

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR FOREST HEIGHTS**



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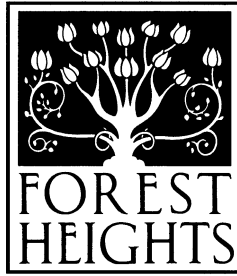
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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
FOREST HEIGHTS**

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 1989  
8 by NAURU PHOSPHATE ROYALTIES (PORTLAND) , INC., a Delaware  
corporation (Declarant').

**OBJECTIVES**

Declarant owns approximately 601 acres located partially within the City of Portland, Multnomah County, Oregon, and partially within Washington County, Oregon. Declarant proposes to develop portions of this property as a planned development to be known as 'Forest Heights.'

Declarant hopes to create in Forest Heights a carefully planned community which will provide an attractive place to live. Declarant presently plans to organize within Forest Heights a number of residential areas, all of which will have restrictions as to use of property. Other areas within or adjacent to Forest Heights may be devoted to open space, commercial and other service facilities, to various recreational purposes, to a school, to a public park or to a fire station.

The residential areas within Forest Heights will be diverse in character with some residential areas designated for single-family dwelling uses and others for medium density residential occupancy. Medium density residential occupancy may be of one or more attached and detached housing types, including duplexes, row houses, town houses, cluster houses, condominiums, and apartments.

Declarant will provide leadership in organizing and administering the Forest Heights community during the development period, but expects property owners in Forest Heights to accept the responsibility for community administration by the time the development is complete.

Funds for the maintenance and development of Common Areas (as hereinafter defined) and certain other areas generally will be provided through assessments

against those who purchase property within Forest Heights, although to assist with the development of Forest Heights, Declarant may (but, unless otherwise expressly provided in this Declaration, or in any plat of Property in Forest Heights or in any declaration annexing property to Forest Heights, is not obligated to) from time to time itself provide some Improvements. For the protection of all owners of property in Forest Heights, there will be a system designed to assure that each person who purchased property in Forest Heights will pay an equitable share of the monies necessary for the maintenance and development of Common Areas (as hereinafter defined), certain other areas and any recreational service areas.

By adoption of these covenants, conditions and restrictions, Declarant is not committing itself to take any action for which definite provision is not made below nor is the Declarant prohibited from adding Improvements or undertaking any activity not described in this Declaration. One who acquires property in Forest Heights will have the advantage of any further development of Forest Heights, but shall not have any legal right to insist that there be any further or other development except as provided in this Declaration, in any plat of property in Forest Heights, or in any declaration which hereafter may be recorded annexing areas to Forest Heights and subjecting areas to these covenants, conditions and restrictions.

Declarant has recorded the plat of "Ridgeline" in the plat records of Multnomah County, Oregon. Declarant desires to subject the property described in such plat to the conditions, restrictions and charges set forth herein for the benefit of such property and its present and subsequent owners, and to establish such property as the first phase of the planned community to be known as "Forest Heights." Additional areas may be annexed to Forest Heights in accordance with the provisions set forth in this Declaration and with applicable City of Portland or Washington County ordinances.

NOW, THEREFORE, Declarant hereby declares that the property described in the plat of Ridgeline 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**

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

1.1 "Architectural Review Committee" means the Architectural Review Committee appointed pursuant to Article VII hereof.

1.2 "Association" means the nonprofit corporation to be formed to serve as the association of Owners (as hereinafter defined) as provided in Article VIII hereof, and its successors and assigns.

1.3 "Commercial Lots" means those Lots (defined in Section 1.12 below) used or to be used for nonresidential purposes, including without limitation, retail, service and private membership recreational facilities, and designated as Commercial Lots on any plat of property within Forest Heights or so designated in any declaration annexing such Lots to Forest Heights.

1.4 "Common Areas" means those areas so designated on any plat of any property in Forest Heights, or in this Declaration, or in any declaration annexing property to Forest Heights, including any Improvements thereon, and shall also include Common Easement Areas (as hereinafter defined) and any lots converted to Common Areas as provided in Section 3.4 below.

1.5 "Common Easement Areas" means those areas so designated on any plat of any property within Forest Heights or in this Declaration or in any declaration annexing such property to Forest Heights.

1.6 "Condominium" means any property in Forest Heights submitted to the Oregon Condominium Act in the manner provided by ORS 94.004 to 94.480 and 94.991.

1.7 "Declarant" means Nauru Phosphate Royalties (Portland), Inc., a Delaware corporation, any person who succeeds to any special Declarant right and to whom all of the Declarant's ownership interest in Forest Heights is transferred or any person, other than the Association, to whom the Declarant has transferred, for purposes of resale, all of Declarant's ownership interest in the planned community.

1.8 "Forest Heights" means the property designated in Section 2.1 of this Declaration and any other property designated in any declaration annexing such property to Forest Heights in accordance with Section 2.2 of this Declaration, but excluding any property withdrawn from Forest Heights in accordance with Section 2.3 of this Declaration.

1.9 "Improvement" means every temporary or permanent structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to any property within Forest Heights, including landscaping, and every alteration, painting or reconstruction thereof.

1.10 "Initial Development" means the property referred to in Section 2.1.

1.11 "Limited Common Areas" means those areas so designated on any plat of any property within Forest Heights or in this Declaration or in any declaration annexing such areas to Forest Heights.

