

**Declaration of Protective Covenants,
Conditions, Restrictions, and Easements**

for

Harvest Gardens PUD



Willamette River Construction, LLC, an Oregon Corporation

Declarant

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Declaration of Protective Covenants, Conditions, Restrictions, and Easements for Harvest Gardens PUD

Willamette River Construction, LLC, an Oregon Corporation

Declarant

THIS DECLARATION is made this ____ day of _____, 2022, by Willamette River Construction, LLC, an Oregon Corporation (Declarant).

A. Declarant has recorded the plan of Harvest Gardens PUD and is the plat records of Marion County, Oregon.

B. Declarant desires to subject the property described in such plats to the conditions, restrictions, and charges outlined 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 first phase of a Class I planned development to be known as **“Harvest Gardens PUD.”**

Now, therefore, Declarant at this moment declares that the property described in *Section 2.1* below shall be held, sold, and conveyed subject to the following easements, covenants, restrictions, and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

Article I

DEFINITIONS

For brevity and clarity, certain words and terms used in this document are defined as follows:

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

1.2 **“Assessments”** means all assessments and other charges, fines, and fees imposed by the Association on an Owner by this Declaration, the Bylaws of the Association, or the provision of the Oregon Planned community Act, including without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments, Working Fund Assessments, and individual Assessments as described in *Article 7* below.

1.3 **“Association”** means the nonprofit corporation to be formed to serve as the Owners association and its successors and assignees, as provided in Article 8 below. The association shall be “Harvest Garden Homestead Homeowners Association,” an Oregon Non-Profit corporation known as “The Association.”

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

1.5 “By-Laws” means the duly adopted bylaws of the Association outlined in the attached *Exhibit A*. The By-Laws of the Association may be amended from time to time by the Board of Directors.

1.6 “Common Areas” means those lots, tracts, or zones designated as such on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Harvest Gardens PUD, established for the enjoyment of all living within the planned community, including any Improvements thereon, and shall also include Common Easement Areas, Limited Common Areas and any Lots converted to Common Areas as provided in *Section 4.2* below.

1.7 “Common Easement Areas” means those easements established for the benefit of all property within Harvest Gardens PUD under this Declaration or any plat or declaration annexing Additional Property to Harvest Gardens PUD.

1.8 “Common Maintenance Areas” means the Common Areas, Limited Common Areas, and any other areas designated in this Declaration or any declaration annexing Additional Property to Harvest Gardens PUD as being maintained by the Association.

1.10 “Declarant” means Willamette River Construction, LLC, an Oregon corporation, and its successors and assigns if such successor or assignee should acquire Declarant’s interest in the remainder of the project site or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant’s rights under this Declaration.

1.11 “Declarations” means all of the easements, covenants, restrictions, and charges outlined in this instrument, together with any rules or regulations promulgated thereunder, as the same may be amended or supplemented from time to time by the provisions hereof, including the provision of any declaration annexing property to Harvest Gardens PUD.

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

1.13 “Limited Common Areas” means those areas established for the exclusive use or enjoyment of sure Lots as designated in this Declaration or any declaration annexing property to Harvest Gardens PUD.

1.14 “Lot” means a platted or partitioned lot within the Property, except any lot marked on a plat of the Property as being ‘Common Area’ or ‘open space’ or so designated in this Declaration or the declaration annexing such property to Harvest Gardens PUD. Many do not include Common Maintenance Areas, Gardens, Pocket Parks, or other designated areas.

1.15 “Occupant or Resident” means the occupant of the home and apartment, a homeowner, or any other person authorized by the Owner to occupy the premises.

1.16 “Owner” means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a contract vendor or other person holding only a security interest in a Lot. The rights, obligations, and status of being an Owner commence upon acquisition of the ownership of the Lot and termination upon disposition of such ownership. Still, termination of ownership shall not discharge an Owner from obligations incurred before termination.

1.17 “Harvest Gardens PUD” means the initial property and any additional property annexed to this Declaration.

1.18 “Rules and Regulations” means those policies, procedures, rules, and regulations adopted by the Association under the authority granted in this Declaration, as the same may be amended from time to time. The Rules and Regulations of the Harvest Garden Homeowner’s Association, as adopted under the powers available to the Association and the Harvest Garden Homeowner’s Association Board of Directors, and in conjunction with standards of the City of Donald.

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

1.20 “The Property” means Harvest Gardens PUD, which includes all the land, real property, space comprising the parcel, all improvements and structures erected, all easements, rights and appurtenances belonging therein, and all fixtures and equipment intended for mutual use, benefit or enjoyment of the owners.

1.21 “Property Management Company” means the person, company, or entity, if any, which the Association has employed to manage the day-to-day administration of the property in a manner directed by the Harvest Garden Homeowner Board of Directors.

Article 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Property Declarant at this moment declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration:

“All real property within the certain plat entitled “Harvest Gardens PUD” filed in the plat records of Marion County, Oregon as recorded in Reel _____ at Page _____, Marion County Deed Records.

