

**TUKWILA HOMEOWNERS ASSOCIATION, INC.**

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS & RESTRICTION**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
TUKWILA PLANNED COMMUNITY

This Declaration, to be effective upon its recording in Marion County, Oregon, is made and executed this 27<sup>th</sup> day of October, 1992, by TUKWILA PARTNERS, a partnership, hereinafter "Declarant".

Declarant is the owner of certain real property, a portion of which is located within the City of Woodburn, Marion County, Oregon, and the remainder of which is located within Marion County, Oregon. Said real property is more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.

Declarant proposes to create a planned development project (hereinafter "Community") to be known as TUKWILA PLANNED COMMUNITY which will be developed in phases on the real property described in Exhibit A. The first phase, known as MILLER FARM SUBDIVISION, has been formed and the plat therefor has been filed. Said MILLER FARM SUBDIVISION does constitute a part of the real property described on Exhibit A.

This Declaration, when recorded, shall subject each phase, whether now formed or subsequently formed, of the TUKWILA PLANNED COMMUNITY, to be developed on the Exhibit A real property, to the terms and provisions hereof. Reference to "common property", when used in this Declaration, shall refer only to common property which is established for the common use and benefit of all independent phases of the TUKWILA PLANNED COMMUNITY and for which all independent phases of the TUKWILA PLANNED COMMUNITY shall assume responsibility, both financial, or otherwise, for operation and maintenance.

In addition to this declaration, affecting common property which is established for the common use and benefit of all independent phases of the TUKWILA PLANNED COMMUNITY, a separate declaration of covenants, conditions and restrictions will be filed and recorded for each separate phase of the TUKWILA PLANNED COMMUNITY as each such phase is completed and filed. The phrase "common property" when used in the declaration for each separate phase shall refer only to common property which is established for the sole and exclusive use and benefit of that separate phase and for which the separate Homeowner's Association established for that phase shall assume sole responsibility, both financial and otherwise, for its operation and maintenance.

Declarant has deemed it desirable for the preservation of the value and desirability of the real property in TUKWILA PLANNED COMMUNITY, to subject the real property in the Community to the following covenants and conditions, and to create a nonprofit

corporation to which will be transferred the common property which is established for the common use and benefit of all independent phases of the Planned Community. Such nonprofit corporation will be delegated the power and authority to maintain and administer such common property, to enforce the covenants and restrictions and to promote the health, safety and welfare of the entire Planned Community and all phases established therein.

Now, therefore, the declarant hereby declares that each parcel of real property in the TUKWILA PLANNED COMMUNITY, as and when it is separately platted and declared to be a part of TUKWILA PLANNED COMMUNITY, shall thereafter be sold, conveyed, owned and occupied, subject to the provisions of this Declaration of Covenants, Conditions and Restrictions. Each person or entity, upon acceptance of a deed or land sale contract to purchase, covenants and agrees to comply with said provisions of this Declaration.

## ARTICLE I

### DEFINITIONS

Section 1. "Articles of Incorporation" means the articles of incorporation of the nonprofit corporation of TUKWILA HOMEOWNER'S ASSOCIATION, INC. an Oregon nonprofit corporation, filed with the Oregon Secretary of State, Corporation Division, as amended from time to time.

Section 2. "Association" means the TUKWILA HOMEOWNER'S ASSOCIATION, INC., an Oregon nonprofit corporation.

Section 3. "Board" means the board of directors of the Association.

Section 4. "Bylaws" means the Bylaws of the Association as amended from time to time.

Section 5. "Common expenses" means the expenditures made by or financial liabilities incurred by the Association and includes any allocations to the reserve account under Article X, Section 3.

Section 6. "Common Property" means real property or an interest in real property which is owned or leased by the Association, or designated in a plat for transfer to the Association. "Common Property" does not include the real property which is owned by the separate Homeowner's Association of any independent phase of the TUKWILA PLANNED COMMUNITY for the sole and exclusive use and benefit of that individual phase but does include real property which is established for the common use and benefit



of all independent phases of TUKWILA PLANNED COMMUNITY and for which all independent phases of TUKWILA PLANNED COMMUNITY shall assume responsibility, both financial or otherwise, for operation and maintenance. "Common Property" also does not include real property or improvements thereon which are platted as part of a condominium, group town houses, or similar related living units, even though such real property and improvements may be owned or used in common by owners and occupants of those living units. "Common Property" includes personal property owned or leased by the TUKWILA HOMEOWNER'S ASSOCIATION, INC.

**Section 7.** "Declarant" means TUKWILA PARTNERS and any successor or assigns thereof specified as a successor declarant in a written agreement between the parties.

**Section 8.** "Declaration" means this declaration and any amendments thereto.

**Section 9.** "Dwelling House" shall mean a single family residence, located on a single lot, whether attached or unattached to an adjoining single family residence on an adjoining lot, and garage and shall include both the main portion of such structure and all projections therefrom.

**Section 10.** "Living Unit" means a building or a portion of a building located upon a Lot and intended for separate occupancy and ownership; it does not include a building or portion of a building on Common Property.

**Section 11.** "Lot" means a unit of land in the Property which is platted for the purposes of constructing thereon one or more Living Units; at such time as a Lot has one or more Living Units constructed upon it, it ceases to be a Lot for purposes of voting and assessment pursuant to this Declaration.

