas unless approved by a vote of the Owners) by recordation of a duly approved amendment to this Declaration or by recordation of a supplemental declaration or Declaration of Annexation.

1.10 **"Conversion Date"** shall be the date upon which Class "B" membership (as defined in Section 2.3) shall cease and be converted to Class "A" membership (as defined in Section 2.3). Such date shall be the date which is the earliest of (i) three (3) years after all of the property within the Development Plan has been developed and one hundred percent (100%) of the Homesites in the last area to be annexed to this Declaration have been conveyed to persons or entities other than Declarant or an Affiliate; or (ii) fifteen (15) years after conveyance of the first Homesite to a Class "A" member; or (iii) at such earlier time as Declarant may elect in writing to terminate Class "B" membership as evidenced by a recorded document executed by Declarant to that effect.

1.11 **"County"** shall mean Deschutes County, Oregon.

1.12 **"Declarant"** shall mean The Tree Farm, LLC and its successors and assigns who acquire any of the rights or assume any of the obligations of Declarant under this Declaration. If less than all of Declarant's rights or obligations are transferred to a successor or assign, then the successor or assign shall only be deemed a Declarant with respect to those rights or obligations that are specifically assigned to or assumed by the successor or assign. One or more persons or entities may be a Declarant.

1.13 **"Declaration"** shall mean this Declaration of Covenants, Conditions, and Restrictions for The Tree Farm and any amendments and supplements thereto made in accordance with its terms.

1.14 **"Design Guidelines"** shall mean The Tree Farm Architectural Design Guidelines, established and revised pursuant to Section 6.2.

1.15 **"Development Plan"** shall mean the development plan approved by Deschutes County, as the same may hereafter be amended.

1.16 **"Governing Documents"** shall mean the Development Plan, this Declaration, the Articles of Incorporation, the Bylaws, any Declaration of Annexation or other supplemental declaration, and any rules and regulations adopted by the Board.

1.17 **"Homesite"** shall mean Lots 1 through 50, inclusive, as shown on the Plat, and any additional property that is made subject to this Declaration pursuant to Article XI and is designated as a Homesite in any Declaration of Annexation, and includes all

Improvements located thereon.

1.18           **"Improvement"** shall mean every structure or improvement of any kind, including, but not limited to, a Unit, landscaping, screening features, site walls, walls, driveways, fixtures, shelters, or other product of construction efforts (including painting, alterations, and reconstruction) on or with respect to The Tree Farm.

1.19           **"The Tree Farm"** shall mean the Property annexed to this Declaration.

1.20           **"Occupant"** shall mean the occupant of a Unit who is the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.21           **"Open Space"** shall mean the Tracts designated as "Open Space" on the Plat, the use and ownership of which is described in Section 5.10 below. Some Open Space Tracts are designated as Common Areas in this Declaration. Some of the Open Space Tracts designated on the Plat are not initially subject to this Declaration, but Declarant reserves the right, in its sole discretion, to subject any or all of such Tracts to this Declaration at any time in the future until the date that is ten (10) years after the Turnover Meeting.

1.22           **"Owner"** shall mean the person or persons, including Declarant, owning any Homesite in the Property, including a vendee under a land sale contract to whom possession of the Homesite has been passed, but does not include a tenant or holder of a leasehold interest or a contract vendor (when possession has passed to the contract vendee pursuant to the terms of the land sale contract) or other person holding only a security interest in a Homesite. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Homesite and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.23           **"Plat"** shall mean the duly recorded plat of Tree Farm, recorded substantially concurrently herewith in the Official Records, Deschutes County, Oregon and any other recorded plats of real property made subject to this Declaration by a Declaration of Annexation.

1.24           **"Property"** shall mean the real property described on the attached **Exhibit A**, and such additions thereto as may be made subject to this Declaration by a Declaration of Annexation.

1.25           **"Public Areas"** shall mean 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 Declaration of Annexation or supplemental declaration. The Private Roads, which are Common Areas, are subject to a public access easement.

1.26           **"Road Maintenance Agreement"** shall mean that certain Road Maintenance Agreement with Deschutes County relating to certain roads that are located within The Tree Farm or that otherwise benefit The Tree Farm. The Road Maintenance Agreement may be signed by the Association or may be signed by the Declarant and then assigned to the Association. The Association shall accept any such assignment.

1.27           **"Turnover Meeting"** shall be the meeting of the Owners called by the

Declarant to turn over administrative responsibility for the Association to the Class A members.

1.28 **"Unit"** shall mean any residential dwelling and all related accessory buildings situated upon any Homesite.

1.29 **"Wildfire Protection Management Plan" or "WPMP"** shall mean the Wildfire Protection Management Plan approved for the Property by the County as part of the Development Plan.

1.30 **"Wildlife Habitat Management Plan" or "WHMP"** shall mean the Wildlife Habitat Management Plan approved for the Property by the County as part of the Development Plan.

## **Article II**

### **ASSOCIATION**

2.1 **Organization.** Declarant has organized, or before conveyance of the first Homesite shall organize an association of all of the Owners within the Property. Such Association, and its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name **"The Tree Farm Homeowners' Association,"** and shall have such property, powers and obligations as are set forth in this Declaration, the Bylaws and the Articles of Incorporation of the Association for the benefit of the Property and all Owners of property located therein. In the event that the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association having the same name and purpose, and all of the property, powers and obligations of the Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association and such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be confirmed and evidenced by appropriate conveyances and assignments by the 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.

2.2 **Membership.** The Declarant and every Owner of a Homesite by virtue of ownership of such Homesite shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of a Homesite. Until the Conversion Date, there shall be two (2) classes of membership, Class A and Class B as described in Section 2.3.

2.3 **Voting Rights.** The Association shall have two (2) classes of voting membership:

A. **Class A.** Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners, including Declarant) and shall be entitled to one (1) vote for each Homesite owned. When more than one (1) person holds an interest in any Homesite, all such persons shall be members, but the vote for such Homesite shall be exercised as they among themselves determine, and in

no event shall more than one (1) vote be cast with respect to any Homesite. If the Owners of a single Homesite are unable to agree upon the vote, the vote for such Homesite shall be disregarded.

B. **Class B.** The Class B member shall be the Declarant, who shall be entitled to fifty (50) votes for each Homesite it owns until the Conversion Date at which time the Class B membership shall be converted to a Class A membership.

2.4 **Turnover Meeting.** The Declarant shall call a Turnover Meeting within ninety (90) days following the Conversion Date for the purposes of turning over administrative responsibility for the Association to the Class A members. The Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. The Turnover Meeting shall be conducted in accordance with the Bylaws of the Association. At the Turnover Meeting, the Declarant shall turn over to the Association the responsibility for the planned community of The Tree Farm and of the Association and the Association shall accept such administrative responsibility. At the Turnover Meeting, the Owners shall elect a Board in accordance with the Bylaws. At the Turnover Meeting, the Declarant shall deliver to the Association those items and documents required by ORS 94.616 or applicable successor provisions. In order to facilitate an orderly transition, during the three-month period following the Turnover Meeting, the Declarant or an informed representative shall be available to meet with the Board on at least three mutually acceptable dates to review the documents delivered pursuant to this Section 2.4. Not later than ninety (90) days after the Turnover Meeting, the Association shall provide Declarant with an estoppel certificate (i) certifying that Declarant has satisfied all of its obligations owed to the Association, including, without limitation, any obligations arising out of or related to this Declaration, or (ii) identifying with specificity the extent to which any such obligations remain unsatisfied.

2.5 **Clarification of Role of Association.** The Association shall have the general powers and duties of a nonprofit corporation pursuant to the Oregon Nonprofit Corporations Act, as well as the specific powers and duties set forth in the provisions of this Article and the other provisions of this Declaration that expressly relate to the Association, as well as pursuant to the Articles of Incorporation of the Association ("Articles") and the Bylaws. However, unless expressly set forth herein or in the Articles or the Bylaws, the Association shall not act in the capacity of settling disputes between Owners or resolving problems that Owners may experience. Disputes or problems experienced by Owners to which the Association has no express authority or role as set forth in this Declaration shall be resolved by private, lawful means chosen by the affected Owners and there shall be no recourse to the Association.

2.6 **Transitional Advisory Committee.** Unless the Turnover Meeting has already been held, Declarant or the Owners shall form a transitional advisory committee (the "**Transitional Advisory Committee**") to provide for the transition from administrative responsibility by Declarant for the planned community of The Tree Farm to administrative responsibility by the Association. Not later than the sixtieth (60th) day after Declarant has conveyed to Owners other than Declarant Homesites representing fifty (50%) percent or more of the Homesites then existing in The Tree Farm, Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three (3) or more members. The Owners, other than Declarant, shall select two (2) or more members. Declarant may select no more than one (1) member. The Transitional Advisory Committee shall be advisory only, and its purpose shall be to enable ease of transition from administrative control of the Association by Declarant to control by the Owners. The Transitional Advisory Committee shall have

reasonable access to all information and documents that Declarant is required to turn over to the Association under ORS 94.616(3), or applicable successor provisions.

2.7 **Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Deschutes County, Oregon. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as "**Exhibit B**" to this Declaration.

### **Article III**

#### **ASSESSMENTS**

3.1 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants of the Property and for the improvement, operation and maintenance of the Common Maintenance Areas and other areas to be maintained by the Association.

3.2 **Apportionment of Assessments.** All Homesites, other than Homesites exempted from assessment pursuant to Section 3.5 below, shall pay a pro rata share of the Annual Assessments, Special Assessments, and Emergency Assessments commencing upon the date such Homesites are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Homesites 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 a facility on a Common Area in order to more fairly allocate such cost, taking into the account the extent of use or other factors.

3.3 **Types of Assessments.**

A. **Annual Assessments.** The Association is hereby authorized to levy Annual Assessments against all Homesites subject to Assessments to fund the Common Expenses. The amount of the Annual Assessment allocated to each Homesite shall be determined in the manner described in Section 3.2. In determining the Annual Assessments, the Board may consider any Assessment income expected to be generated from any additional Homesites or changes in the status of the then-existing Homesites 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 3.7. The Board may revise the budget and adjust the Annual 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 copy of the final budget. If the Board fails to adopt a budget, the last adopted budget shall continue in effect.

B. **Special Assessments.** The Board may levy during any fiscal year a Special Assessment, applicable to that year only, for the purpose of paying for all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal

year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Prior to the Turnover Meeting, 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, together with the written consent of the Class B Member. Special Assessments shall be apportioned as provided in Section 3.2 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

C. **Emergency Assessments.** If the 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 3.2 above and payable as determined by the Board of Directors.

D. **Individual Assessments.** Any Common Expense or any part of a Common Expense benefiting fewer than all of the Homesites may be assessed exclusively against the Homesites benefited as an Individual Assessment. Individual Assessments shall also include default Assessments levied against any Homesite to reimburse the Association for costs incurred in bringing such Homesite or its Owner into compliance with the provisions of this Declaration or the rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board, Individual Assessments shall be due thirty (30) days after the Board has given written notice thereof to the Owners subject to Individual Assessments.

3.4 **Assessment of Additional Property.** When Additional Property is annexed to The Tree Farm, the Homesites included therein shall become subject to Assessments from the date of such annexation, except for those Homesites exempt from assessment pursuant to Section 3.5. All other Homesites shall pay such Assessments in the amount then being paid by other Homesites. The Board, however, at its option may elect to recompute the budget based upon the additional Homesites subject to assessment and additional Common Areas and recompute Assessments for all Homesites, including the new Homesites, for the balance of the fiscal year.

3.5 **Exempt Property.** The following property shall be exempt from payment of assessments:

- A. All Common Areas;
- B. Any property dedicated to and/or conveyed to and accepted by any special district (including, without limitation, the Bend Park & Recreation District), any governmental authority or any public utility; and
- C. Homesites owned by Declarant until such time as a dwelling has been constructed on the Homesite and the Homesite is occupied for residential use, except that Homesites owned by Declarant shall be subject to assessments for reserves under Section 3.7.



3.6           **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 3.7, 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 and Occupants 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 Homesites, 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 maintenance associated with any Common Maintenance Areas that are not included in Section 3.6.A above, if any.

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.