1.12 "Living Unit" means a building or a portion of a building located or to be located upon a Lot within Forest Heights and designated for separate residential occupancy (whether or not occupied) or ownership, including a house, apartment or dwelling unit within a multiple occupancy building and, except where the context requires otherwise, a Condominium unit, but not including any building or portion of a building located on a Common Area. For the purpose of determining when voting rights under Article VII and assessment obligations under Article X arise, a Living Unit shall be first deemed to exist when a building permit for the building or portion of the building in which the Living Unit is located has been issued for the construction of such building or portion thereof.

1.13 "Lot" means a platted or partitioned lot, tract or Condominium unit within Forest Heights or any property so designated in any declaration annexing such property to Forest Heights, but not including any Common Area.

1.14 "Mortgage" means a mortgage, trust deed, or land sales contract; "mortgagee" means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract; and "mortgagor" means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

1.15 "Owner" means the person or persons, including Declarant, owning any Lot, including any vendee under a recorded land sales contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.16 "Residential Lots" means those Lots designated as such on any plat of any property within Forest Heights or in this Declaration or in any declaration annexing such Lots to Forest Heights.

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

1.18 "This Declaration" means all of the easements, covenants, restrictions and charges set forth in this Declaration of Protective Covenants, conditions, and Restrictions for Forest Heights and in any and all declarations annexing property to Forest Heights, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Development. Declarant hereby 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 that certain real property located in the City of Portland, Multnomah County, Oregon, in that certain plat entitled "RIDGELINE" filed March 20, 1989, in Book 1220, Pages 12-20, in the plat records of Multnomah County, Oregon.

The Initial Development contains 86 single-family lots and three medium density residential Lots for a total of 89 Lots. The Initial Development will contain not more than 193 Living Units.

2.2 Annexation of Additional Property. Subject to any applicable City of Portland or Washington County ordinances, Declarant may from time to time and in its sole discretion annex to Forest Heights any adjacent real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of adjacent real property to annex the adjacent real property owned by them to Forest Heights. The annexation of such adjacent real property shall be accomplished as follows:

(a) Declaration of Annexation. The owner or owners of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) Provisions of Declaration of Annexation. Notwithstanding any provision apparently to the contrary, a declaration with respect to any annexed property may, subject to any applicable City of Portland or Washington County ordinances:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property.

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

(c) Effect of Annexation. The property included in any such annexation shall thereby become a part of Forest Heights and this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(d) Limitations on Annexation: Annexation of Mill Pond Area. There is no limitation on the number of Lots or Living Units which Declarant may create or annex to Forest Heights, except as may be established by applicable ordinances of the City of Portland or Washington County. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by applicable ordinances of the City of Portland or Washington County. Declarant agrees to annex to Forest Heights as a Common Area the property commonly known as the Mill Pond area, the exact dimensions and description of which shall be established by Declarant in Declarant's sole discretion. It is Declarant's intention that the Mill Pond area will be designated as a Common Area, and will include a storm drainage detention facility.

(e) Voting Rights. Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(f) Adjustment of Association Expenses. The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.7 below.

2.3 Withdrawal of Property. Subject to any applicable City of Portland or Washington County ordinances, Declarant may withdraw property from Forest Heights, including Common Area property, only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of any property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Lot in the property annexed by such declaration. Such withdrawal shall be by a declaration executed by Declarant

and recorded in the deed records of each county in which the property being withdrawn is located. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.7 below. The right of Declarant to withdraw property hereunder shall not expire until the first Lot in the last phase of Forest Heights has been sold.

### ARTICLE III

#### LAND CLASSIFICATIONS

3.1 Initial Development. All land within the Initial Development is included in one of the following classifications:

(a) Residential Lots. Residential Lots shall consist of all Lots on the plat in the Initial Development, except those portions of such Lots which are within Common Easement Areas as shown on the plat.

(b) Common Areas. Common Areas shall consist of all areas marked as “Tract A”, “Tract B”, “Tract C”, and “Tract D” on the plat of the Initial Development, plus the Common Easement Areas.

(c) Common Easement Areas. Common Easement Areas shall consist of all areas marked “Landscape Easement” on the plat of the Initial Development.

(d) Limited Common Areas. Limited Common Areas shall consist of the areas marked on the plat of the Initial Development as a “P.L.C.A.A. Easement” or “P.L.C.A. Access Easement”, “Private Limited Common Areas Access”, or a “Private Storm Sewer Easement”, the use and benefit of which shall be limited to those Lots adjoining such areas, and the cost of installation and maintenance of which shall be borne solely by such adjoining Lots in accordance with Section 4.6 below.

3.2 Additional Land Classifications. Additional land classifications and uses may hereafter be established in any declaration annexing property to Forest Heights as provided in Section 2.2 above.

3.3 Change in Land Classifications. Subject to any applicable City of Portland or Washington County ordinances, the classification of any area designated as a “P.L.C.A.A. Easement”, “P.L.C.A. Access Easement”, “Private Limited Common Area Access”, or Private Storm Sewer Easement”, may be changed, added, or removed only by the recorded declaration executed by the Owners of all Lots adjoining such area.

3.4 Conversion of Residential or Commercial Lots to Common Areas. Subject to any applicable City of Portland or Washington County ordinances, Declarant may elect to build common facilities on one or more Residential or Commercial Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of the county in which such Lots are located. Such declaration shall be executed by Declarant, as owner of the Lots, and bear a certificate of the president or secretary of the Association reciting that the holders of a majority of the voting rights in the Association have approved such conversion to Common Areas.