2.2 Annexation of Additional Property. The declarant may, from time to time and in its sole discretion, annex to Harvest Gardens PUD as Additional Property, any real property now or hereafter acquired by it, and may also, from time to time and in its sole discretion, permit other holders of real

property to annex the real property owned by them to Harvest Gardens PUD. There is no limitation on the number of Lots that the Declarant may create or annex to Harvest Gardens PUD except as may be established by applicable ordinances of the City of Donald. Similarly, there is no limitation on the right of the Declarant to annex common property;

2.3 Improvements. Declarant does not agree to build any specific future improvements but does not limit Declarant's right to add additional improvements to the Property.

2.4 Withdrawal of Property. Property may be withdrawn from Harvest Gardens PUD only by duly adopted amendment to this Declaration, except that Declarant may remove all or a portion of the Initial Property or any Additional Property annexed into the Property. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Marion County, Oregon. If a portion of the Property is withdrawn, all voting rights allocated to Lots being withdrawn shall be eliminated, and the everyday expenses shall be reallocated as provided in *Section 10.9* below. Such right of withdrawal shall not expire except upon the sale of the last Lot within the applicable phase of the Property development.

Article 3

LAND CLASSIFICATIONS

3.1 Land Classifications within Initial Property all land within the Initial Property is included in one or another of the following classifications:

- a. Lots shall consist of Lots 1-297 of the plat of Harvest Gardens PUD.
- b. Common areas shall be marked as 'Gardens,' and playground/park areas plus Common Easement Areas and Limited Common Areas referred to below.
- c. Limited Common Areas shall be marked as private roads and between homes as pocket parks on a plat of Harvest Gardens PUD.

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 Marion County, Oregon. The declarant shall execute such declaration as Owner of the Lots.

Article 4

PROPERTY RIGHTS IN COMMON AREAS

4.1 "Owners' Easements of Enjoyment" Subject to provisions of this article, every Owner and their invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appropriate to, and shall pass with the title to every Lot. However, the use of Limited Common

Areas is limited to the Owners and invitees of the Lots designated in the declaration establishing the Limited Common Area.

4.2 “Title to Common Areas” Title to the Common Areas shall be conveyed to the Association by the Declarant AS IS, free and clear of monetary liens, at least 90 days after the Turnover Meeting to the Board of Directors of the Association. Title to Common Easement Areas, subject to the easements outlined in the Declaration, shall rest in the Owners of respective Lots.

4.3 “Extent of Owners’ Rights” The rights and easements of enjoyment in the Common Areas created at this moment shall be subject to the following and all other provisions of this Declaration:

a. Association Easements. The declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under, and upon the Common Maintenance Areas:

1. An easement for underground installation and maintenance of power, gas, electric, water, and other utilities and communication lines and services installed by the Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.
2. An easement for construction, maintenance, repair, and use of such areas, including common facilities.
3. An easement to repair any existing structures in Common Areas.

b. Public and Utility Easements. The Common and Limited Common Areas shall be subject to such public and utility easements as may be established in any property plat. In addition, the public is hereby granted access easements to overall pedestrian access, trails, and Common Areas except for Limited Common Areas within the Property. The Declarant or the Association may grant or assign such easements to municipalities or other utilities performing service. The Declarant may also grant free access to police, fire, and other public officials and to the employees of utility and communication companies serving the Property.

c. Use of the Common Areas. The Common Areas and Limited Common Areas shall be used for the purposes set forth in any plat of the Property and not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas, except as otherwise provided in this Declaration.

d. Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned directly or indirectly by the Association. The Association shall first offer to dedicate such property to the City of Donald. Such approval shall be optional for the easements described in Section 4.3b above. The Association, upon approval in writing of at least 80% of the Association voting rights, and if approved by order or resolution of the City of Donald, may dedicate or convey any portion

of the Common Areas to a park district or other public body. This paragraph shall not apply to Common Easement Areas or Limited Common Areas.

e. Limitation on Use. Use of Common Areas and Limited Common Areas by the Owners shall be subject to the provision of this Declaration and to the following:

1. The right of the Association to suspend such use rights of an Owner or Occupant to the extent provided in *Article 11* below.

2. The right of the Association to adopt amends, and repeal rules and regulations in accordance with this Declaration.

4.4. “Delegation of Use” Any Owner may delegate, in accordance with the Bylaws of the Association, their right of enjoyment of the Common Areas and Limited Common Areas to family members, tenants, invitees, and guests, whose use shall be subject to this Declaration and the Rules and Regulations adopted under this Declaration.

4.5 “Easements Reserved by Declarant” So long as the Declarant owns any Lot, the Declarant reserves an easement over, under, and across the Common Areas and Limited Common Areas to carry out sales and rental activities necessary for the convenience of the sale or rental of Lots, including advertising and “For Sale” signs. Declarant, for itself and its successors and assignees, hereby retains the right and easement of ingress and egress over, in, upon, under, and across the Common Areas and Limited Common Areas and the right to store materials thereon and make such other use thereof as may be reasonably necessary to the construction of the Improvements on the Property or other real property owned by Declarant.

