

Exhibit M:
Draft Collina at Springbrook CC&Rs

AFTER RECORDING, RETURN TO:

Collina Homeowners Association
c/o Crystal Lake Community Management, Inc.
P.O. Box 8550
Bend, OR 97708

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
COLLINA AT SPRINGBROOK**

(Plat of Collina at Springbrook)

Yamhill County, Oregon

By:

Pahlisch Homes at Springbrook, LP

TABLE OF CONTENTS

	<u>Page</u>
Article 1 Definitions	1
1.1 “Accessory Dwelling Unit”	1
1.2 “Architectural Review Committee” or “The Committee”	1
1.3 “Articles of Incorporation”	1
1.4 “Assessments”	1
1.5 “Association”	2
1.6 “Board of Directors” or “the Board”	2
1.7 “Bylaws”	2
1.8 “Common Areas”	2
1.9 “Common Easement Areas”	2
1.10 “Common Maintenance Areas”	2
1.11 “Declarant”	2
1.12 “Design Guidelines”	2
1.13 “Emergency Assessments”	2
1.14 “Front Yard”	2
1.15 “General Assessments”	2
1.16 “General Common Areas”	2
1.17 “Governmental Authority”	2
1.18 “Improvement”	2
1.19 “Individual Assessments”	3
1.20 “Limited Common Areas”	3
1.21 “Limited Common Area Assessments”	3
1.22 “Living Unit”	3
1.23 “Lot”	3
1.24 “Collina”	3
1.29 “Mortgage”	3
1.30 “Occupant”	3
1.31 “Owner”	3
1.32 “Person”	3
1.33 “Plat”	3
1.34 “Property”	3
1.35 “Rules and Regulations”	3
1.36 “Sold”	4
1.37 “Special Assessments”	4
1.38 “this Declaration”	4
1.39 “Turnover Meeting”	4
Article 2 Property Subject To This Declaration	4
2.1 Property	4
2.2 Improvements	4
2.3 Withdrawal of Property	4
2.4 Subdivisions	5
2.5 Consolidations	5

2.6	Dedications.	5
Article 3	Land Classifications.....	5
3.1	Land Classifications within the Property.....	5
3.2	Conversion of Lots to Common Areas.	6
3.3	Condominium Conversions.	6
3.4	Re-Zoning and Other Governmental Actions.....	6
Article 4	Property Rights In Common Areas.....	6
4.1	Owners Easements of Enjoyment.	6
4.2	Common Easement Areas.....	6
4.3	Title to Common Areas.....	6
4.4	Extent of Owners' Rights.....	7
4.5	Delegation of Use.	9
4.6	Easements Reserved by Declarant.....	9
4.7	Easement to Serve Other Property.....	9
4.8	Future Development.....	9
4.9	Limited Common Areas.....	10
Article 5	Property Rights In Lots.....	10
5.1	Use and Occupancy.....	10
5.2	Easements Reserved.....	10
5.3	Future Easements.....	12
Article 6	General Use Restrictions	12
6.1	Structures Permitted.....	12
6.2	Residential Use.	12
6.3	Leasing and Rental of Living Units.....	13
6.4	Offensive or Unlawful Activities.....	13
6.5	Animals.	13
6.6	Maintenance of Improvements on Lots.	13
6.7	Recreational and Commercial Vehicles.....	14
6.8	Vehicles in Disrepair.....	14
6.9	Noisy and Hazardous Vehicles.	14
6.10	Parking.	14
6.11	Signs.....	14
6.12	Rubbish and Trash.	15
6.13	Maintenance of Landscaping.	15
6.14	Installation of Landscaping.....	15
6.15	Temporary Structures.....	15
6.16	Fences and Hedges.....	16
6.17	Service Facilities.	16
6.18	Outside Furniture and Hot Tubs.	16
6.19	Window Coverings.	16
6.20	Air Conditioning Units.	16
6.21	Firearms and Fireworks; Fire Pits.....	16
6.22	Nonbiodegradable Substances.	16

6.23	Antennas and Satellite Dishes.....	16
6.24	Exterior Lighting or Noisemaking Devices; Yard Ornaments.	17
6.25	Pest Control.....	17
6.26	Grades, Slopes and Drainage.	17
6.27	Building Materials.	17
6.28	Subdividing and Partitioning Lots.	17
6.29	Completion of Improvements.	17
6.30	Association Rules and Regulations.....	18
Article 7 Architectural Committee.....		18
7.1	Architectural Review.	18
7.2	Committee Decision.....	18
7.3	Committee Discretion.	19
7.4	Membership: Appointment and Removal.....	19
7.5	Majority Action.....	19
7.6	Design Guidelines.	19
7.7	Liability.....	20
7.8	Nonwaiver.....	20
7.9	Appeal.	20
7.10	Effective Period of Consent.....	20
7.11	Estoppel Certificate.....	20
7.12	Enforcement.....	21
Article 8 Association.....		21
8.1	Organization.....	21
8.2	Membership.	21
8.3	Voting Rights.....	21
8.4	General Powers and Obligations.....	22
8.5	Specific Powers and Duties.	22
8.6	Liability.....	24
8.7	Interim Board; Turnover Meeting.....	24
8.8	Contracts Entered into by Declarant or Prior to Turnover Meeting.	24
8.9	Bylaws.....	24
Article 9 Maintenance, Utilities And Services		24
9.1	Association Maintenance of Common Areas.	24
9.2	Owner’s Responsibility.....	25
9.3	Maintenance of Utilities.....	25
9.4	Association Front Yard Landscaping Maintenance.....	25
9.5	Limited Common Areas.....	26
9.6	Boundary Fences.....	26
9.7	Security.	26
9.8	Services.....	26
9.9	Damage or Destruction by Casualty to Common Areas.	26
9.10	Owner Liability for Damage.....	27
Article 10 Assessments		27

10.1	Purpose of Assessments.....	27
10.2	Types and Allocation of Assessments.	27
10.3	Commencement of Assessments.....	27
10.4	General Assessments.	28
10.5	Special Assessments.	28
10.6	Emergency Assessments.....	28
10.7	Limited Common Area Assessments.....	29
10.8	Individual Assessments.....	29
10.9	Operations Fund.....	29
10.10	Reserve Fund.	30
10.11	Creation of Lien and Personal Obligation of Assessments.....	31
10.12	Voluntary Conveyance.....	31
Article 11 Enforcement.....		31
11.1	Violation of General Protective Covenants.	31
11.2	Default in Payment of Assessments; Enforcement of Lien.	32
11.3	Reports to First Mortgagees.....	32
11.4	Subordination of Lien to Mortgages.	32
11.5	Interest, Late Charges and Expenses.	33
11.6	Costs and Attorneys' Fees.	33
11.7	Nonexclusiveness and Accumulation of Remedies.	33
11.8	Enforcement by City of Newberg.	33
Article 12 Dispute Resolution.....		33
12.1	Mediation.	33
12.2	Arbitration.....	34
12.3	Selection of Arbitrator.	34
12.4	Consolidated Arbitration.....	35
12.5	Discovery.	35
12.6	Evidence.....	35
12.7	Excluded Matters.	35
12.8	Costs and Attorneys' Fees.	35
12.9	Survival.	35
Article 13 Mortgages		35
13.1	Reimbursement of First Mortgages.	35
13.2	Right of First Mortgagees Relating to Maintenance.....	36
Article 14 Amendment and Repeal.....		36
14.1	How Proposed.....	36
14.2	Approval Required.....	36
14.3	Recordation.	36
14.4	Regulatory Amendments.	36
Article 15 Miscellaneous Provisions		37
15.1	Lessees and Other Invitees.....	37
15.2	Nonwaiver.....	37

15.3	Construction; Severability; Number; Captions.....	37
15.4	Notices and Other Documents.....	37

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR COLLINA**

THIS DECLARATION is made this ____ day of November 2022 by **Pahlisch Homes at Springbrook, LP**, an Oregon limited liability company.