**Section 12.** "Mortgage" means a mortgage or a deed of trust pertaining to a Lot or Living Unit.

**Section 13.** "Mortgagee" means a mortgagee or a beneficiary of a deed of trust.

**Section 14.** "Occupant" means the occupant of a Living Unit.

**Section 15.** "Owner" means the legal owner or contract purchaser of any Lot or Living Unit which is part of the Property, but does not include a mortgagee who has an interest in the Lot or Living Unit merely as security for the performance of an obligation.

**Section 16.** "Plat" means the final map, diagram, drawing, replat or other writing containing the descriptions, locations and other information on Common Property, Living



Units and/or Lots in a subdivision of all or a portion of the real property in the community.

Section 17. "Property" means each parcel of real property on which declarant records a plat and declares all or portions thereof to be part of TUKWILA PLANNED COMMUNITY. "Property" also means all improvements and fixtures located on the property. "Property" also means all real property and the improvements thereon transferred to the Association by the declarant and does not include real property and the improvements thereon not transferred to TUKWILA HOMEOWNER'S ASSOCIATION, INC., but transferred to the separate Homeowner's Association of any independent phase of the community developed. "Property" includes tracts of common property identified as such on the recorded plat, whether or not such tract has been conveyed to the Association, only if such common property is established for the common use and benefit of all independent phases of the Planned Community. "Property" does not include any portion of the real property described in Exhibit A unless and until a plat and declaration for such portion is recorded by Declarant. "Property" does not include the golf course and facilities related thereto even though a portion of the course and/or related facility may be depicted on a recorded plat.

Section 18. "Service Association" means a separate Association on the Property which is formed by Declarant in conjunction with a condominium, group of townhouses, or similar related Living Units. A Service Association may be vested with authority and responsibility to govern and maintain real property and improvements which are platted as part of the related Living Units, but the provisions of this Declaration shall also apply to all such real property and owners and occupants thereof. The members of a Service Association may be assessed by the Service Association as well as by the Association.

## ARTICLE II

### NAME

The name by which the community is to be identified is TUKWILA PLANNED COMMUNITY.

## ARTICLE III

### GENERAL DEVELOPMENT PLAN

Section 1. Phased Development. Declarant proposes to develop and plat TUKWILA PLANNED COMMUNITY in several phases. As each phase is developed, declarant will record a plat of the phase, which plat will identify the number of lots and/or living units included in that phase and any tracts which will or may be subsequently

conveyed to the Association as common property or to the Homeowner's Association of any independent phase as common property established solely and exclusively for the use and benefit of that separate phase. There is no limit on the number of phases that may be included in the community. Declarant is not obligated to include all or any particular portion of the real property described in Exhibit A in the Planned Community.

**Section 2. Residential Development.** A phase may be platted for development as single family dwellings, townhouse-type residential units, row homes, duplex-type residential units, condominiums and related common elements, apartment buildings and related amenities, or other types of buildings for residential occupancy.

**Section 3. Service Association.** If all or a portion of a particular phase includes a condominium, a group of townhouses, or a similar grouping of related Living Units, the Declarant may form a separate Service Association in which may be vested the authority and responsibility to govern the particular condominium, townhouses, group of related Living Units, and any common areas which pertain thereto. The members of the Service Association may be assessed by the Service Association as well as by the Association. All such members shall remain bound by this Declaration.

**Section 4. Common Property.** As each phase of the Community is platted, the plat shall depict the tracts, if any, which will or may be transferred to TUKWILA HOMEOWNER'S ASSOCIATION, INC., as common property, and shall depict the tracts, if any, which will or may be transferred to the separate Homeowner's Association of one or more of the independent phases, as common property, established for the sole and exclusive use and benefit of that separate phase. At such times as the Declarant shall deem the Association financially capable of operating and maintaining a tract of Common Property, it shall convey such tract to the Association; provided, that any tract so conveyed shall be free of debt encumbrance at the time of conveyance. The Association shall accept each such conveyance and shall thereafter be responsible to operate and maintain such tract of Common Property and any facilities and improvements thereon at the Association's expense. Prior to the conveyance, the Declarant shall be responsible to maintain such tract and facilities at Declarant's expense. The Common Property is more fully described in Article V.

**Section 5. Sidewalks and Adjoining Property.** Each owner of a lot shall construct a sidewalk along the street frontage of his lot, if required by the City of Woodburn, in the location and to the specifications determined by the City of Woodburn and the Architectural Committee. The sidewalks shall be constructed prior to the issuance of any occupancy permit for a living unit constructed on the lot. Each owner shall then landscape, in grass or other landscaping materials approved by the Architectural Committee, any real property located between the sidewalk and the curb adjacent to the lot, whether or not such real property is owned by the lot owner, and shall install a



sprinkling system sufficient to provide irrigation thereto. Thereafter, the Owner shall maintain and repair the sidewalk.

## ARTICLE IV

### ARCHITECTURAL CONTROL

**Section 1. Architectural Committee.** The Board shall appoint a separate Architectural Committee for each phase of the TUKWILA DEVELOPMENT immediately after the final approval of each such phase. Each committee shall initially consist of three members. Immediately after the turnover meeting described in the Bylaws, the Architectural Committee shall increase to five members. The Board may remove and replace their respective appointees at any time, with or without cause. The members of the Architectural Committee may or may not be members of the Board. The Architectural Committee shall have the authority and duty to regulate, with regard to its phase of development, the external design, appearance, location and maintenance of any and all improvements on the Property and all landscaping thereon in accordance with the provisions of this Declaration and the architectural manual of each phase.