3.7           **Reserve Fund.**

A.           **Establishment of Account.** Declarant, on behalf of the Association, shall conduct an initial reserve study as described in paragraph (c) of this section and establish a bank account in the name of the Association (the "**Reserve Fund**") to fund major maintenance, repair or replacement of all property for which the Association has maintenance, repair and replacement responsibility under this Declaration that will normally require replacement in whole or in part in more than one (1) year and less than thirty (30) years, for exterior painting of the Common Areas or other property to be maintained by the Association, if the Common Areas or such other property includes exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items, including items required by the Maintenance Plan established pursuant to Section 5.5. The Reserve Fund need not include those items that can reasonably be funded from the general budget or other funds of the Association or for those items for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

B.           **Funding of Reserve Fund.** The Reserve Fund shall be funded by Assessments against the individual Homesite assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Homesite. 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:

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

D. **Use of Reserve Fund.** The Reserve Fund shall be used only for 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 Homesites. Sellers of the Homesites, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

3.8 **Declarant's Subsidy.** Declarant may, but shall not be obligated to, reduce the Annual 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.

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

3.10 **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 Annual 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 Homesite, 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.

3.11 **Advance Payments Upon Sale.** The Association may require any Owner to obtain, in conjunction with the closing of any sale of such Owner's Homesite, a deposit from the purchaser equal to the then estimated amount of assessments for three (3) months due to the Association. Any Owner entering into such a contract shall be obligated to collect or otherwise deposit such Assessments with the 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.

3.12 **Personal Obligations for Assessments.** Declarant, for each Homesite owned by it within the Property, hereby covenants, and each Owner of any Homesite 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 Homesite against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person or entity who was the Owner of such Homesite 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 XII.

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

3.14 **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.

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

3.16 **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 IV**

### **GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS**

4.1 **Interim Board.** Declarant shall have the right to appoint an interim board of three (3) to five (5) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting. After Turnover, there shall be three (3) directors, to be elected as provided in the Bylaws.

4.2 **Purpose of Operating Fund.** The Board, for the benefit of the Owners, shall provide and shall pay for out of the operating fund provided for in Article II above the following:

A. Labor, supplies and operating costs associated with running the Association and performing its obligations hereunder, including the operation of Common Maintenance Areas;

B. Normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping) and the Improvements to such Common Maintenance Areas, such as roads, fences, columns, walls, grounds, landscaping, lights, irrigation systems and entry monuments, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas;

C. Repairs and enhancement of the Common Maintenance Areas;

D. Performance of all obligations under the following: the Wildlife Habitat Management Plan, the Wildfire Protection and Management Plan, the Road Maintenance Agreement, and all obligations under easement agreements that benefit The Tree Farm.

E. Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Homesites and/or Owners, if any;

F. Payment of expenses for utilities serving Common Maintenance Areas for which the Association is responsible or the Board deems to be in the best interest of the Association;

G. The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board,

and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager; provided that a management agreement entered into prior to the Turnover Meeting shall not have a term in excess of three (3) years and shall be terminable without penalty if the Board gives not less than thirty (30) days written notice of termination to the other party not later than sixty (60) days after the Turnover Meeting. The management agreement may provide that if it is not terminated as provided in the foregoing sentence, it will renew automatically for successive one-year periods, until terminated by either party (i) without cause, effective as of the next scheduled renewal date, by providing not less than thirty (30) days' written notice to the other party; or (ii) with cause, effective upon the date of written notice, by providing such notice to the other party;

H. Legal and accounting services for the benefit of the Association or otherwise deemed necessary by the Board, including, without limitation, payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property;

I. Payment of all reasonable and necessary expenses in connection with the collection and administration of Assessments and Association funds;

J. Policies of insurance as provided in this Declaration or the Bylaws;

K. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes, assessments, fees or costs, which (i) the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law; (ii) are necessary to fulfill the obligations of the Association hereunder; (iii) in the Board's opinion shall be necessary or proper for the enforcement of this Declaration; (iv) are necessary or desirable in the opinion of the Board to keep the Property neat and in good order; or (v) the Board considers to be of general benefit to the Owners or occupants of the Property.

The judgment of the Board in the expenditure of funds and what constitutes a proper expense under Section 3.6.D and this Section 4.2 shall be final and conclusive so long as such judgment is exercised in good faith.

**4.3 Powers and Duties of Board.** The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association and the powers and duties of a non-profit corporation pursuant to the Oregon Nonprofit Corporation Act and a homeowners association pursuant to ORS 94.630:

A. To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

B. To borrow funds for the purpose of performing its duties under this Declaration and, subject to Section 5.2, encumber the Common Areas as security for the repayment of such borrowed money.

C. To obtain and maintain in force policies of insurance as provided in the Declaration and the Bylaws.

D. To employ the services of any person or corporation as manager; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

E. To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

F. To make rules and regulations for The Tree Farm, including the operation of the Common Areas, and to amend them from time to time. A copy of the rules and regulations, 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 Units. The method of adoption of such rules and regulations shall be as provided in the Bylaws.

G. Within ninety (90) days after the end of the fiscal year, the Board shall prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year and distribute a copy of such financial statement to each Owner and, upon written request, to any mortgagee of a Homesite.

H. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

I. To perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents, including, without limitation, enforcement of the decisions of the Architectural Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

J. To adopt budgets and collect all Assessments and enforce all penalties for non-payment as provided in Article III and Article XII.

K. To perform all obligations under the following: the Wildlife Habitat Management Plan, Wildfire Protection and Management Plan, the Road Maintenance Agreement and all easement agreements that benefit The Tree Farm.

L. Subject to the limitations set forth in Section 5.3, to grant easements, licenses and concessions through or over the Common Areas.

4.4 **Wildfire Protection.** The Association shall comply with the Wildfire Protection and Management Plan. No later than twelve (12) months following the sale of a Homesite, other than a sale to Declarant or an affiliate of Declarant, the Association shall submit information and applications required for recognition of each Homesite under the Firewise Communities USA/Recognition Program, and further, shall submit information and documentation as needed to maintain such recognition status for the Property at all times. The cost of complying with the WPMP, including but not limited to a) obtaining and maintaining the Firewise Communities recognition status and b) conducting a WPMP

compliance audit as may be required by the County, shall be a Common Expense of the Association to be allocated among the Owners. Notwithstanding the foregoing, minimizing fire risk on each Homesite shall be the sole obligation of the Owner of such Homesite, and the Association shall have no liability to any individual Owner for fire loss or damage to a Homesite, any Common Maintenance Areas or any person property, regardless of the cause.

4.5 **Contracts Entered into by Declarant or Prior to Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts and employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association prior to the Turnover Meeting shall have a term of not more than of three (3) years, except as otherwise provided in ORS 94.700(2). In addition, any such contract, unless otherwise exempted under ORS 94.700(2), 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 written notice of termination given to the other party not later than sixty (60) days after the Turnover Meeting.

4.6 **Board Powers Exclusive.** The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the operating fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein. The foregoing shall not be construed so as to prohibit the Board from delegating some or all of its contracting or other day-to-day management authority to a professional manager(s) and/or an officer(s), provided the Board maintains supervisory authority over such manager(s) and/or officer(s) and such manager(s) and/or officer(s) operate within a budget approved by the Board.

4.7 **Indemnification.** Neither a member of the Board of Directors nor an officer of the Association or member of the Architectural Review Committee or any other committee established by the Board of Directors, shall be liable to the Association, any Owner or any third party for any 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.

## **Article V**

### **COMMON MAINTENANCE AREAS**

5.1 **Improvements.** The Declarant may, but is not obligated to, construct the following Improvements to the Common Maintenance Areas: Entry monument(s), which may include landscaping, irrigation and lighting; utilities to serve Common Areas, and, in the discretion of the Board, Common Maintenance Areas; landscaping, irrigation, street

lighting, street signs within street rights of way, and mail station(s); ornamental lighting on roads and Common Areas; trails as shown on a Plat; and roads and pathways. The foregoing shall not be construed so as to require that such Improvements be built, or that they be built to any specified design or other standards, except applicable Deschutes County or State of Oregon codes and requirements. Notwithstanding the foregoing, the Declarant does not choose to limit its right to add Improvements not described in this Declaration to The Tree Farm.

5.2 **Association to Hold.** Except for the portions thereof dedicated to the public or any governmental or quasi-governmental authority, title to the Common Areas (other than easements) shall be conveyed to and shall be accepted by the Association from Declarant AS IS, but free and clear of monetary liens (except for nondelinquent taxes and assessments) on or before the Turnover Meeting. Without limiting the generality of the foregoing, the conveyance of the Common Areas shall be made subject to such easements and/or dedications as Declarant may retain and/or choose to grant to third parties. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Maintenance Areas, including any Common Areas that may be hereafter established. Nothing contained herein shall create an obligation on the part of Declarant to establish any additional Common Area. Following the conveyance of the Common Areas to the Association, the dedication, mortgage, or conveyance of any Common Areas shall require the affirmative vote of at least eighty percent (80%) of the Class A Member voting rights and consent of the Class B Member.

5.3 **Association Authority to Grant Easements and Other Property Interests in Common Areas.** The Association may execute, acknowledge and deliver leases, easements, rights of way, licenses, and other similar interest affecting the Common Areas and consent to vacation of roadways within and adjacent to the Common Areas. Except for those matters described in ORS 94.665(4)(b), which the Board of Directors may approve without Owner consent, the granting of any interest pursuant to this Section 5.3 must be approved by at least seventy-five percent (75%) of the Owners present at a meeting of the Association or with the consent of at least seventy-five percent (75%) of all Owners solicited by any means the Board determine is reasonable. If a meeting is held to conduct the vote, the meeting notice shall include a statement that the approval of the granting of an interest in the Common Areas will be an item of business on the agenda of the meeting.

5.4 **Condemnation.** If there is a condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the Association shall represent the Owners in negotiations with the condemning authority. The funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. If the Board of the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Areas or for whatever reason, any remaining funds may be distributed to each Owner based on an equal amount per Homesite.

5.5 **Maintenance of Common Maintenance Areas; Wildlife Habitat Management Plan.**

A. The Association will maintain, repair and replace as necessary all Common Maintenance Areas (including Common Areas) and the Improvements installed pursuant to



Section 5.1, to the extent the same benefit the Association and/or the Owners. 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 and in compliance with standards required by applicable governmental authorities, including, but not limited to, the Wildfire Protection Management Plan and the Wildlife Habitat Management Plan.

B. The Board of Directors shall prepare, implement, review and update a maintenance plan (the "**Maintenance Plan**") for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration, the Bylaws or the Oregon Planned Community Act. The Maintenance Plan shall describe the maintenance, repair or replacement to be conducted, include a schedule for maintenance, repair or replacement, be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association and address issues that include, but are not limited to, warranties and the useful life of the items of which the Association has maintenance, repair or replacement responsibility. The operating and reserve budgets of the Association shall take into account such costs. The Board of Directors shall review and update the Maintenance Plan as necessary.

C. The Association shall comply with all terms of the Wildlife Habitat Management Plan, including, without limitation, the preparation of all reports required thereunder. In addition, if the same is executed and assigned to the Association, the Association shall comply with the terms of that certain Memorandum of Understanding (the "MOU") between Declarant and the Bend Parks & Recreation District (the "District") and relating to the Wildlife Habitat Management Plan. Declarant shall assign its interest and obligations in the MOU to the Association, and the Association shall assume such interest and obligations. Without limiting the generality of the foregoing, the Association shall cooperate with the District in preparing and submitting all reports, including the payment of the Association's pro rata share of all costs, based upon the parties' relative share of open space acreage subject to the Wildlife Habitat Management Plan. All costs associated with the WHMP and the MOU shall be common expenses of the Association.

5.6 **Prohibited Activities.** Neither the Association nor any Owner shall conduct any of the following activities within any Common Maintenance Area or any Common Area: i) the removal or addition of any tree without the prior written approval of the Architectural Review Committee; ii) the removal or addition of any other vegetation without the prior written consent of the ARC; iii) the modification, grading, excavation, filling or other activities which would alter the topography or vegetative cover of any Common Maintenance Area or Common Area without the prior written consent of the ARC; iv) the disposal or placement of any debris, refuse, soil, rock, landscape debris or other deleterious materials; v) parking, storage, repair, or disposal of any motor vehicle; vi) the burning of garbage, yard debris, or anything else, including fireworks; and vii) motor vehicle access (except on roads or roadways or as may be necessary for repairs or maintenance approved by the Board or in conjunction with maintenance of utilities). The prohibitions contained in this Section 5.6 shall not apply to the activities of Declarant or to any Homesites owned by Declarant.

5.7 **Landscape Maintenance.** The Association shall maintain all unimproved Common Areas in compliance with the Wildfire Protection Management Plan and Wildlife Habitat Management Plan.