4.6 “Limited Common Areas” The respective Limited Common Areas shall be subject to a reciprocal access easement for the use by the Owners of the benefited Lots for vehicular access and utilities and communication lines service such Lots. Such areas shall be operated, maintained, replaced, and improved by the Association, but the entire cost thereof, including reserves for future maintenance, repairs, and replacements, shall be assessed on an equal basis to the Owners of Lots to which such Limited Common Areas pertain.

Article 5

PROPERTY RIGHTS IN LOTS

5.1 Use and Occupancy The owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by, and each Owner and Declarant shall comply with the restrictions contained in *Article 6* below, all other provision of this Declaration and the provision of any supplement or amendment to this Declaration.

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

a. Adjacent Common Maintenance Area. The Owner of any Lot that adjoins or blends together visually with any Common Maintenance Area shall, if the Association elects from time to time, require or permit the Association to enter upon the Lot to perform the maintenance of such Common Maintenance Area.

b. Right of Entry Declarant, the Declarant, Board or appointed Committee and any other 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 an emergency, security, and safety reasons or to perform maintenance and to enter any portion of the Lot located thereon for the purpose of determining whether or not the and the improvement of such Lot are then in compliance with this Declaration. No such entry shall be deemed trespass or otherwise create any right of action by the Owner of such Lot.

c. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on the recorded plat. City Code does not permit structures to be placed within utility easements. Within easements, the Board or appointed Committee shall not permit any planting, or other material to be placed or permitted to remain on the easement area if such planting, or other material may damage or interfere with the installation or maintenance of utilities, change the direction of flow of drainage in the easements or obstruct or retard the flow of water through drainage.

d. 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. The Declarant shall restore the Lot to its condition as it existed prior to such access and shall be responsible for any damage to the Lot.

Article 6

GENERAL USE RESTRICTIONS

6.1 Structures Permitted. No building or structure shall be created, constructed, maintained, or permitted upon said property except upon a building site. No building or structure shall be erected, constructed, maintained, or permitted on a building site other than a single detached dwelling unit, except appurtenance to any dwelling unit, such as garden houses or similar structures, architecturally in harmony and of permanent construction, may be erected within the building limits. All structures shall be completed and painted within six months from when construction commenced. Construction plans, specifications, and plans showing the location of structures shall be approved in advance of any construction. The building plans submitted shall consist of one complete set of plans and specifications

in the usual form showing the following: 1) The size and dimensions of the improvements, 2) The exterior design, 3) Exterior color scheme 4) Location of improvements on the lot.

6.2 Residential Use. Lots are only to be used for residential purposes. Except with the consent of the Board, no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials, or supplies be used in connection with any trade, service or business be kept or stored on any such Lot. The Board shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable law. 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 shall be deemed to prohibit:

- a. Any activities relating to the sale of Living Units
- b. The right of Declarant or any contractor or home builder to construct a Living Unit, on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use one or more Living Units as sales offices staffed by employees of Declarant or any licensed real estate salesperson.
- c. The right of the Owner of a Lot to maintain their professional personal library, keep personal, business, and professional records, or accounts, handle their personal or professional business, make telephone calls or confer with business or professional associates, clients, or customers, in their Living Unit. The Board of Directors shall 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 violate applicable law.

6.3 Offensive of Unlawful Activities. No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property that interferes with or jeopardizes the enjoyment of the Property or that is a source of annoyance to Owners or Occupants. Occupants shall use extreme care about creating disturbances, making noises, or using musical instruments, radios, televisions, amplifiers, and audio equipment that may disturb other Occupants. Owners and other Occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, Occupants, guests, or invitees, or directed at the managing agent, its agents, or employees, or vendors.

6.4 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, kept, or permitted within any Lot other than a reasonable number of household pets that are not kept, bred, or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance. No animal shall be permitted to roam the Property unattended.. Any inconvenience, damage or unpleassantness caused by such pets shall be the responsibility of the respective owners. Any hostile, overly aggressive, excessive barking, unrestrained or unattended pet , constitutes a nuisance. An Owner or Occupant may

be required to remove a pet upon receipt of a fourth and final notice from the Board of Directors of violations of any rule, regulations, or restriction governing pets within the Property.

6.5 Maintenance of Structures/Sidewalks/Trees: Each Owner or Occupant shall maintain the Owner's Lot, sidewalks and street trees, and other improvements thereon in a clean and attractive condition, in good repair, and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting or staining, repair, replacement, and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights, perimeter fences, and other exterior maintenance or improvements. Any change in the type of roof or roof color and any exterior remodeling or changes shall be subject to review and approval of the Board of Directors or Committee prior to any work being performed. Damage caused by fire, flood, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner. It shall be restored within a reasonable amount of time, as determined by the Board of Directors or Committee.

6.6 Maintenance of Landscape, Each Owner shall keep all sidewalks, shrubs, trees, grass, and plantings of every kind on the Owner's Lot or within the street right-of-way, neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly material.