RECITALS

A. **PAHLISCH HOMES AT SPRINGBROOK, LP** (“**Declarant**”) owns all the real property in the plat of COLLINA AT SPRINGBROOK, which is located within the City of Newberg, Yamhill County , Oregon.

B. Declarant, desires to subject a portion of such property as described in Article 2 below to the conditions, restrictions and charges set forth in this instrument for the benefit of such property, and its present and subsequent owners, and to establish such property under the Oregon Planned Community Act, ORS 94.550 to 94.783 (as the same may be amended or added to in the future, the “**Planned Community Act**”), as a Class I planned development to be known as “**Collina.**”

NOW, THEREFORE, Declarant, hereby establishes the easements described herein and declares that the property described in Section 2.1 below will be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, and each such declarant, as to the real property owned by each such declarant, and does hereby grant the easements set forth in this Declaration that are located on, over and through the real property owned by Declarant, runs with such property and is binding upon all parties having or acquiring any right, title, or interest in such property or any part thereof and inures to the benefit of each owner thereof.

**Article 1
DEFINITIONS**

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

1.1 “**Accessory Dwelling Unit**” means a portion of a Living Unit capable of being occupied as a separate residence and which includes its own kitchen and bath facilities.

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

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

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

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

1.6 “**Board of Directors**” or “**the Board**” means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Owners will elect the Board of Directors.

1.7 “**Bylaws**” means the duly adopted bylaws of the Association recorded the same day as this Declaration, as the same may hereafter be amended or replaced.

1.8 “**Common Areas**” means those General and Limited Common Area tracts designated as such on the Plat of the Property or in this Declaration, including any Improvements thereon, and also includes Common Easement Areas, and any Lots converted to Common Areas as provided in Section 3.2 below.

1.9 “**Common Easement Areas**” means those easements established for the benefit of all property within Collina pursuant to this Declaration or the plat of Collina at Springbrook.

1.10 “**Common Maintenance Areas**” means the Common Areas and any other areas designated as such in Section 9.1 of this Declaration as being maintained by the Association.

1.11 “**Declarant**” means Pahlisch Homes at Springbrook, LP

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

1.13 “**Emergency Assessments**” means the Assessments described in Section 10.6.

1.14 “**Front Yard**” means the area between the predominant wall plane of the Living Unit facing toward any street and the adjacent street, including any side yard adjoining the street. The Front Yard also includes any portion of the street right of way between the curb and the Lot line and the landscaping and trees located in that area. The Front Yard also includes the strip of land abutting an alley for homes on alleys.

1.15 “**General Assessments**” means the Assessments described in Section 10.4.

1.16 “**General Common Areas**” means those tracts or areas designated as such on the Plat of the Property, which the Association owns or will own or maintain.

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

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

- 1.19 “**Individual Assessments**” means the Assessments described in Section 10.8.
- 1.20 “**Limited Common Areas**” means those Common Areas established for the exclusive use or enjoyment of certain Lots as designated in this Declaration or any declaration annexing property to Collina.
- 1.21 “**Limited Common Area Assessments**” means those Assessments as described in Section 10.7.
- 1.22 “**Living Unit**” means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, together with any permitted Accessory Dwelling Unit.
- 1.23 “**Lot**” means a platted lot, partitioned parcel, or condominium unit within the Property, with the exception of any lot marked on a plat of the Property as being common or open space or so designated in this Declaration or an annexation declaration annexing such property to Collina. Lots do not include Common Areas or common tracts that the Plat or this Declaration indicates will be owned and maintained by the Association.
- 1.24 “**Collina**” means the Property described in Section 2.1.
- 1.29 “**Mortgage**” means a mortgage or a trust deed; “**mortgagee**” means a mortgagee or a beneficiary of a trust deed; and “**mortgagor**” means a mortgagor or a grantor of a trust deed.
- 1.30 “**Occupant**” means the occupant of a Living Unit who is the Owner, lessee or any other Person authorized by the Owner to occupy the Living Unit.
- 1.31 “**Owner**” means the person or persons, including Declarant, owning any Lot in the Property including the holder of a life estate, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. If a Lot is Sold under a recorded real estate installment sale contract, the purchaser (rather than the seller) will be considered the Owner unless the contract specifically provides to the contrary. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership does not discharge an Owner from obligations incurred prior to termination.
- 1.32 “**Person**” means a human being, a corporation, partnership, limited liability company, trustee, or other legal entity.
- 1.33 “**Plat**” means the plat of Collina recorded of even date with this Declaration.
- 1.34 “**Property**” means the real property referred to in Section 2.1 below, also referred to as “Collina.”
- 1.35 “**Rules and Regulations**” means the rules and regulations duly adopted by the Board of Directors pursuant to Section 6.31.

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

1.37 “**Special Assessments**” means the Assessments described in Section 10.5.

1.38 “**this Declaration**” means all of the easements, covenants, restrictions and charges set forth in this instrument as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.39 “**Turnover Meeting**” means the meeting called by Declarant pursuant to Section 8.7 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Property.** Declarant hereby declares that all of the real property described below is owned and will be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration and Declarant hereby establishes all of the easements over and benefitting the Initial Property that are set forth in this Declaration:

Lots 1 through 392 inclusive within that certain plat entitled “Collina at Springbrook” filed in the plat records of Yamhill County , Oregon, on _____, 2022, Recording number XXXX – XXXXX.

(a) There is no limitation on the number of Living Units, that Declarant may construct in Collina, except as may be established by applicable ordinances of the City of Newberg.

(b) Declarant does not have any obligation to build any specific future Improvements on the Property, but nothing in this Declaration limits its right to add additional Improvements. Nothing in this Declaration will establish any duty or obligation on Declarant to annex any property to this Declaration, and no owner of property excluded from this Declaration will have any right to have any such property annexed to this Declaration or Collina.

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

2.3 **Withdrawal of Property.** Declarant may withdraw property it owns from Collina only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Property at any time prior to the sale of the first Lot in the respective plat of the Initial Development, subject to the prior approval of the City of Newberg. Such withdrawal will be by a declaration executed by Declarant and recorded in the deed records of Yamhill County , Oregon. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn will also be eliminated, and the common expenses will be reallocated as provided in Section

10.9 below. Such right of withdrawal will not expire except upon sale of the first Lot within the Property as described above.

2.4 **Subdivisions.** Declarant hereby reserves the right to subdivide any Lots then owned by it upon receiving all required approvals from City of Newberg. If any two or more Lots are so subdivided, they will be deemed separate Lots for the purposes of allocating Assessments under this Declaration. No other Owner of any Lot in the Property may subdivide any Lot without the prior written approval of the Declarant during the Development Period and thereafter by the Board of Directors, which consent may be granted or denied at the sole discretion of the Declarant or the Committee, as applicable.

2.5 **Consolidations.** Declarant has the right to consolidate any two or more Lots then owned by it upon receipt of any required approvals from City of Newberg. No other Owner may consolidate any Lots without the prior written approval of the Declarant during the Development Period and thereafter by the Board of Directors, which may be granted or denied at the sole discretion of the Declarant or Committee, as applicable. An approved consolidation will be effected by the recording of a supplemental declaration stating that the affected Lots are consolidated, which declaration will be executed by the Owner(s) of the affected Lots and by the president of the Association. Once so consolidated, the consolidated Lot may not thereafter be partitioned, nor may the consolidation be revoked except as provided in Section 2.4. Any Lots consolidated pursuant to this section will be considered one Lot thereafter for the purposes of this Declaration, including voting rights and allocation of Assessments.

2.6 **Dedications.** Declarant has the right to dedicate any portions of the Property then owned by it respectively to any Governmental Authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as it may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space; recreational facilities; schools; fire, police, security, medical and similar services; and such other purposes as they and such Governmental Authority or quasi-governmental entity determine to be appropriate from time to time. Any consideration received by it because of such dedication or reason of any condemnation or any conveyance in lieu of condemnation will belong solely to Declarant.