**Section 2. Committee Approval Required.** No building, fence, wall, or other structure or improvement shall be commenced, erected or maintained upon the common property owned by TUKWILA HOMEOWNER'S ASSOCIATION, nor shall any landscaping of any such portion of such property be commenced or maintained until the plans and specifications have been submitted to and approved in writing by the Architectural Committee, pursuant to the procedure outlined in the Architectural Manual of each phase. The Architectural Committee of TUKWILA HOMEOWNER'S ASSOCIATION, INC. shall, in rendering any decision with respect to common property located within any independent phase, consult with and obtain the recommendation of the Architectural Committee of that independent phase prior to making a decision with respect thereto. Notwithstanding this directive, the recommendation of the Architectural Committee of any independent phase shall be advisory only and shall not be binding upon the Architectural Committee of TUKWILA HOMEOWNER'S ASSOCIATION, INC. with respect to property owned by this Association.

**Section 3. Architectural Manual.** The Board may, from time to time, amend, modify or revise provisions of the Architectural Committee outlined therein provided, however, that no such amendment, modification, or revision shall be binding upon the Owners until notice of the same has been given to the Owners by the Board, and no such amendment, modification or revision shall affect structures, improvements, or landscaping approved prior to the enactment of such amendment, modification or revision. A majority

of the owners of each phase may reject any amendment, modification or revision proposed by the Board with respect to their own phase.

**Section 4. Exemption.** The Declarant shall be exempt from the authority of the Architectural Committee.

## ARTICLE V

### COMMON PROPERTY

**Section 1. Other Common Property Tracts.** As each phase of the Community is platted, the plat shall depict the proposed commonly owned land, if any, which will be or may be established for the common use and benefit of all of the independent phases of the TUKWILA PLANNED COMMUNITY and which will or may be transferred to this Association as common property. Further, the plat shall also depict the proposed commonly owned property, if any, which may be established for the sole and exclusive use and benefit of any independent phase and which will or may be transferred to the separate Homeowner's Association for that independent phase as common property. Those tracts which will or may be transferred to the TUKWILA HOMEOWNER'S ASSOCIATION may include, but are not necessarily limited to, landscaping, ponds, and/or facilities and improvements for the use or benefit, in common, of all of the independent phases and the members thereof of the Association. Declarant is under no obligation to improve such tracts with any particular facilities or structures but reserves the right to improve a tract or tracts with swimming pools, tennis courts, meeting halls, or similar recreational facilities, at its own expense, prior to conveying the same to the Association.

**Section 2. Conveyance to the Association.** At such time as the Declarant deems the Association financially capable of operating and maintaining a tract of Common Property, it shall convey said tract to the Association; provided, that any tract so conveyed shall be free of debt encumbrance at the time of conveyance. The Association shall accept each such conveyance and shall thereafter be responsible to operate and maintain such tract and any facilities thereon in good repair and in an attractive appearance at the Association's expense. Prior to the conveyance, the Declarant shall be responsible to maintain such tract and facilities at Declarant's expense.

**Section 3. Mortgage or Conveyance of Common Property.** After conveyance to the Association, the Common Property cannot be mortgaged or conveyed without the affirmative vote of four-fifths (4/5) of members voting in person or by proxy at a meeting duly called for this purpose; provided, however, that this Section shall not apply to the granting of easements for public utilities or other public purposes, or to the dedications described in Article VI, Section 3(c).



**Section 4. Condemnation of Common Property.** After conveyance to the Association, the Board shall have the sole authority to negotiate with any public or private body or person having the power to eminent domain and to sue or defend in any litigation involving such bodies or persons with respect to the Common Property or any portion thereof which is the subject of any condemnation or eminent domain proceeding.

## ARTICLE VI

### EASEMENTS

**Section 1. Declarant's Rights and Easements.** Declarant shall have the following special rights and easements until all portions of the real property described in Exhibit A capable of residential development have been platted and submitted by Declarant to each phase and until both of the following events have occurred: (a) All Lots and Living Units owned by Declarant in all phases have been sold and conveyed; and (b) All Common Property depicted on all phases have been conveyed by Declarant to the Association.

a. **Sales Office and Models.** Declarant shall have the right to maintain a sales office and model units in one or more of the Lots or Living Units which the Declarant owns. The Declarant and prospective purchasers and their agent shall have the right to use and occupy the sales offices and models during reasonable hours of any day of the week. Declarant may assign these rights to other developers of Lots or Living Units on the Property.

b. **"For Sale" Signs.** The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property. Declarant may assign this right to other developers of Lots or Living Units on the Property.

c. **Declarant's Easements.** The Declarant hereby reserves an easement over the Common Property for all reasonable purposes related to the improvements or maintenance of any Common Property and the construction of Living Units on any and all Lots owned by the Declarant.

**Section 2. Utility and Decorative Improvement Easement.** There is hereby created a blanket easement upon, across, over, through and under the property for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewer, gas, telephones, electricity, television, cable or communication lines and systems and for repair, maintenance and replacement of decorative walls, fences and other decorative improvements installed or constructed upon the property and lots prior to the sale thereof by Declarant to other owners. By virtue of this easement, it shall be expressly permissible for the Declarant, the Association, the

Architectural Committee, or their agent, or the providing utility or service company to install and maintain facilities and equipment on the property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of living units, to repair, maintain or replace the aforesaid decorative improvements, provided that such company, the Association, the Architectural Committee or their agent restores disturbed areas to the condition in which they were found. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical, water lines or other utility service lines or facilities for such utilities may be installed or relocated on said property except as programmed and approved by the Declarant, until the events described in Article VII, Section 1, have occurred, or by the Association, or the Architectural Committee thereafter. This easement shall in no way affect any other recorded easements on the property. This easement shall be limited to improvements and utility installations as originally constructed or repairs and replacements thereof.