5.8 **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, 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, equipment, furniture, package or object of any kind. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas by Declarant or the Association identifying the Property or identifying trails or identifying items of interest, including traffic and directional signs, provided such signs are approved by the Architectural 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.

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. 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.**

A. 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 or permitted by Deschutes County for open space, shall be free of Improvements. Such areas shall also be subject to Deschutes County requirements pertaining to wildlife habitat, wildfire protection, noxious weed control and trails, including, without limitation, the Wildfire Protection Management Plan and Wildlife Habitat Management Plan.

B. There are three categories of open space:

1. Open space designated as Common Areas, which initially includes Tracts A, C, E, H, I, and M, as shown on the Plat;
2. Open space that is not subject to this Declaration and may in the future be conveyed to one or more third parties in Declarant's sole discretion or that Declarant may designate in the future as Common Areas. These Tracts are Tracts B, F, G, J, K, L, N, P and Q, as shown on the Plat; and
3. Tract D, as shown on the Plat, which is open space that will be designated as Common Area in the future after the right-of-way for Skyline Ranch Road is dedicated to the public through the Tract.

## **Article VI**

### **ARCHITECTURAL REVIEW**

6.1 **Architectural and Landscape Review Committee.** A committee to

be known as the Architectural Review Committee (the "ARC") shall be established consisting of the number of members as determined by the Board, except that the ARC shall consist of not less than three (3) members. ARC members need not be members of the Association.

A. The members of the ARC shall be appointed, terminated and/or replaced by the Declarant until the earlier to occur of the following: (i) the date of expiration of the Initial Term of this Declaration; or (ii) the date on which Declarant records an instrument in the real property records of Deschutes County stating that it is turning over control of architectural review, including appointment of ARC members, to the Association, which shall occur no earlier than the date of the Turnover Meeting, but which may occur later than the date of the Turnover Meeting. Thereafter, the Board shall appoint the members of the ARC. After Declarant has turned over control of architectural review, members of the ARC may be terminated and/or replaced by the Board with or without cause. Individuals may serve as members of the Board and members of the ARC simultaneously.

B. The purpose of the ARC is to enforce the architectural and design standards of the community and to approve or disapprove plans for Improvements proposed for the Homesites.

C. The ARC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, landscaper, inspector or other person to assist in the performance of its duties. As required by the WPMP, the ARC shall engage the services of a certified fire professional to assist in assuring compliance with applicable requirements and standards of the WPMP for residential construction and the "zone" wildfire mitigation model (NFPA 1144).

D. At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board pursuant to Section 6.1.A. above, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board. Appeals shall be made in writing within ten (10) days of the Architectural 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 Architectural Review Committee, the appeal shall be treated as a request for a rehearing, in which case the Board shall meet and receive evidence and argument on the matter. A final, conclusive decision shall be made by the Board within thirty (30) working days after receipt of such notification.

E. No approval of the ARC required hereunder shall be valid unless and until the same is granted in writing.

6.2 **Architectural Guidelines.** The Declarant has adopted the initial The Tree Farm Architectural Design Guidelines (the "**Design Guidelines**"). Subject to the requirement of compliance with the WPMP, amendments, modifications, or revisions to the Design Guidelines may be made by the Declarant, without the consent of anyone, prior to the date on which Declarant turns over control of the Architectural Review Committee pursuant to Section 6.1.A. Thereafter, the ARC shall have the sole authority to amend, modify, or revise the Design Guidelines provided the Design Guidelines remain in compliance with the WPMP. No such amendments, modifications, or revisions shall affect any prior ARC approval.

6.3 **Scope of Review.** No structure or Improvement shall be erected, altered or added onto or upon any portion of the Property without the prior written consent

of the ARC, provided however, that all Improvements erected, altered, or added onto by Declarant shall be exempt from the provisions of this Article VI. In addition, any portion of the Property that is dedicated to a governmental entity or dedicated or conveyed to a special district shall also be exempt from the provisions of this Article VI. The Design Guidelines shall include restrictions on, and ARC review shall include a review of, materials, colors, design, location and such other items as the ARC shall determine from time to time in its sole discretion.

6.4 **Submission of Plans; Fee Schedule.** Before the initiation of construction upon any Homesite (including material changes to landscaping), the Owner thereof shall first submit to the ARC such documents and materials as may be required by the Design Guidelines in accordance with the procedure outlined in the Design Guidelines. Such submission shall include payment of the review fee payable pursuant to the ARC fee schedule established and amended from time to time (the "ARC Fee Schedule"). The ARC Fee Schedule shall be established, and may be amended from time to time, by Declarant in its sole discretion, until such time as Declarant has delegated appointment of the members of the Architectural Review Committee to the Board pursuant to Section 6.1.A. above; thereafter, the ARC Fee Schedule shall be set or amended by the Board.

6.5 **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Architectural Review Committee finds the proposed work would be inappropriate for the particular Homesite or incompatible with the Design Guidelines. In reviewing each submission, the Architectural 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 Homesites within the 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 Architectural Review Committee reasonably believes to be relevant, may, but do not have to, be taken into account by the Architectural Review Committee in determining whether or not to consent to any proposed work.

6.6 **Non-Conforming Structures.** If there shall be a material deviation from the approved plans in the completed Improvements, such Improvements shall be in violation of this Article VI to the same extent as if erected without prior approval of the ARC unless the Owner subsequently obtains ARC approval for such deviation, which approval may be granted or denied in the ARC's sole discretion. The ARC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof, which, if incurred by the ARC and/or the Association, shall constitute an assessment against the applicable Homesite(s).

6.7 **Limitation of Liability.** Neither the Architectural Review Committee nor any member of the Architectural Review Committee shall be liable to any Owner, occupant, home builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Architectural Review Committee or a member of the Architectural Review Committee, provided only that the Architectural 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 the Property; they do not create any duty to any person or entity. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Architectural 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, solar ordinances, zoning codes and other governmental requirements, all of which are the sole responsibility of the applicant, nor for ensuring that all dwellings are of comparable quality, value, or size, or of similar design. Declarant, the Association, the Board, the ARC, any other 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 Homesite.

6.8 **Limited Review.** Any review and approval made by the ARC is limited to compliance with the intent of the architectural and design standards of the neighborhood as may from time to time be established by the ARC and/or the Design Guidelines. The review and approval made by the ARC is not to be construed as superseding, replacing, or modifying any review, approval, or permit required by any local, state or federal jurisdictional agencies. It is the applicant's responsibility to obtain and comply with any permits that may be required by any local, state, or federal jurisdictional agency. Nor shall any such review or approval by the ARC be deemed an assurance or statement of compliance with any applicable laws, ordinances or regulations.

6.9 **Address for Notice.** Requests for ARC approval or correspondence with the ARC shall be addressed to The Tree Farm Architectural Review Committee, c/o Owner Relations Department, 409 NW Franklin Avenue, Bend, OR 97703, or such other address as may be designated from time to time by the ARC in a writing addressed to all Owners. No correspondence or request for approval shall be deemed to have been received until actually received by the ARC in a form satisfactory to the ARC.

6.10 **Effective Period of Consent.** The Architectural Review Committee's consent to any proposed Improvement shall automatically be revoked eighteen months after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received an extension of time from the Committee. Commencement of construction shall mean that the Owner must have physically commenced construction activity on the Homesite in accordance with an issued building permit.

## **Article VII**

### **EASEMENTS**

7.1 **Multiple Use Easements.** As long as the Declarant owns a Homesite, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for ingress, egress, installation, replacement, repair, maintenance, use and operation of trails, and all utility and service lines and service systems, public and private, including, without limitation, fiber optic cables. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. The Board shall also have the right to grant the easements described herein, subject to the approval of the Declarant so long as

Declarant owns a Homesite.

7.2 **Declarant's Easement to Correct Drainage.** Declarant hereby reserves for the benefit of Declarant (including its contractors and employees) a blanket easement, including a right of entry, on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

7.3 **Easement for Unintentional Encroachment.** The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching property to the extent of such encroachment.

7.4 **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 Homesite (including any dwelling thereon) for emergency, security, and safety reasons, to perform maintenance and to enter any portion of the Homesite other than the dwelling located thereon to inspect for the purpose of ensuring compliance with and enforce the Declaration, including by taking corrective actions that the Owner has failed to take. Such right may be exercised by any member of the Board and the ARC, any duly authorized agents and assignees of the Association, 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. Entry upon the Homesite as provided herein shall not be deemed a trespass, and neither the Association nor the ARC shall be liable for any damage so created unless such damage is caused by the Association's or the ARC's willful misconduct or gross negligence.

7.5 **Adjacent Common Areas.** The Owner of any Homesite which adjoins any Common Maintenance Areas shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Maintenance Areas. The Owner and Occupant of each Homesite 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.

7.6 **Utility Easements.** Easements for the benefit of Declarant and the Association for installation and maintenance of utilities and drainage facilities are reserved over portions of certain Homesites and Common Areas as shown on the 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.

7.7 **Utility Inspection and Repairs.** Each utility service provider and its agents or employees shall have authority to access all Homesites, but not Units 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 Homesite 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.

7.8 **Reserved Easements.** Easements for installation and maintenance of utilities and/or buffers with adjacent property are reserved as may be shown on the Plat, any subsequent plat of the Property, or other recorded document. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which would violate the terms of the easements as described on the Plat or other recorded document. The easement area of each Homesite and all improvements contained therein shall be maintained continuously by the Owner of the Homesite, except for those improvements for which a public authority, utility company or the Association is responsible. In addition, the Declarant hereby reserves an easement in favor of the Association to permit maintenance, repair and replacement of sidewalks, utilities serving Common Maintenance Areas and all other Common Maintenance Areas, as deemed reasonably necessary by the Board.

7.9 **Temporary Completion Easement.** Until the Turnover Meeting, all Homesites shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Homesites adjacent to the property.

7.10 **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.

7.11 **Maintenance Easements.** An easement is hereby granted and reserved in favor of the Association and its successors, assigns, contractors, property managers, agents and employees over, across and upon the Common Areas and any Common Maintenance Areas or other areas of The Tree Farm necessary or appropriate for purposes of accomplishing the maintenance, repair, replacement or other obligations of the Association hereunder. The foregoing includes, without limitation, an easement over each Homesite to permit the Association to maintain, install and/or replace any vegetation or other landscaping in such areas. It also includes an easement over individual Homesites to permit maintenance, repair and replacement of sidewalks, fences or other Improvements designated as Common Maintenance Areas.

## **Article VIII**

### **USE, OCCUPANCY, AND CASUALTY**

8.1 **Residential Use.** Homesites and 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 Homesite, nor shall any

goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Homesite. The mere parking on a Homesite 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 Units, (b) the right of Declarant or any contractor or home builder to construct Improvements on any Homesite, to store construction materials and equipment on such Homesites in the normal course of construction, and to use Units as sales or rental offices or model homes or apartments for purposes of sales or rental in The Tree Farm, and (c) the right of the Owner of a Homesite 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 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 Unit (which activities may be specified in rules and regulations adopted by the Board) and that the activities would not be in violation of applicable governmental ordinances.

8.2 **Timesharing or Fractional Interest Ownership Prohibited.** No Owner of a Unit or any of several Units within The Tree Farm shall receive a right to occupy such Unit or any of several Units during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with an estate in land, and any such attempted conveyance shall be void; provided, however, this restriction shall not be interpreted to prevent joint ownership of Homesites and Units not including such exclusive use periods.

8.3 **Rental of Units.** No Owner of a Homesite may rent his or her Unit to any person or persons for transient occupancy; provided, however, an Owner shall be entitled to rent or lease his/her Unit, or portion thereof, if:

A. **Written Rental Agreements Required.** There is a written rental or lease agreement specifying that: (i) the tenant shall be subject to all provisions of the Declaration, the Bylaws and the rules and regulations, and (ii) failure to comply with any provision of the Declaration, the Bylaws or the rules and regulations shall constitute a default under the rental agreement;

B. **Minimum Rental Period.** The period of the rental or lease is not less than thirty (30) days;

C. **Tenant Must Be Given Documents.** The Owner gives each tenant a copy of the Declaration, the Bylaws and the rules and regulations; and

D. **Owner Responsibility.** The Owner shall be responsible for any violations by the Owner's tenants and shall be solely responsible for either correcting or eliminating such violations, or getting the tenant to do same.