Article 3 LAND CLASSIFICATIONS

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

(a) *Lots*, which consist of Lots 1 through 392, inclusive, of the plat of the Property.

(b) *Common Areas*, which are the areas designated as Tract(s) will be subject to various easements. (More details to come at Final Plat)

(c) *General Common Areas*, which are the areas designated as Tract(s) will be subject to various easements. (More details to come at Final Plat)

(d) *Limited Common Areas*, None in the initial plat of the Property.

(e) *Common Easement Areas*, as shown or noted on the Plat which include but may not be limited to the following: public utility easements; storm sewer, surface water drainage, detention easements; sidewalk easements; landscaping easements; private fence easements; R.O.W. maintenance easements; and no [road] access easements, as shown or noted on the plat of the initial Property.

3.2 **Conversion of Lots to Common Areas.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Yamhill County, Oregon. Declarant, as owner of the Lots being converted, will execute such declaration.

3.3 **Condominium Conversions.** Declarant reserves the right to convert any Living Units then owned by Declarant into a condominium or other form of ownership in any manner permitted by Oregon law and to otherwise create and terminate any condominium containing Living Units owned solely by Declarant.

3.4 **Re-Zoning and Other Governmental Actions.** Declarant reserves the right, from time to time, to petition for and obtain re-zonings of its property; exchanges of properties; amendments to the Master Plan; and such licenses, permits, and approvals from any Governmental Authority as Declarant may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Property.

Article 4 PROPERTY RIGHTS IN COMMON AREAS

4.1 **Owners Easements of Enjoyment.** Subject to provisions of this Section, every Owner and his invitees has a right and easement of enjoyment in and to the Common Areas, which easement is appurtenant to and passes with the title to every Lot. The use of any Limited Common Areas, however, is limited to the Owners and invitees of the Lots designated in the declaration establishing the Limited Common Area.

4.2 **Common Easement Areas.** Common Easement Areas are to be maintained by the Association and no changes in landscaping will be permitted within such areas without written authorization by the Architectural Review Committee. No building, wall, paving, or construction of any type may be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas, nor may any such areas be used by the Owner for storm water treatment purposes. No fence or landscaping may be erected or maintained by any Owner within a Common Easement Area without the prior written approval of the Architectural Review Committee

4.3 **Title to Common Areas.** Title to Tracts A, B and C will be conveyed to the Association by Declarant, respectively, AS IS but free and clear of monetary liens, before the Turnover Meeting. If Declarant erroneously conveys to the Association any property that is not Common Area, upon request the Association will promptly reconvey the property to Declarant or its designee. Title to Common Easement Areas, subject to the easements set forth in this Declaration, rests and will rest in the Owners of the respective Lots within which Common Easement Areas are located, or to the public if part of dedicated street rights of way.

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

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

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

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

(3) An easement for making repairs or replacements to any existing structures on Common Areas to carry out the Association's maintenance obligations as set forth herein.

(b) **Public and Utility Easements.** The Common Areas are subject to such public and utility easements that are established in the Plat. Declarant or the Association, may (and, to the extent required by law, must) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(c) **Use of the Common Areas.** The Common Areas may not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type may be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas are reserved for the use and enjoyment of all Owners and no private use by Owners or occupants of Lots may be made of the Common Areas, including Common Easement Areas, except as otherwise provided in this Declaration. No Owner may locate or cause to be located on the Common Areas any trash, fencing, structure, equipment, furniture, package or object of any kind. Nothing in this Article prevents the placing of a sign or signs by the Association upon the Common Areas identifying the Property or identifying pathways or items of interest, signs restricting certain uses or warning signs, provided such signs are approved by the Architectural Review Committee, are consistent with the City of Newberg Sign Code and meet vision clearance standards contained in the City of Newberg Land Development code. Lighting for the Common Areas must be shielded such that it does not shine on adjacent properties and must be consistent with the City of Newberg Community Development Code and the lighting plan approved by the City of Newberg. The Board of Directors of the Association has authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

(d) **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber as security for a debt, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the

holders of at least 80 percent of the Class A Association voting rights and the Class B member (as defined in Section 8.3 below), if any, have given their prior written approval and unless approved by the City of Newberg. Such approvals, however, are not required for dedications under Section 2.6. This provision does not apply to the easements described in Section 4.4(b) above. The Association, upon approval in writing of at least 50 percent of the Class A Member voting rights and the Class B Member, if any, and if approved by order or resolution of the City of Newberg, may dedicate or convey any portion of the Common Areas to a park district or other public body. Any sale, transfer, conveyance or encumbrance permitted by this Declaration may provide that the Common Areas may be released from the restrictions imposed by this Declaration if the ballot or vote for the approval of the action also includes approval of the release; given such inclusion, the effect of the release will be the same as withdrawal of such property from this Declaration.

(e) **Leases, Easements, Rights-of-Way, Licenses and Similar Interests and Vacations of Roadways.** Notwithstanding the provisions of Section 4.4(d), the Association may execute, acknowledge and deliver leases, easements, rights-of-way, licenses and other similar interests affecting the Common Areas and consent to vacation of roadways within and adjacent to the Common Areas, subject to the approvals required by ORS 94.665(4) and (5).

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

- (1) The provisions of this Declaration;
- (2) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;
- (3) Easements reserved or granted in this Declaration;
- (4) The Board's right to:
 - (A) adopt Rules and Regulations regulating use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;
 - (B) suspend the right of an Owner to use the Common Areas as provided in this Declaration
 - (C) dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration;
 - (D) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Areas;
 - (E) permit use of any recreational facilities situated on the Common Areas by Persons other than Owners, their families, lessees and guests with or without payment of use fees established by the Board;

(F) designate areas and facilities of Common Areas as Public Areas and;

(G) provide certain Owners the rights to the exclusive use of those portions of the Common Areas designated as Limited Common Areas.

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

4.6 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves and is hereby granted an easement over, under and across the Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots, including, without limitation, advertising and “For Sale” signs. In addition, Declarant hereby reserves to itself, in gross, a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights may be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner’s Lot by that Owner or the Owner’s family, tenants, employees, guests, or invitees.

4.7 **Easement to Serve Other Property.** Declarant reserves for itself and its duly authorized agents, successors, assigns and Mortgagees, and the developers of Improvements in Collina, a perpetual easement over the Common Areas for the purposes of enjoyment, use, access and development of the property subject to the Master Plan, even if such property is never made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction, utilities, water and sanitary sewer lines, communication lines, drainage facilities, irrigation systems and signs, and ingress and egress for the benefit of other portions of Collina and any property in the vicinity of the Property that is then-owned by Declarant, or an affiliate thereof. Declarant agrees that such users are responsible for any damage caused to the Common Areas as a result of their actions in connection with development of such property. If the easement is exercised for permanent use by such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, and their respective successors or assigns, will enter into a reasonable agreement with the Association to share the cost of any maintenance of such facilities. The allocation of costs in any such agreement will be based on the relative extent of use of such facilities.

4.8 **Future Development.** Owners of Lots in Collina by virtue of purchasing their Lot(s) consent to the Master Plan for Collina approved by the City of Newberg, as the same may be subsequently modified or amended by Declarant or otherwise. By adoption of the Master Plan and this Declaration, Declarant is not committing itself to take any action that this Declaration or the Bylaws does not make an obligation. Any Person who acquires property in Collina will have the advantage of any future development of Collina but does not have any legal right to insist that there be any future development of the Property or any claim against such declarants for failure to develop Collina.

4.9 **Limited Common Areas.**

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

(b) **Initial Designation.** Limited Common Areas may be designated as such in this Declaration, the instrument by which they are conveyed to the Association, but any such assignment will not preclude the Declarant as to the Lot(s) or portion(s) thereof it owns, from later assigning use of the same Limited Common Areas to additional Lots.