**Section 3. Members Easement of Enjoyment.** Subject to the provisions of this Declaration and rules and regulations of the Association, every Owner shall have a right and easement of enjoyment in and to the Common Property, and an easement of access through the Common Property as reasonably necessary for access to the Owner's Lot or Living Unit, which easements shall be appurtenant to and shall pass with the title to every Lot or Living Unit. The Owner's easements created hereby shall be subject to the following right of the Association:

a. The right of the Association to establish reasonable rules and to charge reasonable assessments and fees for capital expenditures on the Common Property and the maintenance and upkeep of the Common Property and payment of all Association expenses.

b. The right of the Association to suspend the right of an Owner to use the Common Property for any period during which any assessment against his Lot or Living Unit remains unpaid for more than 30 days after notice; the right of the Association to suspend the right of an Owner to use any Common Property for a period not to exceed 60 days for any other infraction of the Declaration or rules and regulations promulgated and adopted by the Board.

c. The right of the Association to dedicate the streets, or to dedicate and transfer all or any other portion of the Common Property to any public agency or authority subject to such conditions as may be agreed to by the members. Other than streets and except as to the grant of easements for utilities and similar or related purposes, no such dedication and transfer shall be effective unless approved by a vote of two-thirds of members voting in person or by proxy at a meeting duly called for this purpose, and unless the holders of first mortgage liens on any of the Lots or Living Units have approved such dedication or transfer.



d. Any Owner may delegate his right of enjoyment to the Common Property to the members of his immediate family and to his house guests, as well as to any lessee of his Lot or Living Unit, subject to regulations as may be established from time to time by the Board.

**Section 4. Easements for Encroachments.** If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the community, an easement for the encroachment exists to the extent that any Lot or Common Property encroaches on any other Lot or Common Property. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this Section relieves an Owner of liability in case of the Owner's willful misconduct or relieves Declarant or any other person of liability to adhere to the plats of the community.

**Section 5. Easements for Zero Lot Line Residential Units.** Declarant, as developer, may construct improvements upon certain of the lots within Tukwila, known as Zero Lot Line Residential Units. General common elements for said units will consist of common walls which require mutual easements for ingress, egress and use of each adjacent property for the purpose of maintenance, repair and replacement of such common walls by the owner of any lot adjacent to each such common wall. Reciprocal easements are hereby created for any and all Zero Lot Line Residential Units or any structure constructed as Zero Lot Lines within Tukwila as follows:

a. The Declarant herein does hereby grant and convey to the owner of each lot which contains a common wall, a mutual reciprocal right of way on, over, across and along the real property upon which a common wall exists. Such reciprocal easement shall be appurtenant to and benefit only the lots adjacent to each common wall.

b. Such easements and right of way may be used only for ingress and egress purposes, at reasonable times and places, after reasonable prior notice, by the parties owning a lot adjacent to a common wall and may only be used in the event of reasonable necessity of maintenance, repair and/or replacement of such common wall. Each easement shall be continuous, not exclusive, and shall be used on a non priority basis, only for the benefit of a party owning a lot adjacent to a common wall. Each easement shall benefit the successors, assigns, lessees and mortgagees and the owners of such lots and no other person.

c. The cost of periodic maintenance, repair or replacement of common walls shall be borne exclusively by the party benefited by such maintenance, repair or replacement and if benefit is derived by the owners, assigns, lessees, or mortgagees of both lots adjacent to such common wall, then the cost thereof shall be apportioned in accordance with the benefit so derived. Any maintenance or repair shall be performed by the respective parties on a prompt, diligent and regular basis in accordance with generally

accepted standards of repair, maintenance or replacement.

d. If any party fails to perform necessary maintenance and repair or replacement or to submit to the payment of the expense thereof, within 15 days after prior written notice by the non performing party, the other party may cause such work to be done with the right of reimbursement for all sums necessarily and properly expended to remedy such failure. If a non performing party fails to pay such reimbursement on demand, the party causing such work to be done shall have the immediate right to record a lien against the non performing party's property benefited by these covenants. The parties agree that such lien shall be treated as a construction lien in accordance with the Oregon Revised Statutes, subject to foreclosure and priority as set forth in the Construction Lien Statutes.

e. In the event any party shall fail to perform its obligations under this agreement, the other party shall be entitled to require such performance by a suit for specific performance or, where appropriate, to injunctive relief. Such remedy shall be in addition to any other remedies afforded under Oregon law and those rights of cure and reimbursement specifically granted under this easement.

f. In the event of any litigation arising under these provisions, the prevailing party shall recover from the losing party the prevailing party's attorney's fees at trial or on appeal as adjudged by a trial or appellate court or as determined by an arbitrator.

g. The easements granted hereunder shall run with the land as to all property burdened and benefited by such easement, including any divisional partition of such property. The rights, covenants and obligations contained in these provisions shall bind, burden and benefit each party's successors and assigns, lessees and mortgagees.