8.4 **Casualty.** In the event of damage to or destruction of a Unit, the Owner of the Unit shall repair, reconstruct, and rebuild the damaged or destroyed portions of the Unit to substantially the same condition that existed prior to the damage or destruction or consistent with such plans and specifications as are approved in accordance with Article VI of this Declaration. Alternatively, the Owner shall promptly clear the Homesite of all debris and ruins and maintain the Homesite consistent with the terms of Section 10.13. All repair, reconstruction, or rebuilding shall begin within six (6) months



following the damage or destruction, and shall be diligently pursued to completion within eighteen (18) months following the damage or destruction (or within such other schedule as is established by the ARC in writing), unless work is delayed by causes beyond the reasonable control of the Owner. If an Owner fails to timely repair such damage or clear the Homesite, the Association shall have all rights of enforcement and remedies set forth under this Declaration. The ARC shall have the right to extend the deadlines contained in this Section 8.4 if it deems the same reasonable under the circumstances; provided, however, in no event may any Owner leave his or her Unit or Homesite in a condition that poses a health or safety hazard.

## **Article IX**

### **PROPERTY RIGHTS**

9.1 **Owner's Use and Occupancy.** The Owner of a Homesite in the Property shall be entitled to the exclusive use and benefit of such Homesite, except as otherwise expressly provided in this Declaration, but the Homesite shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article X below and all other provisions of this Declaration for the mutual benefit of all Owners.

9.2 **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Homesite, subject to the following provisions:

A. The right of the Association to establish and publish rules and regulations governing The Tree Farm, including use of the Common Areas, affecting the welfare of Association members.

B. The right of the Association (subject to such notice and/or hearing requirements as may be imposed by applicable law) to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any Assessment against the Homesite remains unpaid or during which such Owner is otherwise in material breach hereunder; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

C. The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for public right-of-way purposes. Any other transfer or mortgage of Common Areas requires the consent of at least eighty percent (80%) of the Class A Member votes, and the consent of the Class B Member.

D. All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

9.3 **Effect of Declaration.** Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth

in their entirety in said documents.

9.4 **Rezoning Prohibited.** No Homesite shall be rezoned without the prior written consent of the Board and of the Declarant so long as Declarant owns a Homesite, which may be withheld in the Board's or Declarant's sole discretion, as applicable. Declarant or the Board may enforce this covenant by obtaining an injunction against any non-approved rezoning at the expense of the enjoined party. This Section 9.4 shall not apply to legislative zone changes initiated by Deschutes County.

9.5 **Homesite Consolidation and Division.** An Owner may consolidate multiple Homesites he or she owns, provided, however, the same is first approved by Deschutes County and then the ARC has approved the design plan for the Unit. No Homesite may be subdivided. Notwithstanding the foregoing, so long as there is at least one Class B Member, Declarant shall have the right to consolidate and/or subdivide Homesites within The Tree Farm, provided no Homesite is less than two (2) acres in size, subject to applicable Deschutes County Ordinances, without first obtaining the consent of the ARC. Upon the completion of a subdivision of a Homesite, each newly created parcel shall immediately constitute a Homesite and the owner of fee title thereof shall become an Owner with all of the rights granted to Owners hereunder. Upon the completion of a subdivision of a Homesite, each newly created Homesite shall be entitled to the voting rights as set forth in Section 2.3, and subject to Assessments set forth in Article III. Upon the completion of a consolidation of multiple Homesites, the newly created Homesite shall be treated as the original number of Homesites for voting and assessment purposes.

9.6 **Drainage Alteration Prohibited.** The surface water drainage contours of each Homesite shall conform to the approved grading plan established by the Declarant or the ARC. No Owner shall fill or alter any drainage swale established by the Declarant, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the Declarant or ARC. Each Owner shall take steps to assure that its Homesite has adequate drainage and does not cause runoff to be directed onto any adjacent property.

9.7 **Damage or Destruction By Owner.** In the event the need for maintenance or repair of a Common Maintenance Area is caused by the willful or negligent act or omission of an Owner, his or her family, tenants, guests or invitees, the costs of such maintenance and repair may, in the discretion of the Board of Directors, be charged to the Owner as an Individual Assessment.

## **Article X**

### **USE RESTRICTIONS/DEVELOPMENT STANDARDS**

10.1 **Completion of Improvements.** Construction of a Unit must be completed, including painting and all exterior finish, within twenty-four (24) months from the start of construction. ("Start" of construction means that the Owner has physically commenced construction activity on the Homesite in accordance with an issued building permit; "Complete" means obtaining certificate of final inspection from Deschutes County). 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 prior written approval from the Architectural Review Committee.

10.2 **Landscaping Completion.** Landscaping plans for each Homesite shall

be submitted to the Architectural Review Committee and shall be in compliance with the Wildfire Protection Management Plan and other guidelines as may be established by the Committee from time to time. The approved landscaping must be completed not later than ninety (90) days from completion of the Unit. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Review Committee.

10.3 **Exterior Lighting.** All exterior lighting shall be subject to approval of the Architectural Review Committee. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty (30) days after the celebrated holiday. The Association and Architectural Review Committee may regulate the shielding or hours of use of lighting in order to reduce annoyance to neighboring properties.

10.4 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Homesite, nor shall anything be done or placed on any Homesite that interferes with or jeopardizes the enjoyment of other Homesites or the Common Areas, or that is a source of annoyance to occupants. 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 Homesites. No unlawful use shall be made of a Homesite nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Owners and other Occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, Occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

10.5 **Recreational Equipment.** Playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, may only be placed, installed or utilized on any Homesite if so approved by the Architectural Review Committee. No such equipment or structures may be placed on pathways, trails or roadways at any time.

10.6 **Temporary Structures.** No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Homesite at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

10.7 **Signs.** Except as permitted in this Section 10.7, no sign or emblem of any kind may be kept or placed upon any Homesite or mounted, painted or attached to any Unit or other Improvement upon such Homesite or carried by any person or by any other means displayed within the Property except with the written approval of the ARC. Notwithstanding the foregoing, "for sale" signs shall be permitted on a Homesite provided the same complies with ARC design standards, and political signs may be placed on a Homesite no earlier than thirty (30) days prior to an election date and must be removed within two (2) days following the election. No "for rent" signs shall be permitted on a Homesite at any time. In addition, until the Turnover Meeting, Declarant may erect signs or billboards, and at any time, Declarant or the Association shall have the right to erect signs or monuments that identify The Tree Farm, in either case without the need for ARC

approval. This Section 10.7 shall not be construed to prohibit flags; flags shall be subject to such restrictions and/or prohibitions as may be contained in the Design Guidelines and/or the rules and regulations.

**10.8            Campers, Boats, Recreational Vehicles, Certain Trucks, Commercial Vehicles, and other Non-Passenger Vehicles.** No campers, boats, boat trailers, recreational vehicles, motor homes, commercial vehicles, trucks weighing more than 10,000 pounds GVW, or other types of non-passenger vehicles, equipment, implements, or accessories shall be kept or stored on any Homesite for more than seventy-two (72) hours or such other period as may be permitted pursuant to the Association rules and regulations except (i) with the Board's approval, or (ii) as provided below:

A.        Except to the extent the same is screened from public view and from the view from adjacent property (including adjacent Homesites, Common Areas, and public rights of way), no recreational vehicles, motor homes, disabled vehicles, campers, boats, boat trailers, recreational trailers, or other types of non-passenger vehicles, equipment, implements, or accessories shall be parked or stored on or adjacent to any Homesites. In the event of a dispute as to whether there is adequate screening for purposes of this Section 10.8, the determination of the ARC shall be definitive.

B.        The Board, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle, equipment, implements and/or accessory is operable and adequately screened from public view and from the view from any portion of the Property other than the applicable Homesite. Upon an adverse determination by said Board, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this Section 10.8.

C.        No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in the streets within the Property, or in any driveway or yard adjacent to a street, or that is not screened from public view and from the view from any portion of the Property other than the applicable Homesite.

**10.9            Pets, Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Homesite, except for a reasonable number of generally recognized household pets that are not kept, bred, or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Notwithstanding the foregoing, backyard chickens may be allowed on a Homesite subject to strict compliance with Association rules; however, roosters will not be permitted under any circumstances. In the event of a dispute, the Board shall make the final decision as to what constitutes "recognized household pets" and "a reasonable number" under particular circumstances. All such animals shall be kept in strict accordance with all applicable laws and ordinances (including leash laws) and in accordance with all rules established by the Association. No animal shall be allowed to roam the Common Area unattended, and all pets shall be kept on a leash while outside a Homesite. Any animal enclosures shall be constructed in accordance with plans approved by the ARC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be subject to the ARC approval. Each Owner is solely responsible for his or her animals, shall assure that such animals do not create a nuisance or otherwise damage any portion of the Property, and shall clean up after such animals.

**10.10            Garbage and Refuse Disposal; Wood Storage.** No Homesite,

Common Area or any other portion of The Tree Farm shall be used or maintained as a dumping ground for rubbish. Compost, recycling, trash, garbage or waste shall not be kept, or disposed of, on any Homesite or Common Area except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of compost, trash, garbage, refuse, rubble, debris, or recyclable materials shall be stored, kept, placed or maintained on any Homesite where visible from any street or neighboring Homesite except solely on a day designated for removal of garbage, rubbish, or recyclable materials, and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day. All screening shall be of an attractive nature, consistent with the overall development scheme of The Tree Farm. Firewood is not permitted to be stored on any Homesite unless it is in an enclosed, fire-resistant structure.

10.11 **Parking in Common Areas/No Parking Signage.** No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, or on any easement unless in use for maintaining such Common Areas, provided however, that this restriction shall not apply to driveways, streets or paved areas intended for vehicular use. In addition, parking of vehicles is prohibited on any public or private street within the Property that is signed or otherwise marked for "No Parking" by the Association or a governmental authority. The Association shall have the right to tow any vehicles in violation of this Section 10.11 at the vehicle owner's expense.

10.12 **Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Homesite without the prior written consent of the ARC. Every detached accessory building, including but not limited to such structures as storage buildings, greenhouses, animal enclosures, or children's playhouses shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition and consistent with the Design Guidelines.

10.13 **Unimproved Homesite Maintenance.** All unimproved Homesites shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and all trees, shrubs and grass thereon shall be pruned, cut or mowed, as applicable, to prevent creation of a nuisance or fire hazard and to be in compliance with the Wildfire Protection Management Plan.

10.14 **General Landscaping and Exterior Maintenance.** Each Homesite Owner shall keep all shrubs, trees, grass, and plantings of every kind on his or her Homesite cultivated, pruned, free of trash, and other unsightly material. Each Homesite Owner shall keep all Improvements upon his or her Homesite in good condition and repair and adequately painted or otherwise maintained.

A. The initial landscaping, as well as all subsequent material changes to such landscaping, shall be subject to final approval by the ARC. All installed landscaping shall remain fully irrigated unless otherwise approved by the ARC and shall be maintained by Owner in strict compliance with the Wildfire Protection and Management Plan.

B. Except in the case of imminent threat of harm to persons or Improvements or as may be deemed advisable by the Association, the removal of trees shall require the prior written approval of the ARC. All tree removal shall comply with applicable laws and ordinances.

10.15 **Wildfire Protection.** Each Owner shall comply with the Wildfire Protection Management Plan. Although the Association shall have the right to take enforcement action against an Owner who fails to comply with the Wildfire Protection Management Plan, the Association shall have no liability for (i) a failure to take action against a non-compliant Owner; or (ii) the failure of an Owner to comply with the Wildfire Protection and Management Plan.

A. Landscaping. All installed and native landscaping on Homesites and Common Areas shall be designed, constructed and maintained to standards established in the WPMP, which standards are based on the "zone" wildfire mitigation model recognized by Firewise and NFPA 1144- 2013 Standard for Reducing Structure Ignition Hazards from Wildland Fire (NFPA 1144). Standards applicable to residential properties are contained in the Design Guidelines.

B. Residential Construction. All residential construction on Homesites shall be designed, constructed and maintained to the standards established in the Design Guidelines and WPMP, which are based on applicable standards from NFPA 1141-2012 Standard for Fire Protection Infrastructure for Land Development in Wildland, Rural and Suburban Areas (NFPA 1141) and NFPA 1144.

10.16 **Wildlife Protection.** Each Owner shall comply with such provisions of the Wildlife Habitat Management Plan ("WHMP") as are applicable to his or her Homesite. The capturing, trapping, injuring, or killing of wildlife within the Property is expressly prohibited, except when reasonably necessary to avoid an imminent threat of personal injury or death to any person or except when reasonably necessary to protect property from damage by rodents or other pests and then only to the extent permissible under applicable laws. The feeding of wildlife or leaving salt blocks out for big game is also expressly forbidden.