6.7 Parking Owners and Occupants should park all vehicles on their property, in the garage or in the driveway, when possible. There is limited street parking throughout the Harvest Gardens PUD neighborhood. No vehicles of any kind shall be parked on lawn areas or other locations not designed for parking purposes. Recreation vehicles, including boats, trailers, motorcycles, campers, or RV's can be parked on the road for a maximum period of 48 hours for loading and unloading. Owners and Occupants shall not use designated visitor parking for extra vehicle parking or parking of recreational vehicles, trailers, motorcycles, campers, or other vehicles of any kind. Only visitors may use these temporary spaces while visiting Owners or Occupants for 48 hours. The HOA can tow vehicles in violation of any of these rules at the homeowner's expense.

6.8 Vehicles in Disrepair No Owner shall permit any vehicle in extreme disrepair to be abandoned or remain parked on the Owner's Lot or on streets for an excessive period (5 days). No non-running vehicles shall not be parked for extended periods (more than 20 days) in driveways, and owners or tenants are not permitted to perform repair work to their vehicles in driveways or streets.

6.9 Signs No signs shall be erected or maintained on any Lot and displayed to the public, except one temporary sign for sales or renting purposes or seasonal political signs for short periods. Association Signs placed in common areas are not to be changed, moved, or altered in any way.

6.10 Construction The construction on any Lot, including painting of the exterior, shall be completed within 8 months from the beginning of construction. In the event of an undue hardship, this provision may be extended with approval by the Board of Directors. The area shall be kept reasonably clean and in workmanlike order, free of litter, during construction. Debris may not be deposited on any other Lot. All unimproved or unoccupied Lots shall be kept in a neat and orderly condition, free from

6.11 Fences, Hedges, and Walls No fencing shall be installed in the front yard of any Lot. Fencing may be installed in the backyard of a Lot so long as such fencing is in compliance with applicable laws, statutes, ordinances, and regulations, is made of the same type of material, and is the same color as the fence(s) installed by the Association. No new fence, hedge, structure, wall, or retaining walls shall be constructed or exist anywhere on any Lot without prior approval of the Board of Directors or Committee. No planting or structure obstructing vision at driveways or intersections shall be permitted or maintained.

6.12 Exterior Lighting or Noisemaking Devices Except with the consent of the Board of Directors or Committee, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if installed not more than 30 days before and removed within 60 days after the holiday.

6.13 Pest Control No Owner or Occupant shall permit anything or condition to exist upon any portion of the Property that will induce, breed, or harbor infectious plant or animal diseases or noxious insects, weeds, or vermin.

6.14 Setback, Maximum Height, Minimum Yard Requirements Each Lot shall be subject to the setback, maximum height, and minimum yard requirements set by the City of Donald, which may be modified by an approved variance by the City and by the prior approval of the Board of Directors or Committee. No Lot may be subdivided or partitioned, nor may its Lot lines be adjusted, without the approval of the City of Donald and the Board of Directors.

6.15 Grades, Slopes, and Drainage Each Owner or Occupant shall not alter, modify or interfere with the established drainage pattern and grades, slopes, and courses related thereto over any Lot or Common Area without prior approval of the Board of Directors or Committee. No structure, planting, or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activity be undertaken that may damage or interfere with established slope ratios, create erosion or obstruct, change the direction of or retard the flow of water through drainage channels.

6.16 Garage Owners and Occupants shall use garages primarily for parking vehicles and only secondarily for storage.

6.17 Windows, Decks, Porches, and Fences To preserve the attractive appearance of the Property, the Association may regulate the nature of items placed in or on windows, decks, porches, and fences to be visible from the street or Common Areas. Garments, rugs, laundry, and other items may not be hung from windows, facades, porches, fences, or decks.

6.18 Leasing and Rental of Living Units No Owner may lease or rent their Living Unit for less than 6 months. All leases or rentals shall be by the written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Rules and Regulations, Articles of Incorporation, and Bylaws of the Association and that any failure by the lessee or tenant to comply with the terms shall be a default under the lease. Suppose the Board of Directors finds

the lessee or tenant has violated any provision of such documents or the Rules or Regulations. In that case, the Board may require the Owner to terminate such lease or rental agreement.

6.19 Rules and Regulations the Association, from time to time, may adopt, modify or revoke such Rules and Regulations governing the conduct of persons and the operations and use of the Property as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, shall be delivered by the Board of Directors to each Owner.

Article 7

ARCHITECTURAL REVIEW

7.1 Architectural Review No improvements shall be commenced, erected, placed, or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the Board of Directors or Architectural Review Committee. Except for construction by Declarant or any affiliate of Declarant shall be presumed approved and is thereby exempt from this review process. The Board of Directors - - are responsible for reviewing any conflicts between the CC&Rs and City Code, and any City Code provision prevails. The City does not enforce CC&Rs, but may prosecute a City Code violation. The Board of Directors enforces CC&Rs, and any member in good standing has the ability to bring code violations to the attention of the Board of Directors to determine any action needed.