(c) **Subsequent Assignments.** Limited Common Areas may be converted to General Common Areas and Limited Common Areas may be reassigned for the benefit of different Lots and Owners upon (1) approval by the Board of Directors and (2) the vote of two-thirds of the voting rights of Lots to whom any of such Limited Common Areas are then assigned. Any such conversion or reassignment also requires the written consent of the declarant, or its successor, who annexed such Limited Common Area to Collina.

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

Article 5 PROPERTY RIGHTS IN LOTS

5.1 **Use and Occupancy.** The Owner of a Lot in the Property is entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, including but not limited to the restrictions contained in Article 6 below, and all other provisions of this Declaration.

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

(a) **Maintenance Easements.** The Owner of any Lot that includes a Common Maintenance Area, or adjoins or blends together visually with any Common Area, must if the Association so requires, permit the Association to enter upon the Lot to perform the maintenance of such Common Maintenance Area. The Association will also have an easement over the Front Yards of the Lots for access for installation, design, regular upkeep, maintenance, modification and replacement of the Front Yard landscaping and related irrigation equipment, including controllers, monitors, and drainage systems, if any. The Owner and occupant of each Lot is responsible for controlling the Owner's or occupant's pets, so they do not harm or otherwise disturb Persons performing such maintenance on behalf of the Association.

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

(c) **Right of Entry; Easements for Maintenance, Emergency and Enforcement.** Declarant, the Architectural Review Committee, and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for determining if the use and/or Improvements of such Lot are then in compliance with this Declaration, the Bylaws and the Rules and Regulations of the Association. No such entry may be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot. Upon request given to the Owner and any occupant, any Person authorized by the Association may enter a Lot to perform necessary maintenance, repair or replacement of any property for which the Association has maintenance, repair or replacement responsibility under this Declaration, to make emergency repairs to a Lot that are necessary for the public safety or to prevent damage to Common Areas or to another Lot or Living Unit, or to enforce this Declaration or the Rules and Regulations. Requests for entry must be made in advance and for a reasonable time, except in the case of any emergency, when the right of entry is immediate. An emergency entry does not constitute a trespass or otherwise create a right of action in the Owner of the Lot.

(d) **Utility Easements.** Easement for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat of the Property. Within such utility easements, no Owner may cause, nor the Architectural Review Committee will permit or approve, any proposed any structure, planting, or other material to be placed or to remain on the easement area that may damage or interfere with the installation or maintenance of utilities, or that may change the direction or flow of drainage channels in the easements, or that will limit or impede access to the utility and appurtenant equipment for repair, maintenance and replacement. The utility easement area of each Lot and all permitted Improvements in it will be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible, and except for Common Maintenance Areas, which will be maintained by the Association.

(e) **Irrigation Systems.** In some Lots irrigation systems for the Front Yards that are maintained by the Association may have a controller for the landscape irrigation system that is owned by the Association, notwithstanding that it is attached to the exterior walls of the Living Unit. The Association has an easement for the location of such controllers on the exterior of the Living Unit on such a Lot and an easement for access and use of the controller. The landscaping system owned by the Association on a Lot may utilize the Lot owner's water to irrigate the Lot's Front Yard and use power supply of that Living Unit for their operation. In each case the Association has an easement for such system, including access to the controller and the ability to use the Living Unit's water and power systems for such purposes. The Owner of the Living Unit must not disturb this system. Any additional irrigation the Owner wishes to supply for the Owner's side and rear yards on a Lot must be independent of the Association's system.

(f) **Construction on Adjoining Lot.** Declarant hereby reserves for the benefit of Declarant and its assigns a temporary easement over each Lot for access to the adjoining Lot for construction purposes, including temporary placement of ladders or scaffolding. Declarant will restore the Lot to its condition as it existed prior to such access and is responsible for any damage to the Lot.

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

(h) **Private Storm Drainage Easements.** Declarant grants reciprocal appurtenant PSDEs for the benefit of each pair of Lots over which such PSDE's are designated and established pursuant to the Plat.

5.3 **Future Easements.** Declarant reserves the nonexclusive 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 owned by Declarant. The location of any such easement will be subject to the written approval of the Owner of the burdened Lot, which approval will not unreasonably be withheld, delayed or conditioned.

Article 6

GENERAL USE RESTRICTIONS

6.1 **Structures Permitted.** No structures may be erected or permitted to remain on any Lot except structures containing Living Units and an Accessory Dwelling Unit if permitted by applicable governmental regulations, and structures normally accessory to a residential home, all of which must have been first approved by the Architectural Review Committee pursuant to Article 7. Structures normally accessory to a Living Unit include but are not limited to construction of a private greenhouse, storage unit, private swimming pool or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the applicable governmental regulations, is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee. Any construction of an Accessory Dwelling Unit or modification of a Living Unit to create an Accessory Dwelling Unit from a portion of an existing Living Unit must be approved by the Architectural Review Committee.

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

professional associates, clients, or customers, or (d) the right of the Owner of a Lot to maintain and operate an exempt family child care provider participating in the subsidy program under ORS 329A.250 to 329A.500) in his or her Living Unit to the extent allowed for home occupations by the local jurisdiction. The Board of Directors will not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable governmental ordinances.

6.3 Leasing and Rental of Living Units. No Owner may lease or rent his or her Living Unit for a period of less than 30 days. All leases or rentals must be by written lease agreement, which must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and Bylaws of the Association, and Rules and Regulations adopted by the Association thereunder, and that any failure by the lessee or tenant to comply with the terms of such documents will be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or Rules and Regulations, the Board may require the Owner to terminate such lease or rental agreement. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent his living unit.

6.4 Offensive or Unlawful Activities. No noxious or offensive activities will be carried out upon the Property, nor will anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to Owners or occupants. Occupants and Owners should use care about creating disturbances, making noises or using musical instruments, radios, televisions, amplifiers or audio equipment that may disturb other Occupants or Owners. No unlawful use may be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property must be observed. Owners and other occupants will not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at owner Owners, Occupants, guests, family members, invitees, or directed at the managing agent of the Association, its agents, employees, or vendors.

6.5 Animals. No animals, livestock or poultry of any kind may be raised, bred or kept or permitted within any Lot other than a reasonable number of ordinary household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. The Board of Directors has the authority to determine what is an “ordinary household pet.” Any hostile, overly aggressive, unrestrained or unattended barking dog, constitutes a nuisance. Any inconvenience, damage or unpleasantness caused by such pets is the responsibility of their respective owners. No animal is permitted to roam the Property unattended, and all dogs must be kept on a leash while outside a Lot. An Owner or Occupant may be required to remove a pet upon receipt of the third written notice from the Association Board of Directors of violations of any Rule or Regulation or restriction governing pets within the Property. Dog runs and doghouses must be fully screened or fenced from view from any other Lot and must not be visible from the street. The design and construction of such screening, enclosure or doghouse is subject to guidelines adopted by the Architectural Review Committee.

6.6 Maintenance of Improvements on Lots. Each Owner must maintain the Improvements on the Owner’s Lot, including but not limited to, exterior painting, staining, and repair, replacement and regular care for roofs, gutters, downspouts, exterior building surfaces, lights, perimeter fences and other exterior Improvements and glass surfaces, retaining walls, decks, porches,

walkways and driveways, and sidewalks over the Owner's Lot or between the street and the Owner's Lot, in a clean and attractive condition, in good repair to conform to the general standards of maintenance and care as determined by the Architectural Review Committee and in such fashion as not to create a fire or other hazard, including keep the Improvements and adjacent sidewalks reasonably free of leaves, ice, and snow. All repainting or re-staining, any change in type of roof or roof color and any exterior remodeling or changes are subject to prior review and approval by the Architectural Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism or other causes are likewise the responsibility of each Owner and must be restored within a reasonable period of time. Any change in appearance to a Living Unit or other Improvements on a Lot must first be approved by the Committee as set forth in Article 7.