3.5 Consolidation of Lots. The Owner of two adjoining Lots, with the approval of the Architectural Review Committee, may elect to consolidate such Lots into one Lot. Subject to any applicable City of Portland or Washington County ordinances, the Architectural Review Committee may impose reasonable conditions or restrictions on the granting of its approval of a Lot consolidation, including, but not limited to maintenance or landscaping requirements and limitations on use. The consolidation shall be effective upon the recording in the deed records in the county in which the Lot is located of a declaration of the Owner stating that the two Lots are consolidated. The declaration shall include a written consent to the consolidation executed on behalf of the Architectural Review Committee by at least one member thereof and a description of any restrictions and conditions imposed as a condition of such consent. Thereafter, and except if otherwise provided by the Architectural Review Committee as a condition to its consent, the consolidated Lots shall constitute one Lot for all purposes of this Declaration, including voting rights and assessments.

## **ARTICLE IV**

### PROPERTY PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to provisions of this Declaration, every Owner and such Owner's invitees shall have a right and easement of enjoyment in and to the Common Areas.

4.2 Common Easement Areas. The Common Easement Areas shall be reserved as landscape buffer areas. Such areas are to be maintained by the Association and no party other than Declarant shall make any changes in the landscape design, architecture, ornamentation, or plantings or remove or trim trees, lawns or shrubs in the Common Easement Areas without written authorization by the Board of Directors of the Association. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner other than Declarant so as to trespass or encroach upon the Common Easement Areas. This paragraph shall not apply to any area located within a Common Easement Area which is on the Owner's side

of a privacy fence built within the Common Easement Area by the Declarant unless and until the privacy fence is removed by the Declarant or the Association. Under no circumstances will the owner acquire any rights in the Common Easement Areas superior to the rights reserved by the Declarant herein by any claim of non-use or adverse possession.

4.3 Title to Common Areas. Fee title to the Common Areas, except the Common Easement Areas, shall be conveyed by Declarant to, and must be accepted by, the Association free and clear of liens and encumbrances prior to the date on which Class B membership in the Association ceases and is converted to Class A membership as described in Section 8.3(b). Fee title to the Common Easement Areas shall pass to the Owners of the respective Lots within which such Common Easement Areas are located, subject to the easements set forth in this Declaration.

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

(a) Association s and Owner's Easements. Declarant grants to the Association for the benefit of the Association and all Owners of Lots within Forest Heights the following easements over, under and upon the Common Areas, including the Common Easement Areas:

- (i) An easement for installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of property within Forest Heights.
- (ii) An easement for construction, maintenance, repair and use of the Common Areas and common facilities thereon, including, but not limited to, walkways, bike paths, fences, landscaping, irrigation systems, landscape art, and entry way structures, decorative ornamentation, and signs, and for any purposes and uses adopted by the Association for the benefit of .the Association and the Owners.
- (iii) An easement for the purpose of making repairs to any existing structure on the Common Areas.

(b) Declarant's Easements. So long as Declarant owns any Lot, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under and across the Common Areas in order to carry out

development, construction, sales, and rental activities necessary or convenient for the development of Forest Heights and the sale or rental of Lots and for such other purposes as may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights hereunder.

(c) Utilities Easements. Declarant or the Association may (and, to the extent required by law, shall) grant or assign easements to municipalities, communication companies, or other utilities performing utility services, including, without limitation, the cable and telephone systems referred to in Section 12.12 of this Declaration, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving Forest Heights.

(d) Use of the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas for the purpose of identifying Forest Heights or any subdivision therein or identifying trails or other items of interest, provided such signs are approved by the Architectural Review Committee and comply with any applicable City of Portland or Washington County ordinances. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

(e) Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, cause the Common Area to be subject to any security interest, sell, or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least 80 percent of the Class A voting rights (as described in Section 8.3(b) below) and the Class B member (as defined in Section 8.3(b) below), if any, have given their prior written approval and such action complies with any applicable City of Portland or Washington County ordinances. This provision shall not apply to the easements described in Section 4.4(a) above. The Association, upon approval in writing of the holders of at least 50 percent of the Class A voting rights and the Class B member, if any, and if approved by the City of Portland (or, if applicable, Washington County), may dedicate or convey any portion of the Common Areas to a park district or other public body for open space or recreational use. A sale, transfer, or encumbrance of the Common Area or any portion of the Common Area in accordance with this Section 4.4(e) may provide that the Common Area so conveyed shall be released from any restriction imposed on such Common Area by this Declaration. No sale, transfer, or

encumbrance, may, however, deprive any Lot of such Lot's right of access or support without the written consent of the Owner of the Lot.

(f) Restrictions on Use of Common Areas. Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article XI below.

(ii) The right of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration and the Bylaws of the Association, including, without limitation, the right to require reservations for use of the Common Area or Common Area facilities and the right to impose reasonable fees in connection with such use.

4.5 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, such Owner's right of enjoyment of the Common Areas to the members of such Owner's family or tenants who reside on the Lot.

4.6 Limited Common Area Easements. Each Lot adjoining a Limited Common Area shall have the following rights and obligations in connection with such Limited Common Area:

(a) Uses. Each Lot adjoining a Limited Common Area shall have an easement over such Limited Common Area for the following use:

(i) If the area is designated a "P.L.C.A.A. Easement" or "P.L.C.A. Access Easement," or "Private Limited Common Area Access," such Lot shall have a nonexclusive easement over such area for ingress, egress, and utility installation and maintenance purposes.