## ARTICLE VII

### ASSOCIATION

**Section 1. Organization; Adoption of Bylaws.** Upon the execution and recording of this Declaration, the Articles of Incorporation shall be filed, and the Association shall be organized to provide for the preservation and architectural control of the Property, the maintenance of the Common Property, and to promote the health, safety, and welfare of the Owners and Occupants of the Property. Declarant shall simultaneously adopt and record Bylaws for the Association.

**Section 2. Board of Directors.** The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws. The Declarant shall appoint



the initial directors of the Board.

**Section 3. Power and Duties of the Association.** The Association shall have such powers and duties as may be granted or delegated to it by law, the Articles of Incorporation, this Declaration, and the Bylaws.

**Section 4. Records.** An HOA shall promptly, upon request, furnish the City of Woodburn with Association records, including current lists of officers and members, and their mailing addresses.

## ARTICLE VIII

### MEMBERSHIP AND VOTING RIGHTS

**Section 1. Members.** Every person or entity who is a record owner or of a fee interest or undivided fee interest in any Lot or Living Unit or a purchaser in possession under a land sale contract shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership in the Association shall be appurtenant to, and may not be separate from, ownership of any Lot or Living Unit. Transfer of ownership or a Lot or Living Unit automatically transfers membership in the Association.

**Section 2. Voting Rights.** The Association shall have two classes of voting members:

a. **Class A.** Class A members shall be all Owners designated in Section 1 hereof with the exception of Declarant; Class A members shall be entitled to one vote for each Lot or Living Unit owned, rented or leased; however, that at such time as one or more Living Units have been constructed on a Lot, the vote for the Lot shall cease to exist. When more than one person holds an interest in a Lot or Living Unit, all such persons shall be members and shall exercise their vote for said Lot or Living Unit as they determine; provided, in no event shall more than one vote be cast with respect to any Lot or Living Unit.

b. **Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot or Living Unit owned. All Class B memberships shall cease and be automatically converted to Class A memberships on the occurrence of the earlier of the following:

(i) The total number of votes represented by Class A memberships

becomes equal to or greater than the total number of votes represented by Class B memberships after all portions of the real property described in Exhibit A capable of residential development have been platted and submitted to Hazelnut "A".

(ii) July 1, 2004.

## ARTICLE IX

### COVENANTS FOR ASSESSMENTS

#### **Section 1. Creation of the Lien and Personal Obligation of Assessments.**

Each owner of any living unit or lot, save and except the declarant which is expressly excluded from this requirement, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agrees to pay the Association: (1) annual assessments or charges; (2) special assessments, and (3) individual assessments to be established and collected as hereinafter provided:

All such assessments, together with interest thereon and together with attorney fees and costs of collection thereof as hereinafter provided, shall be a continuing lien upon the Living Unit or Lot against which each such assessment is made. Each such assessment, together with interest thereon, attorney's fees and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such Living Unit or Lot at the time when the assessment fell due as well as a lien on his respective Living Unit or Lot. The personal obligation for delinquent assessments shall not pass to an owner's successor in title unless expressly assumed by them, but the lien of the assessment shall run with the Lot or Living Unit.

**Section 2. Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and Occupants, and to pay the common expenses of the Association. Common expenses shall include:

- a. Expenses of Administration.
- b. Expenses of maintenance of the common area and upon decorative walls, fences and other decorative improvements for which the Declarant, the Association or the Architectural Committee are responsible to repair, maintain and replace.
- c. Cost of insurance or bonds as provided in Article XII.
- d. Costs of funding reserves as provided in Section 3 of this Article.



- e. Any deficit in common expenses for any prior fiscal year of the Association.
- f. Any other items properly chargeable as an expense of the Association.
- g. Any other items agreed upon as common expenses by Owners.
- h. Maintenance of the perimeter wall shall be the responsibility of the Association.
- i. Mowing and general maintenance of vacant lots will be done by the Association.

**Section 3. Reserve Accounts for Major Repair and Replacement of Improvements.** The Association shall maintain a reserve account or accounts for repair or replacement of those structures or improvements on the common property and for repair and replacement of decorative walls, fences and other improvements on private property which are the responsibility of the Declarant, the Association or the Architectural Committee, which will naturally require replacement in more than three and less than thirty years, taking into account the estimated remaining life of such items and the replacement cost thereof. The reserve account or accounts will be funded out of the annual assessments each year. The initial budget of the Association shall provide for not less than 5% of the amounts of each regular assessment to be paid into the reserve account. That initial amount may be increased annually as provided in Section 4 below. That initial amount shall not be decreased nor shall the funds be used for any purpose other than defraying all or part of the costs of major repair or replacement as provided herein, except by a vote of two-thirds (2/3) of members voting in person or by proxy, at an annual meeting or special meeting duly called for this purpose. The Board shall invest the reserve funds in an insured interest-bearing account until needed.

**Section 4. Maximum Monthly Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the maximum monthly assessment shall be \$30.00 per month for each Lot or Living Unit assessed.

a. From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the Board may increase the maximum annual assessment each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the

maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of members voting in person or by proxy, at an annual meeting or special meeting duly called for this purpose.

c. The Board may fix the monthly assessment at any amount not in excess of the maximum.

**Section 5. Special Assessment for Landscaping Maintenance.** Declarant may determine that landscaping for particular housing types be maintained under a common landscape maintenance agreement. This agreement shall be approved by the Board. It is to include all exterior landscaped areas except those specifically enclosed by a courtyard. Reserves for plant replacement and irrigation repairs shall be included in this agreement.

At any further date should the rear or side yards of any Lot abut a golf course, all rear or side yards shall become subject to common landscape maintenance. All yards are to be landscaped with an automatic irrigation system and are subject to the architectural review.