10.17 **Antennae, Satellite Dishes.** No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus upon any Homesite unless such apparatus is erected and maintained in such a way that it is screened from the view from any portion of the Property other than the applicable Homesite; and no such apparatus shall be erected without the prior written consent of the ARC. The ARC, as designated in this Declaration, shall have the absolute authority to determine whether an accessory is adequately screened. The authority of the ARC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

10.18 **Clothes Hanging Devices.** Clothes hanging devices exterior to a dwelling shall be temporary, unaffixed structures and shall not be visible from adjacent property or any portion of the Property. Clothes hanging devices shall be screened from public view and from the view from any portion of the Property other than the applicable Homesite.

10.19 **Fences.** No fences or boundary hedges shall be installed on a Homesite without prior written approval of the Architectural Review Committee. Owners must locate surveyor's pins marking boundary corners before construction of any permitted fences. The following general fencing types will be allowed within The Tree Farm, subject to approval by the ARC:

A. **Boundary Fencing.** Except as provided herein, no perimeter fencing is allowed on Homesites; provided, however, a wood split rail fence will be permitted on a Homesite property line that abuts open space (including land owned by governmental agencies or special districts) or Common Area. For any such property line fencing, the distance between the ground and the bottom strand of board of the fence shall be at least fifteen (15) inches and the top height of the fence shall not exceed forty-eight (48) inches above ground level. Invisible fencing will also be an acceptable boundary fence material. To the extent that the Declarant or the Association installs a split rail fence on a Homesite property line that abuts open space (including land owned by governmental agencies or special districts) the Owner of that Homesite shall maintain, repair and replace such fence in good condition and repair at all times.

B. **Garden Fencing.** Welded wire fencing up to eight (8') feet in height will be permitted only for the purpose of restricting wildlife access to garden or landscaped areas on a Homesite, and is not permitted as a boundary line fence material. The total enclosed area is subject to ARC approval.

C. **Privacy Fencing.** Fencing, subject to design specifications contained in the Design Guidelines, may be constructed on the Homesite provided it connects to the Unit or other Improvements located on the Homesite and doesn't exceed five (5') feet in height from ground level. The total enclosed area is subject to ARC approval.

Notwithstanding the foregoing, the Declarant, or the Association with approval of Declarant during the Development Period, may in its sole discretion install fences or boundary hedges on Common Areas within The Tree Farm, subject to applicable governmental restrictions.

10.20 **Security.** Neither Declarant nor the Association shall be responsible for security of the Common Maintenance Areas (including the Common Areas) or any Unit or Homesite, and the Owners are exclusively responsible for their own security and the security of their Units, Improvements, Homesites and property. The Association may elect to, but shall not be required to, provide security features, such as security guards, patrols and/or security cameras within The Tree Farm. The provision of such security features shall not, in any event, be construed to obligate the Association to provide security for The Tree Farm nor shall it subject the Association to liability for any failures of such security features. By acceptance of a deed, each Owner specifically agrees to the terms of this Section 10.20.

10.21 **Construction Activities.** This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to Improvements by a Homesite Owner (including Declarant) upon any Homesite within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the Deschutes County area. In the event that construction upon any Homesite does not conform to usual practices in the area as determined by the ARC in its sole determination, the ARC shall have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Homesite, there is excessive accumulation of debris of any kind which is offensive, or detrimental to it or any other portion of the Property, then the ARC may contract for or cause such debris to be removed, and the Owner shall be liable for all expenses incurred in connection therewith as an Individual Assessment. Each Owner

shall assure that his or her contractor(s) shall strictly comply with such construction rules and regulations as may be set forth by the ARC and/or the Board from time to time.

10.22 **Unit Construction.** All buildings or other Improvements, permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with such setback standards as may be imposed by the local governmental jurisdictional authority, as may be set forth in the deed for a particular Homesite and/or as may be established by the ARC from time to time. In no event shall any Owner apply to the applicable local governmental jurisdictional authority and/or the ARC for a variance to construct any Improvement with a ridge height in excess of thirty (30) feet above the average original (natural) grade as further described in the Design Guidelines.

10.23 **ARC Supervisory Authority Over Construction Activities.** All construction activities on the Property, including, without limitation, staging, shall be governed by the ARC and such guidelines, rules and regulations as it may promulgate from time to time. The foregoing is intended and shall be construed to give the ARC the right, but not the obligation, (i) to provide supervision of construction activities; and (ii) to enforce Design Guidelines and ARC adopted rules and regulations.

10.24 **Traffic Regulations.** The Association may promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits. Vehicular and pedestrian traffic includes but is not limited to motor vehicles, trailers, bicycles, skateboards and roller skates. The Association shall be entitled to enforce such provisions by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof, as long as such procedures are consistent with the Declaration and Bylaws. Only drivers licensed to operate motor vehicles shall operate any type of motor vehicle within The Tree Farm. All vehicles of any kind which are operated within The Tree Farm shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all Owners.

## **Article XI**

### **ANNEXATION**

11.1 **Annexation by Declarant.** At any time during the Term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 50 homesites in the planned community of The Tree Farm, including the Homesites listed in Exhibit A, and homesites expected to be created in property to be annexed to The Tree Farm, but this number may be adjusted at the sole discretion of Declarant, subject to the terms of Section 11.1.A. There shall be no maximum number of homesites which may be annexed to this Declaration. Declarant shall have no obligation of any kind to annex any additional property to the Property.

A. **Eligible Property.** Any or all of the real property in Deschutes County, Oregon adjacent to ("adjacent" property shall include property on the other side of a public right of way, a public or private street or a river) or contiguous with the Property shall be eligible for annexation. There is no limitation on the amount of land that Declarant may annex to The Tree Farm, or the right of Declarant to annex common property, except as may be



established by applicable ordinances, agreements, or land use approvals or as set forth herein.

B. Consent or Joinder Not Required. No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

C. Declaration of Annexation. Annexation shall be evidenced by a written declaration of annexation (the "**Declaration of Annexation**") executed by the Declarant, or in the case of an annexation by action of members by the Board and the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a Declaration of Annexation with respect to any annexed property may:

- i) establish such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property;
- ii) establish additional or different limitations, uses, restrictions, covenants and conditions as Declarant may deem to be appropriate for the development of such annexed property; and/or
- iii) contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

Without limitation of the meaning of the foregoing provisions of this Section 11.1, in any Declaration of Annexation Declarant may, but shall not be obligated to, establish easements particular to different homesites and common property and/or to create any such sub-associations as it may elect.

D. Voting Rights; Allocation of Assessments. Upon annexation, additional Homesites so annexed shall be entitled to the voting rights as set forth in Section 2.3. The formula to be used for reallocating the common expenses if additional Homesites are annexed and the manner of reapportioning the common expenses if additional Homesites are annexed during a fiscal year are set forth in Section 3.4.

11.2 **Annexation by Action of Members**. At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved by at least seventy-five percent (75%) of the voting rights and by Declarant so long as Declarant owns at least one (1) Homesite. Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 10.1.C above executed by the parties herein described.

11.3 **No Duty to Annex**. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to

have such property annexed thereto.

## **Article XII**

### **ENFORCEMENT**

12.1 **Violation of General Protective Covenants.** In the event that any Owner constructs or permits to be constructed on his Homesite 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 Homesite, mailed to the mailing address of each Homesite or mailed to the mailing address designated by the owner of each Homesite in writing, which fines shall constitute assessments for purposes of this Declaration;

B. Enter the offending Homesite 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 operating fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

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

D. Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Homesite 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 Assessment immediately due and payable. In no event, however, shall

the Association deprive any Owner of access to and from the Owner's Homesite 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 Homesite for any Assessment levied against the Homesite, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Homesite 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.

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 Homesite, mailed to the mailing address of each Homesite 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 of any suit or action to enforce this Declaration, the Bylaws, the rules and regulations or the Oregon Planned Community Act, or to collect any money due hereunder or to foreclose a lien, the prevailing party in such suit or action shall be entitled to recover all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

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 Homesite, 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 Homesite 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 Homesite, or any part thereof, to do the same or similar acts.

12.6 **Non-exclusiveness and Cumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of the Governing Documents 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.

### **Article XIII**

#### **DISPUTE RESOLUTION**

13.1 **Mediation.** 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 Deschutes 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.

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.

If a qualified dispute resolution program exists within Deschutes 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 non-initiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

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.

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.

The requirements of this section do not apply: (i) to circumstances in which irreparable harm to a party will occur due to delay; or (ii) to litigation, arbitration or an administrative proceeding initiated by the Association to collect assessments or otherwise enforce the terms of this Declaration.

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

#### **Article XIV**

##### **MORTGAGEES**

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

14.1 **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 Homesite 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 Homesite shall not affect the Assessment lien, but the sale or transfer of any Homesite 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 Homesite from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

14.2 **Reimbursement of First Mortgagees.** First mortgagees of Homesites 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 to the extent the same was the responsibility

of the Association.

14.3 **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 Homesite 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.

14.4 **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 Homesite.

## **Article XV**

### **DECLARANT'S SPECIAL RIGHTS**

The Declarant shall have the following special rights, in addition to all other rights reserved under this Declaration and any supplemental declaration, with respect to the Common Area and each Homesite in The Tree Farm, which rights shall terminate at the Turnover Meeting, except to the extent otherwise specified below:

15.1 **Marketing Rights.** Declarant shall have the right to maintain a sales office and model on one or more of the Homesites which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on The Tree Farm, including, without limitation, the Common Area.

15.2 **Declarant Easements.** The Declarant has reserved easements over The Tree Farm as more fully described in Article VII hereof. In addition to and without limiting the provisions of Article VII, up until the Turnover Meeting, Declarant shall have the right to grant an easement, or license, to the public over portions of the trails, as shown on the Plat or any subsequent plat of the Property.

15.3 **Size and Appearance of The Tree Farm.** Declarant shall not be prevented from increasing or decreasing the number of Homesites in The Tree Farm or from changing the exterior appearance of the Common Area, including the landscaping or any other matter directly or indirectly connected with The Tree Farm in any manner deemed desirable by Declarant, provided that Declarant obtains governmental consents required by law.

15.4 **Dedications.** Declarant reserves the right for a period of ten (10) years following the Turnover Meeting to dedicate or convey any portions of The Tree Farm then owned by Declarant to any governmental authority, quasi-governmental entity, special district, 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 shall belong solely to Declarant. Any land so dedicated or conveyed shall thereafter not be

subject to Assessments under this Declaration and shall not be subject to Architectural Review, including, without limitation, the requirements of Article VI.

15.5           **Development.** Declarant reserves the right with respect to all or any portion of The Tree Farm 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 exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of the County of Deschutes or the City of Bend; 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 Tree Farm.

15.6           **Right to Approve Changes in the Standards within The Tree Farm.** For a period of ten (10) years from the date of the Turnover Meeting, no supplemental declaration and no amendment to or modification of this Declaration or any supplemental declaration and no amendment to or modification of the Bylaws of the Association shall be effective without the prior notice to and the written consent of Declarant.

15.7           **Right to Approve Special Assessments.** For so long as the Declarant owns any land subject to this Declaration, no Special Assessment shall be levied for capital improvements or capital additions without the prior, written consent of Declarant. No Special Assessment shall be levied against Declarant or a Homesite owned by Declarant unless approved by Declarant in writing.

15.8           **Right to Receive Notice of and Attend Owner and Board Meetings.** The Declarant shall have the right to receive notice of and to attend all Owner meetings and all Board meetings for a period of ten (10) years following the Turnover Meeting, regardless of whether Declarant still owns a Homesite. Meeting notices to Declarant shall be given in the same manner as notices to the Owners; provided, however, any notice of a Board meeting that is posted at the Property pursuant to the Bylaws must also be given to Declarant by U.S. Mail or recognized third party overnight delivery service within the time period prescribed in the Bylaws.

15.9           **Right to Inspect Common Maintenance Areas.** The Declarant shall have the right to inspect the Common Maintenance Areas for a period of ten (10) years following the Turnover Meeting, regardless of whether Declarant still owns a Homesite, for purposes of determining whether the Association is performing appropriate and sufficient maintenance and repairs.

15.10          **Right to Review and Copy Records.** The Declarant shall have the right, for a period fifteen (15) years following the Turnover meeting, to review and make copies of all inspection, maintenance and other records of the Association, regardless of whether the Declarant still owns a Homesite.