(ii) If the Limited Common Area is designated as a "Private Storm Sewer Easement" area, each Lot adjoining such area shall have a nonexclusive easement over such area for the purposes of installation and maintenance of one or more private storm sewers and appurtenances for foundation and rain drain (the "Common Private Storm Sewer").

(b) Installation Cost. The cost of installing a roadway, driveway, or Common Private Storm Sewer in a Limited Common Area shall be shared by all of the Owners of Lots adjoining the Limited Common Area in which such roadway, driveway, or Common Private Storm Sewer is located ("Adjoining Owner"), equally or in such other proportions as are determined in the Association's reasonable discretion.

(c) Contribution. An Owner of a Lot adjoining a Limited Common Area may obtain contribution from other Adjoining Owners for the reasonable costs of installing the roadway, driveway, or Common Private Storm Sewer in all or part of such Limited Common Area if such Owner has, not less than five (5) business days before the work is commenced on such installation, given to each and every Adjoining Owner written notice of the work to be performed, the estimated cost thereof, the legal description of the adjoining Lots to be charged with a share of the cost of such installation, and an estimate of each Adjoining Owner's proportionate share thereof.

(d) Record Notice; Lien. Any Owner seeking contribution hereunder may record the notice described in Section 4.6(c) in the deed records of the county in which any Lot subject to a claim for contribution is located (including Lots owned by Declarant) and such claim for contribution shall become a lien against those Lots named in the notice located in the county where the notice is recorded; provided, however, no such notice shall become a lien against any Lot unless such recorded notice includes a statement duly executed by the Board of Directors of the Association that it has reviewed the estimate of proportionate shares contained in the notice and has found the allocation thereof reasonable.

(e) Payment of Contributions. Contributions hereunder shall be payable at the time the Owner seeking contribution is required to pay for the installation for which contribution is sought, or upon completion of such installation, whichever is later, except that Declarant shall not be subject to any claim for contribution hereunder unless and until the Lot owned by Declarant which is subject to a claim for contribution is sold to an unrelated party or is occupied for residential or commercial use, as applicable, whichever is first.

(f) Cost of Maintenance. Limited Common Areas shall be maintained and repaired by the Association. Cost of maintenance and repair of Limited Common Areas, except for the cost of maintenance or repair required because negligence or intentional misconduct, shall be shared equally by and assessed to all of the Adjoining Owners or in such other proportions as are determined in the Association's reasonable discretion.

(g) Damage. It shall be the responsibility of each Owner to properly repair, at such Owner's sole expense, damage caused to a Limited Common Area through the negligence or intentional conduct of such Owner or such Owner's agents, guests, or invitees. If such Owner fails to repair damage to the Limited Common Area as required by this subparagraph, the Association may cause such repair to be performed and assess the Owner for all sums necessarily and properly expended to remedy the damage to the Limited Common Area.

(h) Obligation of Contribution Runs with the Land. The obligation of contribution hereunder shall not only be a charge and continuing lien against and run with the land, but shall also be the personal obligation of the Owner of the Lot at the time an obligation of contribution hereunder arises.

(i) Arbitration. In the event of any dispute concerning the use of any Limited Common Area or the allocation of or right to contribution of cost of installation, maintenance, or repair of any roadway, driveway, or Common Private Storm Sewer in a Limited Common Area, the Board of Directors of the Association shall act as arbitrators and their decision shall be final. In their reasonable discretion, the Board of Directors may award costs and attorneys fees, if any, to the prevailing party.

(j) Standards for Allocation. In allocating installation costs and assessments to an Adjoining Owner, the Association may consider such factors as the relative use and benefit which is derived or may be derived by such Adjoining Owner, any written agreements by such Adjoining Owner concerning the use or benefit to be derived by such Adjoining Owner, and the relative burden assumed by such Adjoining Owner, including the property contributed by such Adjoining Owner to the Limited Common Area, property tax and other expenses paid in connection with the Limited Common Area by such Adjoining Owner, and any other factors which the Association deems relevant to a determination of establishing fair and equitable allocations. The Association shall not be deemed to have acted unreasonably solely because the Association determines that an Adjoining Owner's allocated share of installation costs and assessment is zero, if the Association has acted in good faith in determining the allocation.

#### 4.7 City of Portland Utility Easements.

(a) City of Portland Consent. No permanent or temporary surface or underground structures, private or public utility lines, or improvements shall be constructed or located in easements over any portion of Forest Heights granted to the City or to the public for construction, operation, maintenance or repair of service facilities without the written consent of the City Engineer and, where appropriate, the Chief Engineer of the City Bureau of Water Works.

(b) Indemnification for Utility Repair in Private Streets. The Association and all Owners shall, jointly and severally, in consideration of the City's allowing private streets within Forest Heights and with full knowledge of the facts and circumstances and as a free and voluntary act and deed hereby forever release, hold harmless and agree to defend and indemnify the City, its officers, agents and employees from, and waive its rights to all claims, demands, actions and suits, including all attorney fees and costs, that it or they

may now or ever have against the City, its officers, agents and employees for property damage arising in the course of the construction, repair, or maintenance of any City utility within the private street area, except claims, demands, actions, and suits arising out of the gross negligence or willful misconduct of the City or its officers, employees, or agents.

(c) Street Repair. If the City should remove the street surface to conduct repair, maintenance, or replacement work on City utilities, the City will upon completion of its work, provide an asphalt or concrete patch in the paved surface, but all other street resurfacing expenses necessitated by the maintenance and repair of City utilities shall be borne by the Owners and paid by the Association as a common expense. Work by the City in unpaved areas will be restored by the City as nearly as reasonable to the condition existing prior to the work.