All assessments for this maintenance, including reserves, are to be paid by those receiving the benefit of the maintenance.

**Section 6. Special Assessment for Capital Improvements.** In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property for which the reserve account is inapplicable or inadequate, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members voting in person or by proxy, at a meeting duly called for this purpose.

**Section 7. Uniform Rate of Assessment.** Except as provided in Section 9 and 10, special assessments must be fixed at a uniform rate for all Lots and Living Units; provided, however, that at such time as one or more living units on a lot is assessed, the Lot shall no longer be assessed. A Living Unit shall be assessed at such time as an occupancy permit has been issued by the appropriate governing body.

**Section 8. Date of Commencement of Monthly Assessments.** The annual assessments provided for herein shall commence no later than the first day of the month which commences 60 days following the conveyance of the first Lot or Living Unit to an Owner other than Declarant. The first assessment shall be adjusted according to the number of months remaining in the calendar year.



The Board shall fix the amount of the assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to the Owners of every Lot or Living Unit subject thereto. In the event the Board fails to fix the amount of the assessment and give notice thereof, the assessment fixed for the preceding year shall continue until new assessments are fixed and notice given as provided herein. The assessments may be made payable on monthly, quarterly, or annual basis, as determined by the Board.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage which was recorded before the assessment became due. Sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Unit pursuant to the foreclosure or deed in lieu of foreclosure of a first mortgage with priority over the lien shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, and such unpaid balances or assessments shall be deemed a common expense of the Association. No sale or transfer shall relieve such Lot or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Junior lienholder or purchasers under them who acquire title to a Lot or Living Unit as a result of foreclosure of such junior lien shall take title subject to the lien or any unpaid assessments.

In a voluntary conveyance of a unit, the grantee shall take title subject to the lien of any unpaid assessment.

**Section 10. Exemption from Assessments.** No Lot or Living Unit owned by Declarant shall be subject to any annual or special assessment until it has been sold or leased to a person other than Declarant.

**Section 11. Individual Assessments.** The Association may assess an owner individually for any common expense or any part of a common expense benefiting only that owner or that owner's lot or living unit and may assess an owner individually for common expenses incurred through such owner's fault or direction or failure to perform the obligations imposed on Owners by this Declaration, the Bylaws, the Architectural Manual or rules and regulations. Further, an Owner shall be assessed individually for fines, charges and expenses incurred by the Association in the process of collection of assessments or enforcement of this Declaration, the Bylaws, the Architectural Manual, or rules and regulations.

## ARTICLE X

### COLLECTION OF ASSESSMENT; ENFORCEMENT

#### **Section 1. Compliance with Declaration, Bylaws, Rules and Regulations.**

Each Owner and Occupant shall comply with the Declaration, Bylaws, and rules and regulations adopted pursuant thereto.

#### **Section 2. Authority to Enforce and Collect.**

The Board shall take prompt action against any violator to enforce the provisions of the Declaration, Bylaws, rules and regulations adopted pursuant thereto, including prompt action to collect any unpaid assessment. In doing so, the Board may exercise one or more of the remedies, separately or concurrently, specified in the Declaration or Bylaws, as well as any other remedies which may be available at law. In addition, any aggrieved Owner may bring an action to recover damages or to enjoin, abate or remedy any noncompliance or breach by appropriate legal proceedings.

**Section 3. Abatement and Enjoining of Violators.** In the event of a violation of provisions of the Declaration, Bylaws or any rules and regulations adopted pursuant thereto, the Board shall have the right to:

a. Enter the Lot or Living Unit in which or as to which such violation exists and to summarily abate and remove, at the expense of the Owner, any thing or condition that may exist therein contrary to the intent and meaning of said provisions, and the Board shall not thereby be deemed in any manner of trespass; or

b. Enjoin, abate or remedy such thing or condition, including removal or alteration or construction by appropriate legal proceedings.

**Section 4. Interest; Late Charges; Fines.** Interest shall accrue on any assessment or portion thereof not paid when due at the rate of 12% per annum until paid. The Board may, if it deems appropriate, impose charges for late payments of assessments and, after giving notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto.

**Section 5. Acceleration of Assessment.** In the event that an Owner fails to pay an installment of an assessment when it is due, the Board may, after ten days' written notice, declare the defaulting Owner's entire annual or special assessment due immediately, and interest thereafter shall accrue on the entire assessment at 12% per annum until paid.



**Section 6. Attachment, Notice, Recordation, Duration, and Foreclosure of Lien; Appointment of Receiver; Power to Bid at Foreclosure Sale.** The Association shall follow the provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.352 to 87.382 and provisions regarding the foreclosure of liens under ORS Chapter 88, except that notwithstanding ORS 87.376, a lien for an unpaid assessment shall continue in force and the suit to foreclose need not be commenced for a period of three years from the date the particular unpaid assessment became due. In any such foreclosure suit, the Owner shall be required to pay reasonable rental for the Lot or Living Unit. The plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect the rent. The Board, acting on behalf of the Association, shall have the power to bid on the Lot or Living Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same, on behalf of the Association.

**Section 7. Action to Obtain and Recover a Money Judgment.** The Board may bring an action to obtain a money judgment against an Occupant or Owner for damages for the Occupant's or Owner's breach or noncompliance with the provisions of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto. The Board may bring an action to obtain a money judgment for unpaid assessments against the Owner personally obligated to pay the same; the action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same.