7.2 Decisions & Discretion the Board of Directors and the Architectural Review Committee shall render its decision concerning a construction proposal within thirty (30) working days after it has received all material it requires concerning the application. The Board and Committee may, at its sole discretion, withhold consent if the Board and Architectural Review Committee find the proposed work inappropriate for the particular Lot or incompatible with the Design Guidelines or design standards.

7.3 Membership, Appointment, and Removal the Architectural Review Committee shall consist of as many persons as Declarant may from time to time appoint. Declarant, at its discretion, may appoint a single person to serve as the Committee, remove any member of the Committee from office at any time, and appoint new or additional members at any time. The Association shall keep on file a list of names and addresses of the members of the Committee. The declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members to/from the Committee. The term of each Committee member shall be one year unless extended by the Declarant or Board of Directors. The Board of Directors may serve on both the Board and Architectural Committee. A majority of the members of the Architectural Review Committee may submit changes and additions to Design Standards & Guidelines for Board approval.

7.4 Liability Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, Occupant, builder, or developer for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, Association shall indemnify the Committee and its members.

7.5 Process The building plans to be submitted by Owners shall consist of one complete set of plans and specifications in the usual form showing insofar as appropriate (i) The size and dimensions of the improvement; (ii) the exterior design (iii) approximate exterior color scheme (iv) location of improvements on Lot, including setbacks, driveway and parking areas (v) location of existing trees to be removed. The plans and specifications shall be left with the Committee until sixty (60) days after notice of the completion of Improvements to determine whether the Improvement complies substantially with the plans and is submitted and approved. The Board of Directors may charge a reasonable fee for the time and charges to review any submitted Improvement plan.

7.6 Appeal At any time after Declarant has delegated the appointment of the members of the Architectural Review Committee to the Board of Directors, any Owner adversely affected by the action of the Architectural Review Committee may appeal such action to the Board of Directors. Appeals shall be made in writing within 10 days of the Committee's action and shall contain specific objections justifying the appeal. The Board shall make a final, conclusive decision within twenty (20) working days after receipt of such notification.

7.7 Enforcement If during or after the construction of the Architectural Review Committee finds that the work was not performed in substantial conformance with the approval granted, or that the required approval was not obtained, the Committee shall notify the Owner in writing of the non-compliance, specifying the particulars of the non-compliance. The Committee may require confirming changes or that construction is stopped. The Owner shall bear the cost of any required changes

Article 8

ASSOCIATION'S OPERATION

8.1 Organization The declarant shall organize the Association as a nonprofit corporation in the State of Oregon before the first Lot is conveyed to any Owner. The Articles of Incorporation of the Association shall provide for its perpetual existence, in the event the Association is at any time dissolved, it shall automatically be succeeded by an unincorporated association of the same name. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 Membership, Every Owner of one or more Lots within the Property shall immediately upon creation of the Association and after that during the entire period of such Owner's ownership of one or more Lots within the Property must be a member of the Association. Such membership shall commence, exist, and continue simply by virtue of such ownership and shall expire automatically upon termination of such ownership; and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 Voting Rights the Association shall have two classes of voting membership:

Class A – members shall be all Owners and shall be entitled to one vote for each Lot owned.

Class B – member shall be the Declarant and shall be entitled to three votes for each Lot owned by Declarant. Class B membership shall cease and be converted to Class A membership (i) when all Lots in the final phase of development have been sold and conveyed to Owners other than Declarant. (ii) At such earlier time as the Declarant may elect in writing to terminate Class B membership

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

- a. The powers, duties, and obligations granted to the Association by this Declaration.
- b. The powers and obligations of a nonprofit corporation pursuant to the laws of the State of Oregon.
- c. The powers, duties, and obligations of the homeowner's 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 function of the Association pursuant to this Declaration and for the general benefit of the Owners within the Property.
- e. 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 and changes to the Articles of Incorporation or Bylaws of the Association.

8.5 Specific Powers and Duties The powers and duties of the Association shall include, without limitation, all of the following:

- a. **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in *Article 9* and other provisions of this Declaration.
- b. **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association
- c. **Rulemaking.** The Association shall make, establish, promulgate, amend, and repeal
- d. **Assessments.** The Association shall adopt budgets and impose and collect assessments as provided in *Article 10* of this Declaration.
- e. **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee.