(d) City Responsibility for Construction or Maintenance of Limited Common Areas. The Association and all Owners acknowledge that the City has no responsibility to establish, construct, or repair Common Areas or Limited Common Areas or any road, driveway, private storm sewer line, or other private improvement ("Private Improvement") located in Common Areas or Limited Common Areas. The Association and all Owners shall, jointly and severally, hold harmless, defend, and indemnify the City and the City's officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs), brought against any of them arising from the failure to properly establish, construct, or maintain Common Areas or Limited Common Areas or Private Improvements in connection with Common Areas or Limited Common Areas. This Section 4.7(d) shall not be construed to modify or reduce any obligation of the City in connection with City owned and maintained utilities located in easements granted to the City in Common Areas or Limited Common Areas.

## ARTICLE V

### PROPERTY RIGHTS IN LOTS

5.1 Use and Occupancy. Except as otherwise expressly provided in this Declaration, in the plat in which a Lot was platted or partitioned, or in any declaration annexing such Lot to Forest Heights, the Owner of a Lot in Forest Heights shall be entitled to the exclusive use and benefit of such Lot.

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

(a) Adjacent Common Area. The Owner of any Lot which blends together visually with any Common Area shall permit the Association to enter upon such Lot to perform the maintenance of such Common Area.

(b) Right of Entry. Declarant, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved over the rear and side five (5) feet of each Lot. Such easements are also reserved over the front and on other portions of certain Lots, as shown on the recorded plat. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side lot lines on which a party wall, as defined in Section 5.3, exists or which have been approved for zero lot line development.

5.3 Party Walls. Each wall which is built as a part of the original construction of a dwelling unit within Forest Heights and placed upon the dividing line between Lots shall constitute a "party wall," and the following provisions shall apply:

(a) General Rules of Law to Apply. The general rules of law of the State of Oregon regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply to all such party walls, to the extent such rules are not inconsistent with the provisions of this Section 5.3.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. The word "use" as referred to in this Section 5.3 means ownership of a Living Unit or other structure which incorporates such wall or any part thereof. Any Owner using a party wall may cause repairs and maintenance to be performed to

the party wall and, if such Owner has, not less than 5 days prior to commencing such repair or maintenance, given to all other Owners using the party wall written notice describing the repairs or maintenance to be performed, the estimated cost thereof, the legal description of the Lots to be charged with a share of the maintenance, and an estimate of each Owner's proportionate share, obtain contribution of the portion of the cost attributable to other Owners using the party wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who used the party wall may restore it and, if such Owner has, not less than 5 days prior to commencing such restoration, given to all other Owners who used the party wall prior to the destruction or casualty written notice describing the restoration to be performed, the estimated cost thereof, the legal description of the Lots to be charged with a share of such restoration and an estimate of each Lot's proportionate share, obtain contribution of the portion of the cost attributable to the other Owners using the party wall, without prejudice, however, to the right of any Owner to obtain a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Section 5.3, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements and the cost of any required repair because of such exposure to the elements.

(e) Obligation of Contribution Runs with the Land. The obligation of contribution hereunder shall not only be a charge and continuing lien against and run with the land, but shall also be the personal obligation of the Owner of the Lot at the time an obligation of contribution hereunder arises.

(f) Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Section 5.3, the Board of Directors of the Association shall act as arbitrators and their decision shall be final. In their reasonable discretion, the Board of Directors may award costs and attorney fees, if any, to the prevailing party.

(g) Consolidated Lots. This Section 5.3 shall not apply to any wall which would be a party wall but for the fact that the separate Lots sharing the party wall have been consolidated into one Lot in accordance with Section 3.5 of this Declaration.

## ARTICLE VI

### RESTRICTION ON USE OF RESIDENTIAL LOTS

6.1 Structures Permitted. No Improvements shall be erected or permitted to remain on any Residential Lot except Improvements containing Living Units and Improvements normally accessory thereto. The foregoing provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool, or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with applicable City of Portland and decoration with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee.

6.2 Residential Use. Residential Lots shall only be used for residential purposes. Except with the consent of the Board of Directors of the Association, and as allowed by applicable City of Portland or Washington County ordinances, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Residential Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Residential Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home or apartment for purposes of sales or rental in Forest Heights, and (c) the right of the Owner of a Residential Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his 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 be in violation of applicable City of Portland or Washington County ordinances.

6.3 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof, shall be observed. Without limiting the generality of the foregoing, no heat pump or other heating, ventilating, or

air conditioning equipment, the operation of which Produces noise at a level higher than 80 decibels, as measured at the lot line, shall be allowed on any residential Lot or Living Unit.

6.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Residential Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof. No dog shall be permitted to roam Forest Heights unattended, and all dogs shall be kept on a leash while outside the Residential Lot of their Owner. An Owner or resident may be required to remove a pet upon receipt of the third notice in writing from the Association Board of Directors of violations of any rule, regulation or restriction governing pets within Forest Heights.

6.5 Maintenance of Structures and Grounds. Each Owner shall maintain such Owner's Residential Lot and improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Residential Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be repaired within a reasonable period of time.

6.6 Parking. Parking of boats, trailers, motorcycles, trucks, truck campers, or other recreational vehicle or equipment and vehicles in excess of 8000 pounds gross vehicle weight shall not be allowed on any part of Forest Heights nor on public streets adjacent thereto, excepting only within areas designated for such purposes by the Board of Directors of the Association or within the confines of an enclosed garage or screened area, the plans of which comply with applicable City of Portland and Washington County ordinances, shall have been reviewed and approved by the Architectural Review Committee prior to construction, and no portion of the same may project beyond the screened area.