**Section 8. Collection Costs; Attorney's Fees.** Owners who fail to pay assessments when due shall be obligated to pay reasonable fees and costs including, but not limited to, attorney's fees incurred in connection with the Board's efforts to collect the delinquent or unpaid assessments, whether or not suit or action is commenced. In the event the Board commences suit or action for the collection of any amounts due or to seek damages or enforcement of any provisions of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto, the defendants, jointly and severally, will be liable for the costs of such suit or action, including reasonable attorney's fees to be fixed by the court or courts, both at trial and appeal, in addition to all other sums or obligations.

**Section 9. The City of Woodburn.** The City of Woodburn shall not be responsible for any costs or liabilities assumed by an HOA. Should an HOA fail to maintain common property as required by the articles, covenants, or agreement required by Section 21.080, the City of Woodburn may cause the maintenance of common Property to be made and such costs shall become a lien upon the real property of an individual member of the HOA.

## ARTICLE XI

### INSURANCE

**Section 1. Types of Insurance Policies.** For the benefit of the Association and the Owners, the Board shall obtain and maintain at all times, and shall pay for out of the common expenses fund, the following insurance:

a. A policy or policies of fire insurance with the extended coverage and special form endorsements, for the full insurable replacement value, if available, of any structures on Common Property.

b. A policy or policies insuring the Association, its Board and the Owners individually, against any liability to the public or the Owners and their invitees or tenants, incident to the ownership, supervision, control or use of the Common Property. Limits of liability under such insurance shall be not less than \$500,000 per occurrence for bodily injuries and property damage liability. Such limit and coverage shall be reviewed at least annually by the Board which may increase the limit of and/or coverage, in its discretion. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsements wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

c. The Board may obtain and maintain a fidelity bond naming such persons as may be designated by the Board as principal and the Association and the Owners as obligees, for the amount determined by the Board, and may require that all officers and employees of the Association handling or responsible for Association funds obtain adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

The Association shall not be responsible for any loss or damage to real or personal property of any Owner, whether stored on the Common Property or in the Owner's Lot or Living Unit, nor shall the Association maintain any insurance coverage for such loss.

**Section 2. Insurance Companies Authorized.** All policies shall be written by a company licensed to do business in Oregon and holding a "Commissioner's rating of "A+" and a size rating of "AAA", or better, by Best's Insurance Reports, or as may be otherwise acceptable to the Board.

**Section 3. Authority to Adjust Losses.** All losses under policies hereafter in force regarding the Common Property shall be settled exclusively with the Board or its



authorized representative. Releases and proofs of loss shall be executed by at least two (2) directors.

**Section 4. Prohibition of Contribution.** In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by the individual Owners or their mortgagees.

**Section 5. Provisions in Insurance Policies.** The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

a. A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants.

b. A provision that the policy cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual owners.

c. A provisions that the policy cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board of Directors or manager cure the defect.

d. A provision that a "no other insurance" clause in the policy exclude individual owners' policies from consideration.

**Section 6. Review of Insurance Policies.** At least annually, the Board shall review all insurance carried by the Association, which review shall include an appraisal of all improvements made to the Common Property by a representative of the insurance carrier writing the master policy.

**Section 7. Fire Insurance on Attached Units.** The Association will provide insurance for all common wall or attached units. This insurance will cover full replacement costs for the structure only. The cost for this insurance will be paid by the owners of the common wall units receiving benefit.

## ARTICLE XII

### DAMAGE AND DESTRUCTION

**Section 1. Insurance Proceeds Sufficient to Cover Loss.** In case of fire, casualty or any other damage and destruction, the insurance proceeds of the policy, if sufficient to reconstruct the damages or destroyed structure, shall be applied to such reconstruction. Reconstruction of the damaged or destroyed structure, as used in this paragraph, means restoring the structure to substantially the same condition in which it existed prior to the

fire, casualty or disaster Such reconstruction shall be accomplished under the direction of the Board.

**Section 2. Insurance Proceeds Insufficient to Cover Loss.** If the insurance proceeds are insufficient to reconstruct the damages or destroyed structure, the damage to, or destruction of, such structure shall be promptly repaired and restored by the Board, using the proceeds of insurance, if any, on the structure for that purpose. If the members approve, as provided in ARTICLE X, Section 5, the Association may levy a special assessment to increase the proceeds available for reconstruction.

## ARTICLE XIII

### GENERAL PROVISIONS

**Section 1. Records.** In addition to the records required in the Bylaws, the Board shall keep detailed records of the action of the Board, including minutes of the meetings of the Board and minutes of the meetings of the Association. The Board shall also keep detailed and accurate financial records in chronological order of the receipts and expenditures of common expenses. The Board shall also maintain an assessment roll in which there shall be an account for each Lot or Living Unit subject to assessment. Such account shall designate the name and address of the Owner of the Lot or Living Unit, the amount of each assessment against the Owner, the dates and amounts on which the assessment becomes due, the amount paid upon the account, and the balance due on the assessment.

**Section 2. Indemnification of Directors, Officers, Employees and Agents.** The Association shall indemnify any director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association or is or was serving at the request of the Association as a director, officer, employee or agent or another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgment, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association, and with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolocontendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause



to believe his conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a director, officer, employee or agent shall have a right to contribution over and against all other directors, officers, employees or agents and members of the Association who participated with or benefited from the act which created said liability.