6.7 Recreational and Commercial Vehicles. Except as may otherwise be provided in the Rules and Regulations of the Association, parking of boats, trailers, campers or other recreational or commercial vehicles or equipment, regardless of weight, and parking of any other vehicles with a gross vehicle weight in excess of 9,000 pounds is not allowed on any part of the Property or on public streets within the Property, except only within areas that may be designated for such purposes by the Board of Directors, or within the confines of an enclosed garage or screened area the plans for which must have been reviewed and approved by the Architectural Review Committee prior to construction and no portion of the same may project beyond the screened area. If there is no rear fencing and the vehicle could be seen from outside the Lot other than from the Front Yard, the vehicle must also be screened from view from that direction. Vehicles may not be used for storage of materials for more than 48 hours without approval from the Architectural Review Committee. Any vehicle in violation of this Section can be towed or impounded as provided in Section 11.1(c) below.

6.8 Vehicles in Disrepair. No Owner will permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot unless screened from view, on the Common Area or on any street for a period longer than 48 hours. A vehicle will be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five days following the date on which the Association mails notice to him or her, the Association may have the vehicle removed from the property and charge the expense of such removal to the Owner. Any vehicle parked in violation of this Section can be towed or impounded as provided in Section 11.1(c) below.

6.9 Noisy and Hazardous Vehicles. The Board of Directors may restrict access to the Property of any vehicle, which, in the reasonable determination of the Board of Directors, is too noisy or constitutes a safety hazard.

6.10 Parking. Parking of vehicles by Owner is restricted to the Owner's garage or driveway. Parking in the street by Owner is prohibited, except for any parking areas, if any, so designated by the Board of Directors.

6.11 Signs. No signs may be erected or maintained on any Lot except that not more than one "For Sale" sign temporarily displayed on a Lot by the Owner or by a licensed real estate agent, which may not exceed 24 inches high and 36 inches long, except that the Declarant can have additional signage and marketing materials during the course of initial construction of a dwelling on such Lot. "For Rent" and "For Lease" signs are prohibited. The restrictions contained in this paragraph do not

prohibit the temporary placement of “political” signs on any Lot by the Owner, subject to reasonable regulations adopted by the Architectural Review Committee relating to size and length of display.

6.12 Rubbish and Trash. Trash, garbage and other waste must be kept in sanitary containers, screened from public view. No part of the Property may be used as a dumping ground for trash, garbage, waste, debris or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work may not be dumped onto Lots, streets, or Common Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings, or any such materials from any streets or the Property where deposited by such person within 10 days following the date on which notice is mailed to the Owner or occupant by the Board of Directors of the Association, the Association may have such materials removed and charge the expense of such removal to the Owner. Owners must comply with trash container placement requirements for garbage and recycling collection, based upon direction from the applicable garbage/recycling collection service.

6.13 Maintenance of Landscaping. Each Owner is responsible for installing and maintaining the landscaping on the Lot neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly material, except the Front Yard, which is a Common Maintenance Area. An Owner may not remove street trees, materially change the Front Yard landscaping, or install additional Front Yard landscaping other than annual flowers without the prior written approval of the Architectural Review Committee. Vegetation around structures must be maintained or modified for a minimum distance of 30 feet around structures to prevent the rapid spread of fire to or from the building site. Such clearance will be established prior to framing and maintained upon completion consistent with the Uniform Building Code, Appendix A, Article 16. This provision does not preclude the establishment of typical residential landscaping such as trees, shrubs, bulbs, perennials and other groundcover generally associated with residential development, but is intended to prevent the overgrowth of grasses and shrubs that exist unmaintained on a site and which could contribute to the rapid spread of fire. The Architectural Review Committee may establish in the Design Guidelines, if any, guidance for Lot landscaping such as trees, shrubs, bulbs, perennials, and other groundcover generally associated with residential development. No tree on a Lot over 6-inches in diameter measured 4-feet above adjacent grade may be removed without the prior approval of the Architectural Review Committee and prior approval of the City of Newberg, when applicable.

6.14 Installation of Landscaping. All landscaping (in the Front Yard and the remainder of the Lot) must be completed within six months from the date of occupancy of the Living Unit constructed thereon. Landscaping must include at least grass and bark dust (unless the Architectural Review Committee adopts a formal Xeriscape plan by resolution) and must be maintained in harmony with surrounding landscaping, or as otherwise required or prohibited, as the case may be, under the provisions of ORS 94.779. 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.

6.15 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuildings may be used on any Lot at any time as a residence either temporarily or permanently, except during the period of initial construction of a Living Unit on the Lot. No structure may be occupied prior to connection to power, water and sewer and issuance of a certificate of occupancy by the City of Newberg.

6.16 **Fences and Hedges.** No fences or boundary hedges may be installed without prior approval of the Architectural Review Committee consistent with Design Guidelines adopted by the Architectural Review Committee. Fences may not exceed 6-feet in height. Fences must be well constructed of suitable materials and may not detract from the appearance of the adjacent structures and buildings.

6.17 **Service Facilities.** Service facilities (garbage cans, fuel tanks, clotheslines, clothesline poles and other outside drying of clothes, linens and such, firewood, gardening tools, and equipment, etc.) must be screened such that the elements screened are not visible at any time from the street or a neighboring property. Appliances may not be stored outside. All heat pumps and condenser units (or other utilities and devices commonly placed out of doors) must be placed or screened to reduce visual impact and noise to surrounding Lots or Common Areas. All telephone, power, natural gas, cable television, and other communication lines must be placed underground, except as otherwise mandated by a Governing Authority or public utility companies affecting the Property.

6.18 **Outside Furniture and Hot Tubs.** Furniture permitted to be left outside a Living Unit is limited to items commonly accepted as outdoor or patio furniture. Hot tubs are allowed with the prior written permission of the Architectural Review Committee. The hot tub must be installed out of sight of the main traffic patterns. Locking covers are required and must remain locked when not in use.

6.19 **Window Coverings.** Window coverings visible from the outside of the Living Unit must be: (a) in good working order; (b) a neutral color compatible with the home/trim color; and (c) of a design and materials standard in the window dressing industry such as drapes, mini-blinds, etc. Sheets, blankets, plastic paper, foil, etc. are not allowed.

6.20 **Air Conditioning Units.** Window air conditioning units are allowed, refer to the ARC guidelines for further information.

6.21 **Firearms and Fireworks; Fire Pits.** No firearms may be discharged within Collina at any time. Firearms are to be unloaded at all times while in Collina. Weapons including “BB” guns, pellet guns, dart guns, paint-ball guns, and any other weapon capable of firing a projectile are considered firearms. Oregon statutory law prohibits the use of certain types of fireworks; local ordinances may prohibit fireworks from time to time. Only legal fireworks legal are allowed in Collina. Discharge of firearms or fireworks of any type toward any Common Area is prohibited. Owners and their guests must promptly clean up any fireworks discharged in Collina. Wood burning fire pits, outdoor ovens, and so-called “rocket-stoves” are not permitted on any Lot or Common Area in Collina.

6.22 **Nonbiodegradable Substances.** No motor oil, paint, or other caustic or nonbiodegradable substance may be deposited in any street drain, sewer system or on the grounds within Collina. Any fine and/or costs associated with the cleanup of any nonbiodegradable substance release or deposit that is caused by any Owner, Occupant, or their guests is responsibility of the offending Owner.

6.23 **Antennas and Satellite Dishes.** Exterior antennas, satellite receiver and transmission dishes and other communication devices are not permitted to be placed upon any Lot

except in accordance with rules established by the Architectural Review Committee in accordance with Section 7.3.

6.24 **Exterior Lighting or Noisemaking Devices; Yard Ornaments.** Except with the consent of the Architectural Review Committee, no exterior lighting or noise making devices may be installed or maintained on any Lot, other than as originally installed by the builder of the home and security and fire alarms. Outside lighting must be designed to prevent unnecessary light spillage onto adjoining Lots, Common Areas, or public streets, and no high output exterior lighting, including, but not limited to mercury vapor and halide lights, may be installed without the specific approval of the Architectural Review Committee. The size and design of light standards and fixtures will be considered by the Architectural Review Committee in its review of plans. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Rules and Regulations and if removed within 30 days after the celebrated holiday. The Architectural Review Committee has the authority to adopt rules regarding the placement of human-made items in the Front Yard, including but not limited to such items as concrete, resin, wooden, or ceramic statues, figures or figurines, windmills, pinwheels, train sets, push in solar lights, animal or human figures.