6.7 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Area or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of

disrepair" when the Board of Directors reasonably determines that its presence offends occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him by the Association, the Association may have the vehicle removed from Forest Heights and assess the expense of such removal to the Owner.

6.8 Signs. No signs shall be erected or maintained on any Residential Lot except signs which are approved as to appearance and location by the Architectural Review Committee. The restrictions contained in this paragraph shall not apply to:

(a) Political Signs. The temporary placement of "political" signs on any Residential Lot by the Owner thereof;

(b) Declarant's Sales Office and Model Home Signs. The placement by the Declarant or Declarant's agent of one or more signs identifying the name of the Declarant and/or the location a sales office or model home.

6.9 Rubbish and Trash. No Residential Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, or Common Areas, or on any Lots. All unimproved Residential Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard. If any default under this Section 6.9 exists for a period longer than ten days after written notice of such default is mailed to the responsible Owner by the Association, the Association shall have, in addition to any other rights under this Declaration, or at law or in equity, the remedies specified in Section 11.2(a), (b), and (c).

6.10 Completion of Construction. The construction of any building on any Residential Lot, including painting and all exterior finish, shall be completed within eight (8) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period.

6.11 Landscape Completion. All landscaping must be completed within two (2') months from the date of occupancy of the Living Unit constructed thereon. In the event of undue

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

6.12 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Residential Lot at any time as a residence either temporarily or permanently.

6.13 Hedges and Plantings Along Lot Lines. No hedges or plantings along Lot lines shall be installed without prior approval of the Architectural Review Committee.

6.14 Tree Removal. No trees with a diameter of six (6) inches or more, measured at a height of six (6) feet above ground level, may be removed without the prior written approval of the Architectural Review Committee.

6.15 Service Yards. Service yards (garbage, fuel tanks, clotheslines, etc.) shall be completely screened so that the elements screened are not visible at any time from the street or any adjoining property.

6.16 Antennas and Satellite Disks. Exterior antennas shall not be permitted to be placed upon any Lot except as approved by the Architectural Review Committee. Exterior satellite receiver and transmission disks are prohibited except as provided in Section 12.12 of this Declaration.

6.17 Setback, Maximum Height, and Minimum Yard Requirements. Each Lot shall be subject to the setback, maximum height, and minimum yard requirements shown on the recorded plat on which such Lot is included or which are established by the City of Portland or other governmental entity with jurisdiction over each such Lot and to any land use review procedure established by the City of Portland or other government entity with jurisdiction over such Lot for review and approval of variance from such requirements. In addition, all Lots are subject to any more restrictive setback, maximum height, or minimum yard requirements as are established from time to time by the Architectural Review Committee. The City of Portland established certain maximum height and minimum yard requirements as a condition of approval of the Initial Development, under PC File No. S 28-81, Conditions G and H. No Improvement shall be constructed or maintained in violation of any setback, maximum height, or minimum yard requirement, except with the written consent of the Architectural Review Committee and any applicable City of Portland and Washington County approval.

## ARTICLE VII

### ARCHITECTURAL REVIEW COMMITTEE

7.1. Architectural Review. No Improvement shall be commenced, erected, placed, altered, or maintained on any Lot until the design plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials, and to assure harmony of external design with existing Improvements and location of the Improvement with respect to topography and finished grade elevations.

7.2 Procedure. In all cases which the Architectural Review Committee approval or consent is required by this Declaration, the provisions of this Article shall apply. The procedure and specific requirements for application for Architectural Review Committee approval or consent may be set forth in Design Guidelines or other rules adopted from time to time by the Architectural Review Committee. The Architectural Review Committee may charge a reasonable fee to cover the cost of processing the application.

7.3 Committee Decision. The Architectural Review Committee shall render its decision on an application for approval of the design of an Improvement or any other proposal submitted to it for approval or consent within fifteen (15) working days after it has received a complete written application therefore. A complete application shall specify the approval or consent requested and be accompanied by all material reasonably required or desired by it to make an informed decision on such application. If the Architectural Review Committee fails to render approval or disapproval of such application within thirty (30) working days after the Architectural Review Committee has received a complete application or if no suit to enforce this Declaration has been commenced within one year after completion of construction of the Improvement, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.4 Committee Discretion. The Architectural Review Committee may, in its sole discretion, withhold or condition its approval of any proposed Improvement if the Architectural Review Committee finds the proposed Improvement would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for Forest Heights. Consideration of siting, shape, size, color, design, height, solar access, impairment of the view from other Lots within Forest Heights, or other effect on the enjoyment of other Lots or the Common Areas, disturbance of existing terrain

and vegetation and any other factors which the Architectural Review Committee reasonably believes to be relevant, may be taken into account by the Architectural Review Committee in determining whether or not to approve or condition its approval of any proposed Improvement.

7.5 Membership, Appointment, and Removal. The Architectural Review Committee shall consist of as many persons, but not less than three, as the Declarant may from time to time appoint. The Declarant may remove any member of the Architectural Review Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Architectural Review Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. If Declarant delegates to the Board of Directors the right to appoint or remove members of the Architectural Review Committee or if Declarant fails to appoint an Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee. If the Board of Directors has assumed the responsibility for appointment-of the members of the Architectural Review Committee and fails make such appointments, the Board of Directors shall itself serve as the Architectural Review Committee.