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 and hire employees to manage, conduct and perform business and duties of the Association. They may employ professional counsel and obtain advice from such persons, firms, or corporations. The Association may enter into contracts for services necessary or convenient for the property's management, maintenance, and operations.

g. Borrow Money, Hold Title, and Make Conveyances. The Association may borrow and repay money for the purposes of performing its duties under this Declaration and encumber 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 interests therein, including but not limited to easements across all or any portion of the Common Area, shall accept any real or personal property, leasehold or other property interests in Harvest Gardens PUD to the Association by the Declarant.

h. Transfer, Dedication, and Encumbrance of Common Areas. Except as otherwise provided in *Section 4.3d* above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm, or 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 create various classes of services and make appropriate

8.6 Liability. Neither a member of the Board of Directors nor an officer of the Association or member of the Architectural Review Committee or any other committee established by the Board shall be liable to the Association, any Owner, or any third party for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of their duties, so long as the individual acted in good faith, believed that the conduct was in the best interest of the Association, and had to reason to believe the conduct was unlawful. The Association shall defend individuals against claims and indemnify individual liability and expenses incurred to the maximum extent permitted by law. The Association shall indemnify any managing agent and its officers and employees from any such claim other than for gross negligence or intentional misconduct.

8.7 Interim Board; Turnover Meeting. The Declarant shall have the right to appoint an interim board of one to four directors, who shall serve as the Board of Directors of the Association until replaced by the Declarant or until their successors take office at the Turnover Meeting. The Declarant shall call a meeting of the Association to turn over administrative responsibility for the Property to the Association not later than 90 days after the 20th home is conveyed. Interim directors shall resign, and their successors shall be elected by the Owners, as provided in this Declaration and the Bylaws of the Association.

8.8 Contracts by Declarant. Any management contracts, service contracts, or employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than five (5) years. Any such contract shall provide that it may be

terminated without cause or penalty by the Association upon not less than 30-day notice to the other party and 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 shall be recorded in the Deed Records of Marion County, Oregon. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as *Exhibit A* to this Declaration.

Article 9

MAINTENANCE AND LIGHTING OF COMMON MAINTENANCE AREAS

9.1 Maintenance and Lighting of Common Maintenance Areas. The Association may provide additional exterior lighting for the Common Maintenance Areas and Limited Common Areas. The association shall perform all maintenance, including landscaping, path lighting, irrigation, walks, private roads, monuments, gates, fences, walls, signs, parking areas, walkways, and trails located in Common and Limited Common Areas

9.2 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities within Common Maintenance Areas, such as sanitary sewer service lines, water service liens, and storm drainage. The Association is not liable for any interruption or failure of such services. Each Owner shall be responsible for maintaining utility lines within their Lot other than serving the Common Maintenance Areas. Each Owner shall be responsible for maintaining utility lines within his or her Lot other than serving the Common Maintenance Areas.

9.3 Maintenance of Off-Site Storm-water Facility. The City of Donald is responsible for all maintenance of the public stormwater facility serving Harvest Gardens PUD.

9.4 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, Employee, Contractor of the Association, or the Declarant or any successor of Declarant shall be considered insurers of security within the Property, nor shall any of them be held liable for any loss or damage because of failure to provide security measures.

9.5 Services. The Association may provide or contract for such services as the Board may reasonably deem of benefit to the Property, including, but not limited to, landscaping services, maintenance services, road surface cleaning, garbage service, or trash removal for Common Maintenance Areas, security services or communication services such as cable and internet services.

9.6 Owner's Responsibility. Except as otherwise provided in the Declaration or by written agreement with the Association, all maintenance of Lots and Improvements thereon as provided in *Section 6.5* above shall be the sole responsibility of the Owner thereof, who shall maintain such Lot and the portion of the street right-of-way between the Lot and the street in a neat and attractive condition in accordance with the community-wide standard of Harvest Gardens PUD. The Association shall, at the

discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if the level and quality of the maintenance by the Owner do not satisfy the standard. The Board shall notify the Owner in writing of its intention. If such Owner has not commenced and pursued remedial action within fifteen (15) days after the mailing notice, then the Association shall proceed. The maintenance provided by the Association shall be reimbursed to the Association by the Owner. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 11.5 and 10.7 below.

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

Article 10

ASSESSMENTS

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

10.2 Types of Assessments. The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments, Working Fund Assessments, and Individual Assessments, all as more particularly described below.

A. Lots Owned by Declarant – Lots owned by Declarant shall not be subject to Annual Assessments, including assessments for reserves, Special Assessments, Limited Common Area Assessments, or Emergency Assessments until such time as an occupancy certificate is issued for the Living Unit. Declarant, however, may defer payment of the accrued reserve assessments for a Lot from the time a Lot is conveyed.

b. Owned Lots – All Lots other than Lots owned by Declarant shall be subject to assessment and shall pay an equal share of the Annual Assessments, Special Assessments, and emergency Assessments. The declarant may elect to delay the collection of Annual Assessments against all Lots but in such case, shall pay all common expenses of the Association until such Assessments commence.

10.3 Annual Assessments. The Board of Directors of the Association shall, from time to time and at least annually, prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment, and any common profits of the Association. The budget shall consider the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

10.4 Special Assessments. In addition to the Annual 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 part of the cost of construction, repairs, or acquisition or replacement of a capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments shall be apportioned as provided in *Section 10.2* above and may be payable in a lump sum or installments, with or without interest or discount, as determined by the Board of Directors.

10.5 Emergency Assessments. If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis. Emergency Assessments shall be apportioned as outlined in *Section 10.2* above and payable as determined by the Board of Directors.