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

6.26 **Grades, Slopes and Drainage.** Each Owner of a Lot accepts the burden of, and will not in any manner alter, modify or interfere with the established drainage pattern and grades, slopes and courses related thereto over any Lot (including any reciprocal PSDE (Private Storm Drainage Easement) located on the Owner's Lot) or over Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials may be placed or permitted to remain on or within any grades, slopes, or courses, or any PSDE, nor may any other activities be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or PSDE areas, or which may change the direction of flow, or obstruct or retard the flow of water through such drainage channels. Each Lot Owner is responsible for maintaining the area of his or her Lot with in the respective Private Storm Drain Easement to the same standard as the remainder of the Lot, for the intended purposes of storm drainage to benefit the Owner's Lot and the adjacent Lot.

6.27 **Building Materials.** All building materials to be incorporated into and visible as a part of the external structure of any building or other structure may be regulated by the Architectural Review Committee as provided in Article 7.

6.28 **Subdividing and Partitioning Lots.** Except as otherwise provided in this Declaration, no Lot may be subdivided or partitioned, nor may Lot lines be adjusted, without the consent of the Declarant before the Turnover Meeting, and after the Turnover Meeting without the approval of the City of Newberg and the Architectural Review Committee.

6.29 **Completion of Improvements.** All structures (including flat work) constructed within the Property must be erected and completed within one year after the commencement of construction. All remodeling, reconstruction or enhancement of structures must be completed within one year of the commencement of construction. Commencement of construction will be deemed to

be the date upon which a building permit was first issued for the construction, or, if no building permit was obtained, the date on which lot clearing, demolition or remodeling commenced.

6.30 Association Rules and Regulations. In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory Rules and Regulations governing the conduct of persons and the operation and use of the Property (including, without limitation, use of playground and parking areas) as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property. The Association Board of Directors thereof, will deliver a copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation promptly to each Owner. The Board of Directors will be the body to adopt the Rules and Regulations on behalf of the Association, except as may be otherwise provided in the Bylaws.

Article 7

ARCHITECTURAL COMMITTEE

7.1 Architectural Review. No Improvement may be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations and compliance with the setback requirements contained in applicable governmental development code standards. The building plans to be submitted will consist of one complete set of plans and specifications in the usual form showing insofar as appropriate, (i) the size and dimensions of the Improvements, (ii) the exterior design, (iii) approximate exterior color scheme, (iv) location of Improvements on the Lot, including setbacks, driveway, and parking areas, and (v) location of existing trees to be removed. These plans and specifications will be left with the Committee until 60 days after the Committee has received notice of completion. This is for the purpose of determining whether, after inspection by the Committee, the Improvement complies substantially with the plans and specifications submitted and approved. The Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases in which the Architectural Review Committee consent is required by this Declaration, the provisions of this Section apply, except that this Section does not apply to construction by Declarant.

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

7.3 **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for Collina. Considerations of the Committee may include, but are not limited to the following: siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots or other effects on the enjoyment of other Lots, disturbance of existing terrain and vegetation, and any other factors that the Committee reasonably believes to be relevant. The Committee may take all such things into account in determining whether to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes must be in conformance with any applicable Federal Communications Commission rules.

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

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

7.6 **Design Guidelines.**

(a) **Adoption of Design Guidelines.** Declarant or the Architectural Review Committee will prepare Design Guidelines, which may contain general provisions applicable to all of the Property as well as specific provisions that vary as to types of use or Improvements. The Design Guidelines will interpret and implement the provisions of this Declaration for architectural review and establish guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features that may be used in Collina provided, however that the Design Guidelines will not be in derogation of the minimum standards established by this Declaration. The Design Guidelines are not the exclusive basis for decisions of the Committee, and compliance with the Design Guidelines does not guarantee approval of any application. Regulations on siting of television antennas and satellite receiving dishes will be in conformance with any applicable Federal Communications Commission rules.

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

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

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

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

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

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

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

7.12 **Enforcement.** If during or after the construction, the Architectural Review Committee finds that construction does not comply with the approved plans, the Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes will be borne by the Owner. The Committee has the power and authority to order any manner of changes or complete removal of any Improvement, alteration, or other change to a Lot or the Improvements thereon for which prior written approval from the Committee is required but has not been obtained or waived in writing. The cost of the remediation that the Committee orders will be at the Owner's expense. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 7.9, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth in Section 11.1 below.

Article 8 ASSOCIATION

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

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

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

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

(a) **Class A.** Class A Members are all Owners, with the exception of the Class B member, each of whom is entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons are members. The vote for such Lot will be exercised as they among themselves determine, but in no event may more than one vote be cast with respect to any Lot.

(b) **Class B.** The Class B Member is Declarant who is entitled to three votes for each Lot owned by Declarant. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When all of the Lots in Collina have been sold and conveyed to Owners other than a successor Declarant; or

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

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

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

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

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

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

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

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

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

(b) **Insurance.** The Association will obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association; at least annually the Board of Directors must review the insurance coverage of the Association.

(c) **Rulemaking.** The Association will make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 6.30 of this Declaration.

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

(e) **Enforcement.** The Association will perform such acts, even if they are not expressly authorized by this Declaration, which may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including without limitation, enforcement of the decisions of the Architectural Review Committee.

(f) **Employment of Agents, Advisors and Contractors.** The Association through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such person or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the managements, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of no less than 75 percent of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation is not applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph will increase by \$500 on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration, and subject to Section 4.4(d) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interest therein, including but not limited to easements across all or any portion of the Common Area, and will accept any real or personal property, leasehold or other property interests within Collina conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.4(d) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a Person of other entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

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

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

8.6 **Liability.** A member of the Board of Directors or an officer of the Association will not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. If any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association will 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, will not be liable to the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association will indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

8.7 **Interim Board; Turnover Meeting.** Declarant has the right to appoint an interim board of directors as set forth in the Bylaws. Declarant will call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership in accordance with Section 8.3 above. At the Turnover Meeting the interim directors will resign and their successors will be elected by the Owners as provided in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this Section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

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

8.9 **Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws will be recorded in the Deed Records of Yamhill County , Oregon. Declarant hereby adopts, on behalf of the Association, the initial Bylaws recorded the same day as this Declaration.

Article 9 MAINTENANCE, UTILITIES AND SERVICES

9.1 **Association Maintenance of Common Areas.** The Common Maintenance Areas of the Property include the General and Limited Common Areas, and the Front Yards. The Association will perform all maintenance upon the General Common Areas and Limited Common Areas, including but not limited to landscaping, irrigation systems, walks, private roads, entrance monuments and gates, fences (except as provided below), walls, and signs, walkways, and trails, unless the maintenance thereof is assumed by a public body. The Association will maintain all landscaping within the Common Maintenance Areas (including perimeter fences and retaining walls for the

Common Areas that are not on boundaries with Lots) and will perform or cause to be performed lawn care, irrigation, plant pruning, and bark mulch application. The Common Maintenance Areas will be maintained by the Association in an attractive condition and in a good and workmanlike manner so as to carry out the purpose for which such areas and elements of the Property are intended. Such maintenance by the Association also includes maintenance, care, and replacement for the street trees between the General Common Areas and the public rights of way. A fence located on boundary between General and Limited Common Area on the one hand, and a Lot on the other, is the responsibility of the adjacent Lot Owner as provided in Section 9.6 below.