## **Article XVI**

### **AMENDMENT AND REPEAL**

16.1           **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.

16.2 **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 Homesites, based upon one vote for each such Homesite, 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 Homesite or any uses to which any Homesite 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 Homesite unless the Owners of the affected Homesites 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 Homesite unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment.

16.3 **Recordation.** Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes 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.

16.4 **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.

16.5 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within The Tree Farm and the Owners thereof for an initial period of thirty (30) years commencing on the date this Declaration was recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within The Tree Farm and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the voting rights in the Association. Any such termination shall become effective only if a certificate of the president or secretary of the Association, certifying that termination, as of a specified termination date, has been



approved in the manner required in this Declaration, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon, not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner access to the Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

## **Article XVII**

### **MISCELLANEOUS PROVISIONS**

17.1 **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.

17.2 **Right to Approve Additional Covenants.** No person or entity 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.

17.3 **Right to Transfer or Assign Declarant's Rights.** The Declarant may assign and delegate one or more of the Declarant's rights and obligations hereunder to one or more successor Declarants. Each such assignment shall be in writing, be recorded in the Deschutes County real property records, specify the rights and obligations being assigned and delegated to the successor Declarant and identify the portion of The Tree Farm to which the assignment pertains. The successor Declarant will not acquire any rights as the successor Declarant as to any portion of The Tree Farm other than that portion of The Tree Farm identified in the written assignment.

17.4 **Joint Owners.** Unless otherwise provided in a supplemental declaration, in any case in which two or more persons or entities share the ownership of any Homesite, regardless of the form of ownership, the responsibility of such persons or entities 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 or entities shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons or entities disagree among themselves as to the manner in which any consent shall be given with respect to a pending matter, any such person or entity 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.

17.5 **Lessees and Other Invitees.** Lessees, licensees, invitees, contractors, family members, guests, and other person or entities 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 Homesite 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 or entities in the same manner and to the same extent as if the failure had been committed by such Owner.

17.6 **Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Homesite 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 Homesite, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

17.7 **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.

17.8 **Consent.** Whenever the consent or approval of any person or entity is required by this Declaration, such consent or approval must be in writing and signed by an authorized person in order to be effective.

17.9 **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.

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

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

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of this 28th day of October 2016.

**DECLARANT:**

THE TREE FARM, LLC,  
an Oregon limited liability company

By West Bend Property Company II LLC,  
Managing Member

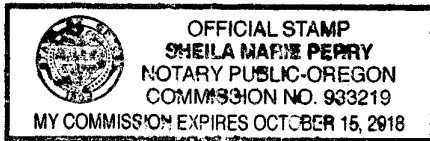
By Brooks Resources Corporation  
Its Managing Member

By: [Signature]  
Kirk Schueler  
Its President

STATE OF OREGON }

COUNTY OF Deschutes }

The foregoing instrument was acknowledged before me the 28th day of October, 2016 by Kirk Schueler, as president of Brooks Resources Corporation, the managing member of West Bend Property Company II LLC, the managing member of The Tree Farm, LLC, an Oregon limited liability company, on behalf of The Tree Farm, LLC.



[Signature]  
Notary Public, State of Oregon  
My Commission Expires: 10.15.18

## **EXHIBIT "A"**

### **PROPERTY SUBJECT TO DECLARATION**

Lots 1 through 50, inclusive; Tracts A, C, E, H, I, and M; Tract D; and Private Roads, including Tree Farm Drive, Ridgeline Drive Ridgeline Court, Golden Mantle Loop and Canopy Court, all as shown on the OFFICIAL PLAT OF TREE FARM, Located in the North Half of the Southwest Quarter and the South Half of the Northwest Quarter, Section 19, Township 17 South, Range 12 East, Willamette Meridian, recorded on October 27, 2016, in Volume 2016, Page 44585 in the Official Records of Deschutes County, Bend, Oregon.

AFTER RECORDING RETURN TO:

The Tree Farm

409NW Franklin Ave

16 Bend OR 97703

Attn: Romy Mortensen

~~EXHIBIT "B"~~  
EXHIBIT "B"

## BYLAWS

### OF

## THE TREE FARM HOMEOWNERS ASSOCIATION

### 1. DEFINITIONS

The terms specified below shall have the following meanings when used in these Bylaws:

1.1 "Articles" mean the Articles of Incorporation of the Association filed with the Corporation Division of the Oregon Secretary of State, as amended from time to time in accordance with the provisions thereof.

1.2 "Association" means The Tree Farm Homeowners Association, an Oregon nonprofit mutual benefit corporation, formed for the purposes set forth in these Bylaws, the Declaration and the Articles.

1.3 "Board" means the Board of Directors of the Association constituted in accordance with Section 5 of these Bylaws.

1.4 "Common Areas" means only that portion of the Property, together with all improvements located thereon, that is established for the common use and benefit of property owners within The Tree Farm and identified as "Common Areas" in the Declaration, on a plat of any portion of the Property, in an amendment to the Declaration or in a supplemental declaration or Declaration of Annexation. The Common Areas shall also include all other real and personal property that the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.5 "Conversion Date" means the date on which Class B membership terminates pursuant to Section 3.2.2.

1.6 "Declarant" means The Tree Farm, LLC and its successors and assigns who acquire any of the rights or assume any of the obligations of Declarant under the Declaration. If less than all of Declarant's rights or obligations are transferred to a successor or assign, then the successor or assign shall only be deemed a Declarant with respect to those rights or obligations that are specifically assigned to or assumed by the successor or assign. One or more persons or entities may be a Declarant.

1.7 "Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for The Tree Farm, as amended or supplemented from time to time in accordance with the provisions thereof.

1.8 "Director" means a member of the Board elected or appointed in accordance with Section 5.3 of these Bylaws.

1.9 "Homesite" shall have the definition given it in the Declaration.

1.10 "Member" means each member of the Association and shall include every Owner of a Homesite. There shall be two (2) classes of membership in the Association, Class A and Class B, as described in Section 3.2 of these Bylaws.

1.11 "Nonprofit Corporation Act" means the Oregon Nonprofit Corporation Act (ORS 65.001 to 65.990), as amended from time to time.

1.12 "Officer" means an officer of the Association as described in and elected in accordance with Section 6 of these Bylaws.

1.13 "Owner" means the person or persons, including Declarant, owning any Homesite in the Property, including a vendee under a land sale contract to whom possession of the Homesite has been passed, but does not include a tenant or holder of a leasehold interest or a contract vendor (when possession has passed to the contract vendee pursuant to the terms of the land sale contract) or other person holding only a security interest in a Homesite. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Homesite and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.14 "Planned Community Act" means the Oregon Planned Community Act (ORS 94.550 to 94.783), as amended from time to time.

1.15 "President" means the President of the Association as described in Section 6.5 of these Bylaws.

1.16 "Property" means the real property located in Deschutes County, Oregon and legally described on Exhibit A to the Declaration and such additions thereto as may be brought within the jurisdiction of the Association and made subject to the Declaration and these Bylaws in accordance with Article XI of the Declaration.

1.17 "Secretary" means the Secretary of the Association as described in Section 6.6 of these Bylaws.

1.18 "Treasurer" means the Treasurer of the Association as described in Section 6.7 of these Bylaws.

1.19 "Turnover Meeting" means the meeting of the Owners called pursuant to Section 13 of these Bylaws for the purpose of turning over control of the Association from Declarant to the Class A Members.

1.20 Other Defined Terms. All other capitalized terms not otherwise defined in these Bylaws shall have the meaning given to them in the Declaration.

## 2. OFFICES

2.1 Principal Office. The principal office of the Association in the State of Oregon shall be at a location determined by the Board. The Association may have such other offices as the Board may determine or as the affairs of the Association may require from time to time.

2.2 Registered Office and Agent. The Association shall have and continuously maintain in the State of Oregon a registered office, and a registered agent whose office is

identical with such registered office, as required by the Nonprofit Corporation Act. The registered office of the Association may be, but need not be, identical with the principal office of the Association and the address of the registered office may be changed from time to time by the Board.

### 3. MEMBERSHIP, VOTING RIGHTS, AND POWERS AND OBLIGATIONS

3.1 Membership. Every Owner of a Homesite shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of a Homesite, be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Homesite. Such membership shall commence, exist, and continue simply by virtue of such ownership, shall automatically expire upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

3.2 Voting Rights. The Association shall have two (2) classes of voting membership:

3.2.1 Class A Members. Class A Members shall be all Owners other than Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A Members shall be all Owners, including Declarant). Class A Members shall be entitled to one (1) vote for each Homesite owned. When more than one (1) person holds an interest in a Homesite, all such persons shall be Members. However, only one (1) vote shall be exercised for the Homesite. The vote for the Homesite shall be exercised as the Owners of the Homesite determine among themselves. If the Owners of the Homesite cannot agree upon how to exercise the vote, then the vote for that Homesite shall be disregarded.

3.2.2 Class B Members. The Class B Member shall be Declarant. The Class B Member shall be entitled to fifty (50) votes for each Homesite owned. The Class B membership shall cease and be converted to Class A membership upon the earlier to occur of: (i) three (3) years after all of the property within the Development Plan has been developed and one hundred percent (100%) of the Homesites in the last area to be annexed to the Declaration have been conveyed to persons or entities other than Declarant or an Affiliate; or (ii) fifteen (15) years after conveyance of the first Homesite to a Class "A" member; or (iii) at such earlier time as Declarant may elect in writing to terminate Class "B" membership as evidenced by a Recorded document executed by Declarant to that effect.

3.3 Suspension of Voting Rights. All voting rights of a Member shall be suspended during any period in which the Member is delinquent in the payment of any Assessment or is otherwise in default under these Bylaws, the Declaration or any rules and regulations of the Association.

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

3.4.1 Governing Documents. The powers, duties and obligations granted to the Association by these Bylaws, the Articles or the Declaration, including, without limitation, the authority to levy Assessments against the Owners for the costs of operating and managing the Association and performing the Association's responsibilities under these Bylaws and the Declaration.

3.4.2 Statutory Powers. The powers and obligations of a nonprofit corporation pursuant to the Nonprofit Corporation Act, and of a homeowners association pursuant to the Planned Community Act, as either may be amended from time to time, except as provided otherwise by these Bylaws or the Declaration.

3.4.3 General. Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Declaration and these Bylaws or otherwise promoting the general benefit of the Members. The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in these Bylaws made in accordance with the provisions herein, accompanied by changes in the Articles or Declaration made in accordance with such instruments, as applicable, and with the Planned Community Act and Nonprofit Corporation Act.

#### 4. MEMBER MEETINGS

4.1 Annual Meetings. A meeting of the Members shall be held annually. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association and each subsequent regular annual meeting of the Members shall be held annually on a date within thirty (30) days of the anniversary date of the first annual meeting of the Members or on a date otherwise set by the Board. At the annual meeting, the President, and any other Officer or person whom the President may designate, shall report on the activities and financial condition of the Association. The first annual meeting of the Members held for the purpose of electing Directors shall be the Turnover Meeting.

4.2 Special Meetings. Special meetings of the Members may be called at any time by the President, by a majority of the Directors, or by the President or Secretary upon receipt of a written request of the Members holding at least forty percent (40%) of the outstanding votes of the Association. If the Members request a special meeting as provided herein and notice of the meeting is not given to the Members within thirty (30) days after the date the written request for the meeting was delivered to the President or Secretary, then any Member who signed the request may set the date, time and place of the meeting and give the required notice. Business transacted at a special meeting shall be restricted to the purposes set forth in the notice for the meeting.

4.3 Place of Meetings. Meetings of the Members shall be held at the principal office of the Association or at such other suitable and convenient place within Deschutes County, Oregon as may be designated in the notice for the meeting.

4.4 Notice of Meetings. Any meeting held pursuant to this Section 4 shall be held on such date, at such time, and at the principal office of the Association or such other place within Deschutes County, Oregon, as may be designated by the Secretary. Written notice of each meeting of the Members under this Section 4 shall be given by, or at the direction of, the Secretary or other person authorized to call the meeting at least ten (10) days before the meeting, but not more than fifty (50) days before the meeting, to each Member entitled to vote at the meeting and to any mortgagee of a Homesite having requested notice thereof in writing. A mortgagee of a Homesite may designate a representative to attend a meeting called under this Section 4. The notices shall be given in accordance with the notice provisions set forth in Section 17.1 and shall specify the place, day, and hour of the meeting, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, or any proposal to remove a Director. Notice of any such meeting may be waived by a Member at any time.