10.7 Individual Assessments. Any common expense or part of a common cost benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited. Individual Assessments include, without limitation, charges for services provided under *Sections 8.5(i) and 9.6* and any common expense that the Board of Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall 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 of the rules and regulations of the Association and fines or other charges imposed pursuant to this Declaration for violation thereof.

10.8 Working Fund Assessments. Upon the first sale of a Lot to a purchaser other than a successor Declarant and any subsequent sale of such Lot, the purchaser shall pay to the Association of Working Fund Assessment equal to two times the monthly Annual Assessment applicable to the Lot. The Board may deposit Working Fund Assessments may deposit funds to the Operations Fund or in the Reserve Fund at its discretion.

10.9 Annexation of Additional Property. When Additional Properties are annexed to Harvest Gardens PUD, the Lots included therein shall become subject to Assessments from the date of such annexation to the extent provided in *Section 10.2*. The Board of Directors, at its option, may elect to re-compute the budget based upon the additional Lots subject to assessment and additional Common Areas and re-compute Annual Assessments for all Lots, including new Lots, for the balance of the fiscal year. Additional Property shall be assessed for operating, maintaining, repairing, replacing, or improving additional Common Areas or facilities.

10.10 Operations Fund. The Association shall keep all funds received by it as Assessments, other than reserves described in *Section 10.11* or Working Fund Assessments deposited in the Reserve Fund as described in *Section 10.8*, separate and apart from its other funds, in a bank account in the State of Oregon in the name of the Association to be known as the "Operations Fund." All expenses of the

Association shall be paid from the Operations Fund or from the Reserve Fund. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents within the Property and, in particular, for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Maintenance Areas and of the Lots situated upon the Property, including but not limited to:

- a. Payment of the cost of maintenance, 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.
- 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, clerical, and other misc. services.

10.11 Reserve Fund. The declarant shall conduct a reserve study and establish a bank account in the State of Oregon in the name of the Association for the replacement of common properties that will normally require replacement in whole or in part in more than three years and less than thirty years. Assessments shall fund the Reserve Fund against the individual Lot assessed for the maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Lot. The reserve portion of the initial Assessment determined by the Declarant shall be based on a reserve study. The Board of Directors shall conduct a reserve study annually to review and update existing studies to determine the Reserve Fund requirements and may adjust the number of payments as indicated by the study or update and provide other reserve items that the Board may deem appropriate. The reserve study shall include:

- a. Indemnification of all items for which reserves are to be established
- b. The estimated remaining useful life of each item as of the date of the study
- c. The estimated cost of maintenance

10.12 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, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, late charges, expenses, or attorneys' fees imposed pursuant to *Section 11.5*, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such Assessments, charges, and other costs shall also be the personal obligation of the person who was the owner of such a Lot when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in *Article 11* below.

10.13 Voluntary Conveyance. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner's agent for the

benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement. The grantee, in that case, shall not be liable for any unpaid Assessments against the grantor not included in the written 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 provision of this Declaration, the Bylaws, or the Rules and Regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's particular 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 as provided in the Bylaws and within fourteen (14) days after issuing written notice to the Owner, then the Association acting through its Board of Directors shall have the right to do any of the following:

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

b. Enter the offending Lot and remove the cause of the violation, or alter, repair, or change the item that violates this Declaration in such a manner as to make it conform, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations fund as an Individual Assessment, provided that not items of construction shall be altered or demolished in the absence of judicial proceedings;

c. Cause any vehicle parked in violation of this Declaration or of the Rules and Regulations to be towed and impounded at the Owner's expenses

d. Suspend the voting rights, any utility services paid for out of Assessments, and the right to use the Common Areas for the period that the violations remain unabated, provided the Association shall 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 thirty (30) days after its due date, such Assessment or charge

shall become delinquent and shall bear interest from the due date at the rate set forth by the Board of Directors. In such event, the Association may exercise any or all of the following remedies:

a. The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments, and right to use 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, shall the Association deprive any Owner of access to and from his Lot.

b. The Association shall have a lien in accordance with ORS 97.709 against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or by the Bylaws against the Owner of the Lot, and may foreclose such lien in the manner provided in ORS 94.709.

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

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

11.3 Reports to First Mortgages. The Board of Directors will send notice of any default in performance of this Declaration by a Lot Owner that is not cured within sixty (60) days to any first mortgagee of such Lot who has given written notice to the Association requesting notices of defaults.

11.4 Subordination of Lien to Mortgages. The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot, which was made in good faith and for value and was recorded before the recordation of the notice of lien. The sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot that 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 shall extinguish any lien of an Assessment, a notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from Liability for any Assessments or charges after that 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 shall bear interest from the due date until paid at a rate that is greater than eighteen percent (18%) per annum or three percentage points per annum above the prevailing Marion County prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing

address of each Lot, or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien, established from time to time by resolution of the Board of Directors.