9.2 Owner's Responsibility. Except for maintenance, repair, and replacement expressly assigned to the Association or to be shared by adjacent Lot Owners as set forth in this Declaration, or by written agreement with the Association, all maintenance of the Lots and Improvements, including street trees, driveways, adjacent sidewalks, retaining walls, and fencing thereon is the responsibility of the Owner thereof, with shared fencing subject to the provisions of Section 9.6 below. Lot Owners must maintain their Lots and Improvements in a neat and attractive condition in accordance with the community-wide standard of Collina. The Association will, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board of Directors will notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within 15 days after mailing of such written notice, then the Association will proceed. The expenses of such maintenance by the Association will be reimbursed to the Association by the Owner, together with interest as provided in Section 11.5 below. Such charges will be an Individual Assessment and lien on the Lot as provided in Sections 10.8 and 11.2 below.

9.3 Maintenance of Utilities. The Association will perform or contract to perform maintenance of all utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines, storm drainage lines and water detention facilities, except to the extent such maintenance is performed by the utilities furnishing such services or is assigned to the Lot Owner in this Declaration. The Association is not liable for any interruption or failure of such services. Each Owner is responsible for maintaining utility lines within his or her Lot, including those located in any Common Easement Area on the Lot, if the utility lines serve the Owner's Lot and no other.

9.4 Association Front Yard Landscaping Maintenance. The Association is responsible for installation, maintenance, and irrigation of landscaping in the Front Yards of all Lots in the Property except and for the design and any modification of landscaping installed by Declarant or the Association. The Association's landscaping maintenance does not include the maintenance and care of porches, decks, walkways, driveways, or sidewalks adjacent to a Lot, or on any Lot, which are the responsibility of the Lot Owner. The Association's responsibility does not extend, however, to include the replacement of trees or shrubs in the Front Yards. Controllers, monitors, and other irrigation system equipment installed by the Declarant, or the Association belong to the Association. If landscaping irrigation settings are set by the Association on a Lot, no Owner may tamper with or change such settings. The Association has right of access to each such controller, monitor, or other equipment. Water for irrigation of the Front Yard is through each Owner's water meter. Each Owner will be responsible for payment of the cost of irrigation water used on the Owner's Lot. If the Board of Directors elects to discontinue Front Yard maintenance of the Lots or certain Lots, the Owner of

such Lot will thereafter be responsible for maintaining, repairing, and replacing irrigation systems, if any, and maintaining the Front Yard under the terms set forth in Sections 6.13, 6.14, and 6.16.

9.5 **Limited Common Areas.** Such areas will be operated, maintained, replaced, and improved by the Association, but the entire cost thereof will be assessed equally to the owners of the Lots to which such Limited Common Area pertains.

9.6 **Boundary Fences.** The responsibility for and cost of maintenance, repair, and replacement of fencing on boundary lines between Lots will be shared by the Owners on either side of the fence in accordance with ORS Chapter 96, including sharing equally the cost of the installation of any new fence or replacement fence as necessary for the Lot and Improvements to remain in good repair and condition. Fences enclosing a Lot are the owner's responsibility, including any fence located in the Front Yard. Fences on boundary lines between Lots and Common Areas will be the sole responsibility of the Lot Owner, except as otherwise provided in this Declaration.

9.7 **Security.** The Association may, but is not obligated to, maintain, or support certain activities within the Property designed to make the Property safer than it otherwise might be, including, without limitation, exterior lighting for Common Areas. Neither the Association, Declarant, nor any successor Declarant may in any way be considered insurers or guarantors of security within the Property, nor will any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, the Declarant, and any successor declarant are not insurers and that each person using the Property assumes all risks for loss or damage to person, to property and to the contents of Lots resulting from acts of third parties and each such person releases the Association, the Board and committees, the Declarant, and any successor declarant from any liability therefor.

9.8 **Services.** The Association will provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, landscape services, garbage and trash removal for Common Areas. The cost of any such service or benefit that is available to some but not all Lots in Collina will be assessed as Individual Assessments to the benefitted Lots.

9.9 **Damage or Destruction by Casualty to Common Areas.** In the event of damage or destruction by casualty of any structures erected on the Common Areas, the damage or destruction must be repaired, reconstructed, or rebuilt unless, within 14 days of such damage or destruction, the Board of Directors or more than 10 percent of the Owners have requested a special meeting of the Association. Such special meeting must be held within 30 days of the date of damage or destruction. At the time of such meeting, unless 75 percent of the Owners, whether in person, by writing or by proxy, with the approval of 75 percent or more of the mortgagees if and as required by this Declaration, vote not to repair, reconstruct, or rebuild the damaged property, the damage or destruction is repaired, reconstructed, or rebuilt, with the work commencing as soon as reasonably possible. In the event any portion of the insurance proceeds paid to the Association are not used to repair, reconstruct, or rebuild the damaged or destroyed Common Areas the proceeds attributable to Common Areas will be deposited in the Operations Fund or applied to such capital improvements as

authorized pursuant to Section 10.5 of this Declaration. If the insurance proceeds are not sufficient to pay the entire cost, the Board of Directors, if necessary, may assess the Owner of each Lot such additional amounts as required to pay the cost of restoration. The responsibility for payment of the amount of the deductible in the Association's insurance policy is the responsibility of the Owners, who must maintain the insurance policies set forth in Article 7 of the Bylaws.

9.10 Owner Liability for Damage. If due to any act, omission, or neglect of an Owner or a member of his or her family or his or her household pet or of a guest or other Occupant or visitor of such Owner, damage is caused to the Common Areas or any Common Maintenance Areas, or any maintenance, repairs or replacements are required that would otherwise be a common expense assessed to some or all of the members of the Association, then such Owner must pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance (including any deductible), as an Individual Assessment.

9.11 COID Canal Risk. Owners acknowledge that they are purchasing a lot in close proximity to the Central Oregon Irrigation District's (COID) canal, and that COID is not responsible for any injury or damages that may be caused by their operations, maintenance of, or improvements to the canal. Owners do hereby release COID from all liability for any injury or damages as a result of COID's activities. Furthermore, it is the Owner's responsibility to take all action necessary to minimize the risk that may be caused by COID's operations, maintenance of, or improvements to the canal. No structures or utilities of any kind, including fences, bioswales and sheds, are permitted within COID property/easement/right of way or canal embankment.

Article 10 ASSESSMENTS

10.1 Purpose of Assessments. The Assessments levied by the Association will be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners and occupants of Collina and for the improvement, operation, and maintenance of the Common Areas.

10.2 Types and Allocation of Assessments. The Association may levy General Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments, and Individual Assessments, all as more particularly described below. All Lots subject to assessment will pay an equal share of the General Assessments, Special Assessments, and Emergency Assessments, except for Lots owned by Declarant as provided in Section 10.3 below.

10.3 Commencement of Assessments Lots owned by Declarant, or any of their affiliates, are not subject to General Assessments (including Assessments for reserves), Special Assessments, Limited Common Area Assessments or Emergency Assessments unless and until an occupancy certificate is issued for the Living Unit located on the Lot. Declarant may, however, defer payment of the accrued reserve Assessments for a Lot from the time a Lot becomes subject to assessment until the date the Lot is conveyed, but not beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association. The books and records of the Association will reflect the amount owing from Declarant, for all reserve Assessments. All Lots subject to assessment will pay an equal share of the General Assessments, Special Assessments and Emergency Assessments. Declarant may elect to delay collection of General Assessments against their Lots, but in that case, Declarant will pay the common expenses of the

Association otherwise allocable to such Lots until such Assessments commence. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses of the Association by waiver by the Owner of use of enjoyment of any of the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing to the Owner by the Association, or Declarant.

10.4 General Assessments. The Board of Directors of the Association will 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 will take into account the numbers of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated becoming subject to assessment during the fiscal year. The budget will provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.9 below. General Assessments for such operating expenses and reserves will then be apportioned among the Lots as provided in Section 10.3 above. Within 30 days after adopting the annual budget, the Board of Directors will provide a summary for the Budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget will continue in effect. The manner of billing and collection of Assessments will be as provided in the Bylaws.