No Member who is present at a meeting may object to the adequacy or timeliness of the notice given.

4.5 Quorum. The presence at any Member meeting of a number of Members, whether in person, by proxy or by absentee ballot (if authorized by the Board), who are entitled to cast at least one-third (1/3) of the outstanding votes of the Association shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If a quorum is not constituted at a meeting, the Members who are present, either in person or by proxy, and entitled to vote shall have the power to adjourn the meeting until another date and time, without notice other than announcement at the meeting. The quorum requirement for any such subsequent meeting shall be reduced to a number of Members, whether in person, by proxy or by absentee ballot (if authorized by the Board), who are entitled to cast at least one-fifth (1/5) of the outstanding votes of the Association; provided that (i) the meeting is adjourned to a date that is at least forty-eight (48) hours from the time the original meeting was called or (ii) the original meeting notice states that the quorum requirement will be reduced if the meeting cannot be organized because of a lack of quorum and specifies the reduced quorum requirement. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

4.6 Majority Vote. A vote by the Members holding more than fifty percent (50%) of the voting power of the Association present in person, by proxy or by absentee ballot (if authorized by the Board) at a meeting at which a quorum is constituted shall be binding upon all Members for all purposes unless a higher voting percentage is specifically required by these Bylaws, the Articles, the Declaration, the Planned Community Act or any other applicable law, in which case such higher voting percentage shall apply.

4.7 Proxies and Absentee Ballots. At all meetings of the Members, each Member may vote in person, by proxy or, if authorized by the Board, by absentee ballot. All proxies shall be in writing, dated and signed by the Member, filed with the Secretary and in compliance with all other proxy requirements of the Planned Community Act. Proxies may only be revoked upon the giving of actual notice of revocation to the person presiding over the meeting or to the Board if a vote is being conducted by written ballot. Proxies shall automatically cease upon cessation of membership or restriction of the Member's voting rights. An absentee ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for absentee ballots shall include instructions for return delivery of the completed absentee ballot and information about whether or not the absentee ballot may be canceled if it is returned in accordance with the instructions. If an absentee ballot is delivered by a Member, the Member may vote in person at the meeting if the Member returned the absentee ballot and canceled the absentee ballot, if cancellation was permitted in the instructions included with the absentee ballot.

4.8 Action Without A Meeting. Any action which applicable law, the Declaration or these Bylaws require or permit the Members to take at a meeting may be taken without a meeting by written or electronic ballot if the procedures set forth in ORS 94.647 and 94.661, as applicable, are followed. For votes of the Members by written or electronic ballot, the Board shall provide the Members with at least ten (10) days' notice before ballots are mailed or otherwise distributed. The notice shall state the general subject matter of the ballot vote, the right of Members to request secrecy procedures in accordance with ORS 94.647, the date after which ballots may be distributed, the date and time by which any petition requesting secrecy procedures must be received by the Board, and the address

where such a petition may be delivered. If, at least three (3) days before the ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Members petition the Board requesting secrecy procedures, then the Board must comply with the secrecy procedures set forth in ORS 94.647. The secrecy procedures shall not apply to the ballot of a Member if the consent or approval of that particular Member is required under these Bylaws, the Declaration or the Planned Community Act. All ballots must set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written or electronic ballots shall state the number of responses needed to satisfy any applicable quorum requirement, the required percentage of votes needed for approval, and the period during which the Association will accept ballots for counting, which period shall end on the earliest of (i) the date on which the Association has received a sufficient number of approving ballots to pass the proposal, (ii) the date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage, or (iii) a date certain by which all ballots must be returned to be counted. Electronic ballots include any ballots given by electronic mail, facsimile transmission, posting on a website or other means of electronic communication approved by the Board. Approval by written or electronic ballots shall be valid only when the number of votes cast by written or electronic ballot equals or exceeds any quorum required to be present if a meeting was held to authorize the action and the number of approvals equals or exceeds the number of votes required to approve the matter if a meeting was held to authorize the action. A written ballot may not be revoked. Notwithstanding the foregoing, action by written or electronic ballot may not substitute for: (i) the Turnover Meeting; (ii) the annual meeting of the Members; (iii) a meeting of the Members if the agenda includes a proposal to remove a Director; or (iv) a special meeting of the Members called at the request of the Members under ORS 94.650(2).

## 5. BOARD OF DIRECTORS

5.1 General. The affairs of the Association shall be managed by the Board, which shall be comprised of the number of Directors specified in Section 5.2 below. The Board shall have all requisite power, duty and authority to perform its obligations under the Declaration, the Articles, these Bylaws, the Nonprofit Corporation Act and the Planned Community Act, including, without limitation, the power, duty, and authority to enforce the provisions of the Declaration and these Bylaws and to acquire and pay for, out of the funds received from the collection of Assessments pursuant to the Declaration, all goods and services necessary or appropriate for the proper functioning of the Association in accordance with the Declaration and these Bylaws. In performing its duties, the Board shall be governed by ORS 94.640 and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377.

5.2 Number and Qualification. The Board shall consist of three (3) to five (5) Directors prior to the Turnover Meeting and three (3) Directors after the Turnover Meeting. All Directors must be individuals. The Directors need not be Members prior to the Turnover Meeting, but shall be Members after the Turnover Meeting; provided, however, if a corporation, limited liability company, partnership or trust owns a Homesite or an interest in an entity that owns a Homesite, then an officer, employee or agent of the corporation, member, manager, employee or agent of the limited liability company, partner, employee or agent of the partnership or trustee of the trust, as applicable, may serve as a Director. Additionally, an executor, administrator, guardian, conservator or other individual appointed by a court to serve in a fiduciary capacity for a Member, or an officer or employee of an entity if the appointee is an entity, may serve as a Director. Prior to election to the Board, any individual wishing to serve on the Board in the capacity as a representative or fiduciary of a Member pursuant to this Section 5.2 shall provide the Board with documentation

satisfactory to the Board that the individual is qualified to represent the Member in compliance with the requirements of this Section 5.2. An individual serving on the Board as a representative or fiduciary of a Member in accordance with this Section 5.2 shall be disqualified from serving as a Director and his or her seat on the Board shall automatically be vacated if the individual no longer meets the requirements set forth in this Section 5.2.

5.3 Election of Directors. Prior to the Turnover Meeting, Declarant shall appoint all Directors, and may remove and replace any Director, with or without cause. At the Turnover Meeting, the Members shall elect two (2) Directors for a term of two (2) years and one (1) Director for a term of one (1) year. The Directors receiving the two (2) highest vote totals shall serve the two (2) year terms. Thereafter, at each annual meeting of the Members, the Members shall elect a number of Directors equal to the number whose terms are then expiring, each to serve a term of two (2) years. In voting for Directors, Members shall have the votes specified in Section 3.2 above. Voting for Directors shall not be cumulative. A Director may serve more than one (1) term.

5.4 Resignation. A Director may resign at any time by sending a written notice of resignation to the Secretary. Unless otherwise specified in the resignation notice, a resignation shall take effect upon receipt of the notice by the Secretary.

5.5 Removal. Any Director, other than a Director appointed by Declarant, may be removed, with or without cause, by the affirmative majority vote of the Members present and entitled to vote at any meeting of the Members at which a quorum is present. No removal of a Director is effective unless the matter of removal is included in the notice of the meeting. At such meeting, the Members shall elect a replacement Director to serve the remainder of the removed Director's term.

5.6 Vacancies. Vacancies on the Board caused by the death, resignation, or disqualification of a Director shall be filled by the affirmative majority vote of the remaining Directors, even if they constitute less than a quorum. Any Director so elected shall serve the remainder of the replaced Director's term. Vacancies on the Board caused by the removal of a Director pursuant to Section 5.5 above shall be filled in accordance with the procedures set forth in Section 5.5 above.

5.7 Meetings of the Board.

5.7.1 The initial meeting of the Board shall occur within ninety (90) days after the date the Articles of the Association are filed. Thereafter, the Board shall meet at least annually, within thirty (30) days after each annual meeting of the Members.

5.7.2 Special meetings of the Board may be called at any time by the President or two (2) Directors. Such meetings shall be scheduled by the Secretary within thirty (30) days after the Secretary's receipt of a written request signed by the President or at least two (2) Directors; provided that if the purpose of a special meeting is to elect a successor Secretary or to consider removal of the Secretary, then such meeting may be scheduled by the President or, if the meeting is also for the purpose of electing a successor President or removing the President, any other Director.

5.7.3 Meetings of the Board shall be held at the principal office of the Association or such other place within Deschutes County, Oregon, as may be designated from time to time by the Board.

5.7.4 The Secretary shall give notice to each Director orally, or delivered in writing personally, by mail or to the extent permitted by the Planned Community Act, by electronic mail, facsimile or other form of electronic communication acceptable to the Board at least twenty-four (24) hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or sent electronically not less than seventy-two (72) hours before the meeting. If mailed, the notice shall be directed to the address shown on the Association's records or to the Director's actual address ascertained by the person giving the notice. Such notice need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting except when a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Notwithstanding the foregoing, emergency meetings of the Board may be held without notice if the reason of the emergency is stated in the minutes of the meeting.

5.7.5 All meetings of the Board shall be open to the Members, except that at the discretion of the Board, the following matters may be considered in executive session, as provided by law: (a) consultation with legal counsel; (b) personnel matters, including salary negotiations and employee discipline; (c) the negotiation of contracts with third parties; and (d) collection of unpaid Assessments. Except in an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the President shall state the general nature of the action to be considered and when and under what circumstances the deliberations can be disclosed to the Members. The statement, motion, or decision to meet in executive session must be included in the minutes of the meeting. A contract or action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in an open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

5.7.6 Meetings of the Board may be conducted by telephonic communication or by other means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the Homesites are principal residences of the Occupants, then: (i) for other than emergency meetings, notice of each Board meeting shall be posted at a place or places on the Property at least three (3) days prior to the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Owners of such meeting; and (ii) only emergency meetings of the Board may be conducted by telephonic communication or such other means. The meeting and notice requirements of this section may not be circumvented by chance or social meetings or by any other means.

5.7.7 The presence in person of a majority of the Directors shall constitute a quorum for voting at a Board meeting. The Board shall have the power to adjourn a meeting even if less than a quorum is present. Each Director shall have one vote. So long as a quorum is constituted, the vote of a majority of the Directors present at the meeting shall be a binding vote of the Board for all purposes, unless a greater percentage is required by law, these Bylaws or the Declaration. A Director who is present at a meeting of the Board at which action is taken on any Association matter is presumed to have assented to the action unless the Director votes against the action or abstains from voting on the action because the Director claims a conflict of interest. When action is taken on any matter at a meeting of the Board, the vote or abstention of each Director present shall be recorded in the minutes of the meeting. The Directors may not vote by proxy or by secret ballot at Board meetings, except that the Directors may elect Officers by secret ballot.

5.8 Action Without A Meeting. Any action which applicable law, the Declaration or these Bylaws permit the Board to take at a meeting may be taken without a meeting if a written consent setting forth the action so taken is signed by all of the Directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the Board, shall be filed in the records of the Association.

5.9 Compensation. No Director shall receive compensation for any service rendered to the Association. However, a Director may be reimbursed for the Director's actual expenses incurred in the performance of his or her duties.

## 6. OFFICERS

6.1 Enumeration and Qualifications. The Officers shall be the President, the Treasurer, and the Secretary, each of whom shall be elected by the Board. The Board may designate such additional Officers as it deems appropriate. All Officers must be individuals. The President shall be a member of the Board, but other Officers need not be members of the Board. Any two offices, except the offices of President and Secretary, may be held by the same person.

6.2 Election and Term of Office. The Officers shall be elected annually by the Board and shall hold office at the pleasure of the Board and until their successors are elected and qualified. If any office becomes vacant, the Board shall elect a successor to fulfill the unexpired term at a special meeting of the Board called for such purpose.

6.3 Removal. The Board may remove any Officer, at any time, with or without cause, and a successor may be elected at a special meeting of the Board called for such purpose.

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

6.5 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Board and shall have all of the general powers and duties normally incident to the office of the chief executive officer of a corporation. The President shall perform all of such duties at the expense of the Association.

6.6 Secretary. The Secretary shall keep the minutes of all proceedings of the Board and all other Association records and shall attend to the giving of all notices to the Board and Members and any other notices pursuant to these Bylaws or the Declaration or required by law. If there are no Vice Presidents, then in the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary. The Secretary shall perform all other duties incident to the office of secretary of a corporation or as may be directed by the Board. The Secretary shall perform all of such duties at the expense of the Association.