7.6 Majority Action. Except as otherwise provided herein, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee, without the necessity of a meeting and without the necessity of consulting or notifying the remaining members of the Architectural Review Committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

7.7 Liability. The scope of the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, or other similar considerations. 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 Architectural Review Committee or a member thereof, provided only that the Architectural Review Committee has, or the member has, in accordance with the actual knowledge possessed by the Architectural Review Committee or by such member, acted in good faith.

7.8 Nonwaiver. Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or

waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

7.9 Appeal. After Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors of the Association, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Architectural Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such appeal.

7.10 Effective Period of Consent, The Architectural Review Committee's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received an extension of time from the Committee.

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

7.12 Construction by Declarant. Improvements constructed by Declarant on any property owned by Declarant, are not subject to the requirements of this Article VII.

## **ARTICLE VIII**

### **ASSOCIATION**

Declarant shall organize an association of all of the Owners within Forest Heights. Such Association, its successors

and assigns, shall be organized under the name "Forest Heights Homeowners Association, Inc." or such similar name as Declarant shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of Forest Heights and all Owners of property located therein.

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

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

8.3 Voting Right. Voting rights within the Association shall be allocated as follows:

(a) Residential Lots and Commercial Lots. Residential Lots shall be allocated one vote per Lot, except that any Residential Lot containing a multi-family structure shall be allocated the greater of one vote or one vote for every ten (10) Living Units located on such Lot. Condominium units shall be entitled to one vote for each Condominium unit. Each Commercial Lot and each other Lot not falling into a Residential or Commercial Lot classification shall be entitled to the number of votes set forth in the declaration annexing such Lots to Forest Heights.

(b) Classes of Voting Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to voting rights for each Lot owned computed in accordance with paragraph 8.3(a) above. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more votes be cast with respect to any Lot than is determined as set forth in paragraph 8.3(a) above.

Class B. The Class B member shall be Declarant and shall be entitled to three times the voting rights computed under paragraph 8.3(a) for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) When eighty percent (80%) of the Lots in the final phase of development of Forest Heights have been sold and conveyed to Owners other than Declarant; or
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

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

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

(b) Statutory Powers. The powers, duties, and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon and of a homeowners association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time.

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

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

8.5 Liability. Neither the Association nor any officer or member of its Board of Directors shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board of Directors, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him.

8.6 Interim Board: Turnover Meeting. Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarant or their successors have been elected by the Owners at the turnover meeting described in this Section. Declarant shall call a meeting by giving notice to each owner as provided in the Bylaws of the Association for the purpose of turning over administrative responsibility for Forest Heights to the Association not later than one hundred twenty (120) days after Lots representing seventy-five percent (75%) of the votes in all phases of Forest Heights computed in accordance with Section 8.3(a) above have been sold and conveyed to Owners other than Declarant. If the Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 8.7 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

8.7 Transitional Advisory Committee. The Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by the Declarant of Forest Heights to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the Declarant has conveyed to Owners other than Declarant Lots representing fifty percent (50%) of the votes of all phases in Forest Heights computed in accordance with Section 8.3(a) above, the Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than the Declarant, shall elect two or more members. The Declarant may select no more than one member. The Transitional Advisory Committee shall have reasonable access to all information and documents which the Declarant is required to turn over to the Association under ORS 94.616.

(a) Declarant Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.

(b) Owners' Failure to Select Members. Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.

(c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 8.6 above has been held.

8.8 Declarant Control After Turnover. After the turnover meeting described in Section 8.6 above, Declarant shall continue to have the voting rights described in Section 8.3(b) above. In addition, a majority of the Board of Directors of the Association shall be elected by Declarant, as Class B member, with the balance of the Board of Directors elected by the Class A members. After termination of Class B membership, all directors shall be elected by the Class A members.

8.9 Subassociations. Nothing in this Declaration shall be construed as prohibiting the formation of subassociations within Forest Heights, including, without limitation, Condominium associations, neighborhood associations or associations of commercial owners.

8.10 Association 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 operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property within Forest Heights. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

## ARTICLE IX

### MAINTENANCE, UTILITIES, AND SERVICES

9.1 Maintenance and Lighting of Common Areas. The Association shall perform all maintenance upon, and where the Association deems appropriate, provide exterior lighting for, the Common Areas, Common Easement Areas, Limited Common Areas and in other areas not yet annexed to Forest Heights but which in the Association's or Declarant's reasonable judgment benefit Owners of property in Forest Heights, including, but not limited to the property known as the Mill Pond area, the property at the main entry to Forest Heights, and the property along Miller Road leading from the main entry into Forest

Heights, and landscaping within such areas and dedicated rights of way, including but not limited to grass, trees, walks, private roads, entrance gates and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a safe condition to at least applicable City of Portland standards, and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association and all Owners of Lots within Forest Heights shall, jointly and severally, hold harmless, defend, and indemnify the City of Portland and its officers, agents and employees against all claims, demands, actions and suits (including all attorneys' fees and costs) brought against any of them arising from failure to properly establish, construct, or maintain such areas.

9.2 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services.

9.3 Services. To the extent required by the City of Portland, the Association shall provide or contract for a bus-transit system for the benefit of Forest Heights and shall submit, on an annual basis, a transportation report as may be required by the City of Portland. The Association may provide or contract for such other services as the Board may reasonably deem to be of benefit to Forest Heights, including, without limitation, garbage and trash removal for Common Areas and security services.