**Section 3. Enforcement.** The Declarant, the Association, the Owners of Lots or Living Units within the Property, the holder of any recorded mortgage on any Lot or Living Units, and/or the owner of the golf course shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to said bodies or owners by any proceeding at law or in equity. Failure by any of these to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorneys' fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorneys' fees incurred in any enforcement activity taken on delinquent assessments, whether or not suit or action is filed.

**Section 4. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

**Section 5. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of each class of members and approved by ninety percent (90%) of the holders of first mortgages on the Lots or Living Units.

**Section 6. Rights of Mortgagees.** Any holder of a first mortgage lien on any Lot or Living Unit upon written request to the Board, shall have the right to:

- a. Receive timely written notice of meetings of the Association;
- b. Receive timely written notice of any proposed abandonment or termination of the Association;

c. Receive timely written notice of any material amendment of the Declaration or the Articles of Incorporation or Bylaws of the Association;

d. Receive timely written notice of any decision by the Association to terminate professional management and to assume self-management of the Association, if the Association previously has retained professional management services;

e. Inspect the financial reports and similar documents of the Association at reasonable intervals during normal business hours;

f. Receive written notice of substantial damage to or destruction of any Common Property and/or any improvements thereon; and

g. Receive timely written notice of any condemnation or eminent domain proceeding affecting the Common Property or any portion thereof.

**Section 7. Notice of Default by Mortgagor.** Upon written request of the mortgagee, the Association shall give the mortgagee written notification of any default by the mortgagor in the performance of such mortgagor's obligations under this Declaration which is not cured within thirty (30) days.

**Section 8. Limitations.** As long as there is a Class B membership, the Association may not use its resources or take a public position in opposition to the General Plan of Development or to changes thereto proposed by the Declarant.

## ARTICLE XIV

### AMENDMENTS TO DECLARATION

**Section 1. Amendment by Members.** The Declaration may be amended by affirmative vote of not less than three-fourths (3/4) of all Class A members; provided, however, that until such time as the events described in ARTICLE VII, Section 1, have occurred, no amendment shall be effective without the approval of the Declarant; and, provided further, that no amendment to ARTICLE XIII, Section 6, shall be effective without the prior written approval of all institutional holders of first mortgages on Lots or Living Units, and provided further that no amendment to this declaration shall be made which results in conflicting and inconsistent terms, obligations and requirements with the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of any independent phase of the TUKWILA PLANNED COMMUNITY.

**Section 2. Declarant's Right to Amend.** Notwithstanding the provisions of Section 1, the Declarant may amend the Declaration in order to comply with requirements



of the Federal Housing Administration, the Veterans Administration, 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 or Living Units in a planned community; provided, however, that if the need for such an amendment occurs after the turnover meeting described in the Bylaws, such an amendment shall not be effective without the concurrence of a majority vote of all Class A members.

**Section 3. Recordation of Amendments.** Amendments to the Declaration shall be executed and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association, and recorded in the deed records of Marion County.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the day and year first above written.

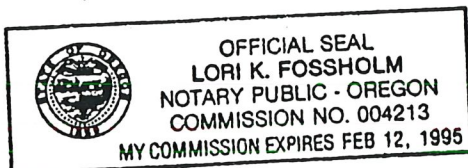
TUKWILA HOMEOWNER'S ASSOCIATION, INC.

By: Fred J. Smith

STATE OF OREGON,     )  
                                      ) ss:  
County of Marion.     )

On the 27<sup>th</sup> day of October, 1992, before me appeared Fred J. Smith, who being duly sworn did say that he, the said Fred J. Smith, is the President of TUKWILA HOMEOWNER'S ASSOCIATION, INC., and that said instrument was signed in behalf of said Corporation by authority of its Board of Directors, and acknowledges said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and fixed by official seal the day and year last above written.



Lori K. Fossholm  
Notary Public for Oregon  
My Commission Expires: 2-12-95

of the Federal Reserve Bank of the United States, the  
Administration of the Federal Reserve Bank of the United States,  
Government National Mortgage Association, and the Federal  
Corporation, any department or agency of the United States,  
or the State of Oregon, or any political subdivision thereof,  
United States in the State of Oregon, or any political subdivision  
planned removal of the same from the State of Oregon, or any  
that if the need for such removal is determined to be  
feasible, such an removal shall be made.

Section 1. The Board of Directors of the Federal Reserve Bank  
of the United States, the Administration of the Federal Reserve Bank  
of the United States, the Government National Mortgage Association,  
the Federal Corporation, any department or agency of the United States,  
or the State of Oregon, or any political subdivision thereof, is  
authorized to remove the same from the State of Oregon, or any  
political subdivision thereof, if the need for such removal is  
determined to be feasible, such an removal shall be made.

Section 2. The Board of Directors of the Federal Reserve Bank  
of the United States, the Administration of the Federal Reserve Bank  
of the United States, the Government National Mortgage Association,  
the Federal Corporation, any department or agency of the United States,  
or the State of Oregon, or any political subdivision thereof, is  
authorized to remove the same from the State of Oregon, or any  
political subdivision thereof, if the need for such removal is  
determined to be feasible, such an removal shall be made.

STATE OF OREGON

County of Marion

I hereby certify that  
the within was received  
and duly recorded by  
me in Marion County  
records:

Fee \$ 120 -

Hand Returned ☒

REEL 1001 PAGE 91

OCT 28 12 07 PM '92

ALAN H. DAVIDSON  
MARION COUNTY CLERK  
BY HQ DEPUTY

WWT  
10-28