6.7 Treasurer. The Treasurer shall be responsible for Association funds and shall keep full and accurate financial records and books of account sufficient for proper accounting purposes showing all receipts and disbursements necessary for the preparation of all financial data and tax returns. The Treasurer shall be responsible for the deposit of all Association funds in such depositories as may from time to time be designated by the Board, and shall disburse Association funds for such purposes as may be permitted under

these Bylaws or the Declaration. The Treasurer shall perform all other duties incident to the office of the Treasurer of a corporation or as may be directed by the Board. The Treasurer shall perform all such duties at the expense of the Association.

7. SHARES OF STOCK AND DIVIDENDS PROHIBITED

The Association shall not have or issue shares of stock. No dividends shall be paid and no part of the income of the Association shall be distributed to its Directors or Officers, or to the Owners. The Association may pay compensation in a reasonable amount to its Officers for services rendered as provided by the Articles, the Declaration, other provisions of these Bylaws, or Board resolution.

8. LOANS TO DIRECTORS AND OFFICERS PROHIBITED

8.1 No Loans to Directors or Officers. No loan shall be made by the Association to its Directors or Officers. The Directors who vote for or assent to the making of a loan to a Director or Officer and any Officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

8.2 Contribution; Subrogation. Any Director against whom a claim is asserted under or pursuant to this Section 8 shall be entitled to contribution from the other Directors who voted for the action upon which the claim is asserted. To the extent that any Director is required to pay such claim, he or she shall be subrogated to the rights of the Association against the debtor on the loan.

9. CONTRACTS, CHECKS, DEPOSITS AND FUNDS

9.1 Contracts. The Board may authorize any Officer or agent of the Association, in addition to the Officers so authorized in these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances. Among other things, such contracts may provide for the employment of personnel necessary for the maintenance, upkeep, and repair of the Common Maintenance Areas. Notwithstanding the foregoing, no management agreement, service contract or employment contract made by or on behalf of the Association prior to the Turnover Meeting shall be for a term in excess of three (3) years, and any such agreement shall be terminable without penalty to the Association upon not less than thirty (30) days' written notice to the other party thereto given by the Board not later than sixty (60) days after the Turnover Meeting.

9.2 Checks, Drafts, Etc. All checks, payment vouchers, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association (including checks or vouchers for the payment of the Common Expenses), shall be signed by such Officers or agents of the Association and in such manner as shall from time to time be determined by the Board.

9.3 Deposits. Keep all funds received by the Association as Assessments, other than reserves described in the Declaration, in the Operations Fund and keep all reserves collected pursuant to the Declaration in the Reserve Fund and use such funds only for the purposes described in the Declaration. All Assessments shall be deposited in the name of the Association in such banks, trust companies, or other depositories as the Board may select.

## 10. COMMITTEES

The Board may appoint such temporary or standing committees as deemed appropriate in carrying out its purposes. Such committees shall hold office at the pleasure of the Board.

## 11. ASSOCIATION BOOKS AND RECORDS; FINANCIAL MATTERS

11.1 General. The Association shall keep accurate and complete books and records of its activities and accounts as required by the Planned Community Act and shall also keep minutes of the proceedings of the Board and shall keep at its registered or principal office a record of the names and addresses of the Members and Directors. All books and records of the Association (except for those items which are exempt from disclosure under ORS 94.670) may be inspected by any Member, or his or her agent or attorney, for any proper purpose at any reasonable time. Without limiting the generality of the foregoing, the Association shall maintain a copy, suitable for duplication, of the following: (a) the Declaration, these Bylaws, the Articles and any rules and regulations adopted by the Board; (b) the most recent financial statement of the Association prepared in accordance with Section 11.2 below; (c) the current operating budget of the Association; and (d) the reserve study for the Association (if any). The Board may adopt reasonable rules regarding the frequency, time, location, notice and manner of inspection and duplication of the Association's records and the imposition of a reasonable fee for furnishing copies of any documents. The fee may include reasonable personnel costs for furnishing such copies.

11.2 Financial Statements. Within ninety (90) days after the end of each fiscal year, the Board shall distribute to each Owner and, upon request, any mortgagee of a Homesite, a copy of the annual financial statement of the Association, consisting of a balance sheet and income and expense statement for the preceding fiscal year. Additionally, if the annual assessments of the Association exceed Seventy-Five Thousand Dollars (\$75,000) for the year (or such other thresholds as may be established by Oregon law from time to time), then the Board shall cause the financial statements to be reviewed within one hundred eighty (180) days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, *provided, however*, the Board need not cause such a review to be performed if so directed by an affirmative vote of at least sixty percent (60%) of the Members, not including votes of Declarant with respect to Homesites owned by Declarant. If the annual assessments of the Association are Seventy-Five Thousand Dollars (\$75,000) or less (or such other thresholds as may be established by Oregon law from time to time), then the Board shall cause such review to be performed within one hundred eighty (180) days after receipt of a petition requesting such review signed by at least a majority of the Members. The terms of this Section 11.2 are intended to comply with the requirements of ORS 94.670, as the same may be amended and/or supplemented from time to time, and all other applicable Oregon laws and shall be deemed modified, as applicable, to comply therewith.

11.3 Tax Returns. The Board shall cause to be filed the necessary income tax returns for the Association.

11.4 Fiscal Year. The Association's fiscal year shall commence January 1 and shall end on December 31.

## 12. INSURANCE

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

12.1.1 Property Damage Insurance.

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

(b) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the Improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible.

(c) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association.

12.1.2 Liability Insurance.

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

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

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

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

12.1.4 Fidelity Insurance.

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



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

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

12.1.5 Insurance by Homesite Owners. Each Owner shall be responsible for obtaining, at his or her own expense, homeowner's insurance covering the Improvements on the Owner's Homesite and liability resulting from use or ownership of the Homesite, unless the Association agrees otherwise. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained under this section by the Owners.

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

### 13. TRANSFER OF CONTROL; TURNOVER MEETING

On a date that is not later than ninety (90) days after the Conversion Date, Declarant shall call the Turnover Meeting. Declarant shall give notice of the Turnover Meeting to each Member in accordance with Section 4.4 above. The notice shall state the purpose of the meeting, which shall be the relinquishment by Declarant of control of the administration of the Association, and the time and place at which the meeting is to be held. If Declarant does not call the Turnover Meeting within the specified time, then any Member may call the Turnover Meeting and give the required notice. At the Turnover Meeting: (i) Declarant shall relinquish control of the administration of the Association and the Members shall assume the control thereof; (ii) the Directors and Officers of the Association then serving shall resign and the Members shall elect Directors who shall then elect Officers in accordance with these Bylaws; and (iii) Declarant shall deliver to the Association all of the items set forth in ORS 94.616(3). During the three (3) month period following the Turnover Meeting, Declarant or its representative shall be available to meet with the Board on at least three (3) mutually acceptable dates as provided under ORS 94.616(4).

### 14. RULES AND REGULATIONS

The Board shall have power to adopt and publish rules and regulations governing the conduct of persons and the operation and use of the Homesites and the Common Areas as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property and to establish penalties for the infraction thereof. Upon adopting any such rules and regulations, the Board shall cause copies thereof to be delivered to each Owner in accordance with the notice provisions set forth in Section 17.1 below. All rules and regulations adopted by the Board shall become binding on all Members and on all occupants of the Homesites upon the date of delivery. Any rule or regulation which conflicts with these Bylaws or the Declaration shall be null and void.

### 15. MAINTENANCE AND MANAGEMENT

The Association shall have the maintenance and management responsibilities set forth in the Declaration and these Bylaws. Costs and expenses incurred by the Association in discharging its responsibilities shall be paid in the manner described in Section 9.2 of these Bylaws.

## 16. ASSESSMENTS

16.1 Generally. All Homesites shall be subject to assessment in accordance with the provisions of the Declaration. From time to time, and at least annually, the Board shall prepare a budget for the Association, estimating the Common Expenses expected to be incurred with adequate allowance for reserves based upon the reserve study required by the Declaration, and determine whether the Annual Assessment should be increased or decreased. Subject to amendment by the Board, the Association shall give written notice to each Member as to the amount of the Annual Assessments with respect to each Homesite on or before December 15 of each year for the calendar year commencing January 1 of the next year. If the Board fails to adopt a budget, the last adopted annual budget shall continue in effect. Annual Assessments shall be due and payable on a monthly, quarterly or annual basis as determined by the Board.

16.2 Request for Assessments Due. The Association shall provide, within ten (10) business days of receipt of a written request from a Member, a written statement that provides: (i) the amount of Assessments due from the Member and unpaid at the time the request was received, such as Annual, Special and Individual Assessments, fines, accrued interest, late payment charges and other charges; (ii) the percentage rate at which interest accrues on unpaid Assessments; and (iii) the percentage rate or fixed charge for late payments. The Association is not required to provide a statement of outstanding Assessments if the Association has commenced litigation by filing a complaint against the Member and the litigation is pending when the statement would otherwise be due.

## 17. NOTICES

17.1 Notices. Unless another form of notice is specifically permitted in these Bylaws or under the Planned Community Act, all notices given hereunder shall be delivered by: (i) messenger service (or hand delivery); (ii) overnight courier service; (iii) regular U.S. Mail; or (iv) electronic mail, facsimile transmission or any other form of electronic communication acceptable to the Board and permissible under the Planned Community Act. Notices delivered by messenger service (or hand delivery), overnight courier service or regular U.S. Mail shall be sent to the mailing address last appearing on the books of the Association. Notices delivered by facsimile or email shall be sent to the email address or facsimile number last appearing on the books of the Association. Notwithstanding the foregoing, electronic mail, facsimile or other form of electronic communication may not be used to give notice of: (i) failure to pay an Assessment; (ii) foreclosure of an Association lien under ORS 94.709; or (iii) an action the Association may take against a Member. Additionally, a Member may decline to receive notice by electronic mail, facsimile or other form of electronic communication by giving written notice thereof to the Board. Notices shall be deemed given on the date the notices are sent in accordance with the procedures outlined herein.

17.2 Waiver. Whenever any notice is required to be given under the provisions of the Articles, the Declaration, these Bylaws or any applicable law or statute, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

18. AMENDMENTS TO BYLAWS

These Bylaws may be amended or repealed and new bylaws may be adopted by a majority of the Directors present at any regular meeting or at any special meeting, if at least three (3) days' written notice is given of intention to amend or repeal and adopt new bylaws at such meeting accompanied by a copy or summary of the amendment; provided, however, that the Board shall have no authority to amend or repeal any provision of these Bylaws relating to the election, qualifications, powers, duties or terms of Directors without the approval of the Owners given at a special meeting called for such purpose; and provided, further, that all such amendments shall be consistent with the provisions of the Declaration. Additionally, for a period of ten (10) years following the Turnover Meeting any amendment to these Bylaws shall require the prior written consent of Declarant and Declarant may also unilaterally amend these Bylaws prior to the Turnover Meeting as permitted under ORS 94.585. An amendment is not effective unless it is certified by the President and Secretary of the Association as having been adopted in accordance with these Bylaws and ORS 94.625, acknowledged in the manner provided for acknowledgment of deeds and recorded in the official records of Deschutes County, Oregon.

19. CONFLICTS

These Bylaws are intended to comply with applicable law and the Declaration. In case of any irreconcilable conflict, applicable law and the Declaration shall control over these Bylaws, any amendments hereto and any rules or regulations adopted hereunder.

*(Signatures on the following page)*

IN WITNESS WHEREOF, Declarant has adopted these Bylaws on behalf of the Association effective as of this 28TH day of October, 2016.

DECLARANT:

THE TREE FARM, LLC  
an Oregon limited liability company

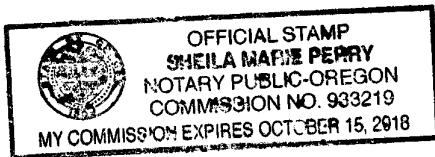
By West Bend Property Company II LLC,  
Managing Member

By Brooks Resources Corporation  
Its Managing Member

By: [Signature]  
Kirk Schueler  
Its President

STATE OF Oregon )  
County of Deschutes ) ss.

The foregoing instrument was acknowledged before me on this 28 day of October 2016, by Kirk Schueler, the president of Brooks Resources Corporation, the managing member of West Bend property Company II LLC, the managing member of The Tree Farm, LLC, an Oregon limited liability company, on behalf of the company.



[Signature]  
Notary Public for Oregon  
My Commission Expires: 10-15-18