10.5 Special Assessments. In addition to the General Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment, applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of General Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to 15 percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Before the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than 50 percent of the Class A voting rights, together with the written consent of the Class B member. Special Assessments will be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors. Notwithstanding anything to the contrary herein, the Association's ability to levy Special Assessments that will cover expenses that otherwise benefit some but not all of the Lots in Collina, and which in the aggregate in any fiscal year exceed an amount equal to 15 percent of the budgeted gross expenses attributable to that particular sub-set of the Lots at Collina for the fiscal year, is subject to approval by a majority of the voting rights for those particular Lots, together with the written consent of the Class B Member, if any, and no further consent from the remainder of the voting rights for other un-benefitted Lots at Collina will be required.

10.6 Emergency Assessments. If the General Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors of the Association will 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. Any Emergency Assessment which in the aggregate in any

fiscal year would exceed an amount equal to 5 percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the Turnover Meeting described in Section 8.7, and the Special Assessment must be approved by not less than 50 percent of the Class A voting rights, together with the written consent of the Class B member. Emergency Assessments will be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.

10.7 Limited Common Area Assessments. General Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement, or improvements to Limited Common Areas will be assessed exclusively to the Lots having the right to use such Association Limited Common Areas, which Assessments will be allocated equally among such Lots.

10.8 Individual Assessments. Any expense of the Association or, except as otherwise provided in this Declaration, any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited. Such Individual Assessments may include any common expense that is incurred by the Association because of the fault of the Owner and that is not paid by insurance. Individual Assessments will also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments will be due 30 days after the Board of Directors has given written notice thereof to the Owner(s) subject to the Individual Assessments.

10.9 Operations Fund. The Association will keep all funds received by it as Assessments, other than reserves described in Section 10.10, separate and apart from its other funds, in a United States bank account in the name of the Association to be known as the "Operations Fund." All expenses of the Association will be paid from the Operations Fund or the Reserve Fund referred to in Section 10.10. The Association will use such funds exclusively for promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

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

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

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

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

10.10 Reserve Fund.

(a) **Establishment of Account.** Declarant will conduct a reserve study as described in paragraph (c) of this section and establish a United States bank account in the name of the Association (the “**Reserve Fund**”) for replacement of common properties that will normally require replacement in whole or in part in more than 1 and less than 30 years, for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items. The Reserve Fund need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund.** The Reserve Fund will be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established, which sums will be included in the regular Annual Assessment for such Lots. The Reserve Fund will 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 will be based on a reserve study described in paragraph (c) or other sources of information. The Board of Directors annually will 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 will 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) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and
- (4) A 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 may be used only for the purposes for which the reserves have been established and will be kept separate from other funds. Reserves for Common Areas will be separately accounted for but need not be held in separate bank accounts. 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. Funds so borrowed from the Reserve Fund must be repaid from Assessments. Not later than the adoption of the budget for the following year, the Board of Directors will adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section prohibits 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 75 percent of the voting rights 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 Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.11 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, will be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 11.5, are a charge on the land and will be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs are also the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations will be enforced in the manner set forth in Article 11 below.

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

Article 11 ENFORCEMENT

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

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines will constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount will be payable to the Association as an Assessment, provided that no items of construction will 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 for the period that the violations remain unabated, provided that the Association will not deprive any Owner of access to and from his Living Unit; and

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

11.2 Default in Payment of Assessments; Enforcement of Lien. If an Assessment or other charge levied under this Declaration is not paid within 30 days of its due date, such Assessment or charge will become delinquent and 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 the defaulting Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, may the Association deprive any Owner of access to and from his Lot.

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

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

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

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

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

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

11.5 Interest, Late Charges and Expenses. Any amount not paid to the Association when due in accordance with this Declaration will bear interest from the due date until paid at the rate of 18 percent per annum, 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 Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (even if suit is not instituted). In the event the Association will file a notice of lien, the lien amount will also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association.

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

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

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

Article 12 DISPUTE RESOLUTION

12.1 Mediation.

(a) 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 will

offer to use any dispute resolution program available within Yamhill 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.

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

(c) If a qualified dispute resolution program exists within Yamhill 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 30 days upon a motion of the non-initiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties will participate in the dispute resolution process.

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

(e) 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.

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

12.2 **Arbitration.** Any claim, controversy or dispute by or among Declarant, Association, the Architectural Control Committee or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations or the Property will be first subject to mediation as described in Section 12.1 above, or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 12. The decisions and award of the arbitrator will be final, binding and non-appealable. The arbitration will be conducted in Newberg, Oregon, pursuant to the arbitration statutes of the State of Oregon, and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration will be treated the same as filing in court for purposes of filing a notice of pending action (“**lis pendens**”).

12.3 **Selection of Arbitrator.** A single arbitrator selected by mutual agreement of the parties will conduct the arbitration. The arbitrator selected will be neutral and unbiased, except to the extent the arbitrator’s prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within 10 days after a party’s demand for arbitration, upon application of any party, the Presiding Judge of the Circuit Court of Yamhill County , Oregon will designate the arbitrator.

12.4 **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties will be submitted in a single, consolidated arbitration.

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

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

12.7 **Excluded Matters.** Notwithstanding the foregoing, the following matters will not be subject to mediation or arbitration under this Article 12 (but will be subject to the applicable provisions of Section 12.8 below): (a) actions relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes will be subject to mediation/arbitration as provided above), and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 12. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure will not constitute a waiver of the right or duty to utilize the procedures specified in this Article 12.

12.8 **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation will be divided and paid equally by the parties. Each party must pay its own attorneys' fees and costs in connection with any mediation. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws or Rules and Regulations, 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, each party shall pay its own attorneys' fees and costs in connection therewith. However, the Association is entitled to recover attorneys' fees associated with the collection of assessments, in accordance with ORS 94.630.

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

Article 13 MORTGAGES

13.1 **Reimbursement of First Mortgages.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such

payments will be owed immediate reimbursement therefor from the Association to the extent the same was the responsibility of the Association.

13.2 **Right of First Mortgagees Relating to Maintenance.** At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security interest purposes, then the record mortgagee, upon giving written notice as provided in this paragraph, will be entitled to exercise the rights of the Owner of a Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association will give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this Section will quote this Section 13.2 and will be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last known address of each.

Article 14 AMENDMENT AND REPEAL

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

14.2 **Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than 75 percent of the voting rights of the Association, 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 may an amendment under this Section create, limit, or diminish special declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing at least 75 percent of the total vote, other than Declarant, agree to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment will be approved by the Zoning Administrator of the City of Newberg.

14.3 **Recordation.** Any such amendment or repeal becomes effective only upon recordation in the Deed Records of Yamhill 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.

14.4 **Regulatory Amendments.** Notwithstanding the provisions of Section 14.1 above, until the Turnover Meeting has occurred, Declarant will have the right to amend this Declaration or the Bylaws of the Association to comply with the requirements of any applicable statute, ordinance or

regulation or of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment will require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

Article 15

MISCELLANEOUS PROVISIONS

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

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

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

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

15.4 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered personally, by electronic mail, or by United States mail. Delivery by United States mail will be deemed made 24 hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: if to Declarant or the Association, to the property manager or the registered address of the Association; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

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

DECLARANT:

**PAHLISCH HOMES AT SPRINGBROOK,
LP,**

an Oregon limited liability company

BY: Pahlisch Homes, Inc.

ITS: Manager

By: _____

Name: Jerry Jones Jr.

Title: Senior Director of Land Development

State of Oregon)
) ss.
County of Deschutes)

The foregoing instrument was acknowledged before this _____ day of _____, 2022, by Jerry Jones, Jr. Senior Director of Land Development of Pahlisch Homes at Springbrook, LP, an Oregon limited liability company, on its behalf.

Notary Public
My appointment expires: _____

(Seal or stamp)