11.6 Costs and Attorney Fees. In the event the Association shall bring a 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 shall pay to the Association all costs and expenses incurred by it in connection with suit or action, including a foreclosure title report. The prevailing party in such suit or action shall recover such an amount as the court may determine to be reasonable as attorneys' fees trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

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

Article 12

DISPUTE RESOLUTION

12.1 Mediation.

a. Except for otherwise provided in this section, before initiating litigation, arbitration, or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration, or an administrative proceeding shall offer to use any dispute, resolution program available within Marion 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 ten (10) days after the receipt of the offer, such acceptance is 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 body's name, address, and telephone number administering the dispute resolution program.

c. If a qualified dispute resolution program exists with Marion County, Oregon, an offer to use the program is not made as required under paragraph (a) of this section. Litigation, arbitration, or an administrative proceeding may stay for thirty (30) days upon a motion of the non-initiating party. If the litigation, arbitration, or administrative action stays under this paragraph, both parties shall 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 thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration, or an administrative proceeding without regard to whether the dispute resolution is completed.

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 (including members, officers, directors, shareholders, and affiliates of Declarant), Association, the Architectural Review Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules, and Regulations, or the Property shall be the 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 awards of the arbitrator shall be final, binding, and non-appealable. The arbitration shall be conducted in the Wilsonville/Woodburn, Oregon, area or such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon, and any court may enforce any arbitration award with jurisdiction. Filing for arbitration shall be treated the same as filing in court to meet any applicable statute of limitation or to file a notice of pending action.

12.3 Selection of Arbitrator. The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. Suppose the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration upon application of any party. In that case, the presiding judge of the Circuit Court of Marion County, Oregon, shall designate the arbitrator.

12.4 Consolidated Arbitration. Upon demand by any party, claims between or the amount the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of this Article, in the event any claim, controversy, or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration.

Either party may elect to have the matter determined by a court of law in a consolidated proceeding rather than by arbitration. In such a case, the parties hereby waive a trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

12.5 Discovery. The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Marion County Circuit Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to a deposition, and to impose appropriate sanctions including, without limitation, an 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 shall produce such additional evidence as the arbitrator may deem necessary to understand and determine the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all parties, except when any of the parties is absent in default or has waived its right to be present.

12.7 Excluded Matter. Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this *Article 12* (but shall be subject to the applicable provisions of *Section 12.8* below)

a. actions relating to the collection of fees, Assessments, fines, and other charges imposed or levied by the Association 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 shall 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 mediation costs shall be divided and paid equally by the parties. Each party shall pay its attorneys' fees and costs with any mediation. The non-prevailing party or parties shall pay the fees of any arbitrator and the costs of arbitration; if none, such fees and costs shall be divided and paid equally by the parties. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator for expenses incurred before and during the arbitration proceeding and by the court, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment.

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

Article 13

MORTGAGEES

13.1 Reimbursement of First Mortgagees. First mortgagees of Lots may, jointly or singly, pay taxes or other charges that are in default and that 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 shall be owed immediate reimbursement therefor from the Association to the extent the same was the responsibility of the Association.

Article 14

AMENDMENT AND REPEAL

14.1 How Proposed. Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding fifty percent (50%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

14.2 Approval Required. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of the Owners representing not less than fifty percent (50%) of the member-owned Lots, based upon one vote for each Lot, together with the written consent of the Class B member if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit, or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which Lot is restricted under this Declaration or change the method for determining liability for common expenses or right to expected profits or the process of determining voting rights of a Lot owner.

14.3 Recordation. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Marion County, Oregon, of a certificate of the president and secretary of the Association set in 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 form provided for acknowledgment of deeds.

14.4 Regulatory Amendments. Notwithstanding the provisions of Section 14.2 above, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, or regulation or of the Federal Housing Administration, any department, bureau, board, commission or agency of the United States or the State of Oregon. After the Turnover Meeting, any such amendment shall require the approval of the majority of the voting rights of the Association voting in person, by proxy, or by ballot at the 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 shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of their Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such person in the same manner and to the same extent as if the failure had been committed by the Owner himself or herself.

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

15.3 Construction; Severability; Number; Captions. Each provision of this Declaration shall be deemed independent and severable. Any provision's invalidity or partial invalidity shall not affect the validity or enforceability of the remaining part of that or any other provision.

15.4 Notices and Other Documents. Any notice or document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be made twenty-four (24) hours after having been deposited in the US mail as certified or registered mail, with postage prepaid, addressed to the Declarant or the Owner, address given by the Owner at the time of their purchase of a Lot. The address of a party may be changed at any time by notice in writing delivered to the Association secretary.

15.5 Private Agreement. This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Harvest Gardens PUD. It is the duty of every person engaged in developing or remodeling a Lot and Improvement in Harvest Gardens PUD to know the requirements of this Declaration and the covenants and agreements contained herein. The Declarant, the Architectural Review Committee, and Association will not be liable for any approval granted in compliance with this Declaration but not in compliance with the regulations of the City of Donald, the State of Oregon, or any other jurisdiction.