## ARTICLE X

### ASSESSMENTS

10.1 Annual Budgets. The Association Board of Directors 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 provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law. The method of adoption of the budget shall be as provided in the Bylaws.

10.2 Assessment Formula. All Lots shall be subject to assessment on the following basis:

(a) Commercial Lots. The Owner of each Commercial Lot shall pay assessments computed by dividing the true cash value of such Commercial Lot, as shown on the records of the

county Assessor, by the true cash value of all Lots within Forest Heights, as shown on such records, in order to determine the percentage of true cash value of Forest Heights attributable to such Commercial Lot. The percentage so calculated times the total annual budget of the Association, multiplied by 1.5 (i.e., a weighted factor of 50 percent), shall be the assessment payable by such Commercial Lot.

(b) Residential Lots. Residential Lots (including Condominium units) shall pay one assessment unit per Living Unit. The amount of the assessment per assessment unit shall be determined by dividing the balance of the annual budget after reduction for the amount assessable to Lots other than Residential Lots, if any, by the total number of assessment units.

(c) Limited Common Areas. The costs of maintaining Limited Common Areas shall be separately assessed to the Lots adjoining the same, as described in Section 4.6 above.

(d) Other Lot Classifications. To the extent that other Lots are annexed into Forest Heights which do not fall into the Residential Lot, Commercial Lot, or Limited Common Area classifications, such lots shall be assessed as Commercial Lots or in such other manner as is designated in the declaration annexing such Lots to Forest Heights.

10.3 Capital Improvement Assessments. The Association may purchase, construct or otherwise acquire additional equipment, facilities or other capital improvements for the general use and benefit of all the members of the Association, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment." Any such assessment shall be assessed to the Lots within Forest Heights on the same formula as set forth in Section 10.2. No new Capital Improvement Assessment may be imposed under this section which, for any one purchase, construction or other acquisition, or group of related purchases, constructions or other acquisitions, in the aggregate exceeds \$10,000, unless approved by the vote or written consent of the Class B member, if any, and by not less than seventy-five percent (75%) of the votes of the Class A members who are voting in person, by absentee ballot or by proxy at a meeting duly called for the purpose of approving the Capital Improvement Assessment. To the extent that the additional equipment, facilities, or other capital improvement purchased, constructed, or otherwise acquired by the Association shall include items of Common Property (as hereinafter defined) which will normally require replacement, in whole or in part, in more than three and less than thirty years, such Capital Improvement Assessment shall be accompanied by a corresponding Common Property Reserve Account Assessment (as hereinafter defined) as required by Section 10.4 below.

10.4 Reserve Account for Replacing Common Property. The Declarant shall establish a reserve account which shall be called the "Common Property Reserve Account," and which will be kept separate and apart from all other funds of the Association. Except as provided in Section 10.4(b) below, the Common Property Reserve Account shall be used exclusively for replacement of items of Common Property which will normally require replacement, in whole or in part, in more than three and less than thirty years and not for regular or periodic maintenance expenses. "Common Property" shall mean any real property or interest in real property within Forest Heights which is owned or leased by the Association or designated as such in any plat of property within Forest Heights, or in this Declaration, or in any declaration annexing such property to Forest Heights.

(a) Assessments. Not less often than annually, the Association shall inventory all items of Common Property which will normally require replacement, in whole or in part, in more than three and less than thirty years, and shall estimate the remaining life of each item of Common Property and the current replacement cost of each of such items. The Association may identify items for which a reserve account assessment is required as those items which are insurable by a common carrier of all-purpose risk insurance. For the purpose of funding the Common Property Reserve Account, the Association shall impose an assessment to be called the "Common Property Reserve Account Assessment" against each Lot within Forest Heights on the same formula as set forth in Section 10.2. The total Common Property Reserve Account Assessment shall be equal to the sum of the estimated replacement cost of each item of Common Property which has an estimated life of greater than three but less than thirty years, divided by the estimated number of years of life for such item of Common Property (not the estimated years of life remaining). The Declarant shall not be required to pay any assessment under this Section 10.4 assessed to a Lot owned by Declarant until such date as the Lot is conveyed by the Declarant to an unaffiliated party in an arms-length transaction.

(b) Loan From Common Property Reserve Account. After the turnover meeting described in Section 8.6 above, the Board of Directors of the Association may borrow funds from the Common Property Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet other temporary expenses. Funds borrowed to meet high seasonal demands or temporary expenses under this Subsection must be repaid from special assessment or maintenance fees within six months of the date such funds are borrowed.

(c) Increase, Reduction, or Elimination of Common Property Reserve Account Assessments. At any time after the second year after the turnover meeting described in Section 8.6 above, future assessments for the Common Property Reserve

Account may be increased, reduced or eliminated by the vote of Owners of Lots representing seventy-five percent (75%) of the votes computed in accordance with Section 8.3(a) above.

10.5 Maintenance and Operations Fund Assessment. The Association shall establish a fund to be known as the "Maintenance and Operations Fund," into which all funds not otherwise allocated to a separate account in this Declaration or by action of the directors of the Association shall be deposited. The Association shall use the maintenance and Operations Fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within Forest Heights, and the improvement, maintenance, and operation of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots in Forest Heights, and for the operation of the Association, including but not limited to:

(a) Maintenance, Utilities, and Services. Payment of the cost of maintenance, utilities, and services as described in Article IX, including the costs of the operation of the Association.

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

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

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

For the purpose of funding the Maintenance and Operations Fund, the Association shall not less often than annually estimate the cost of accomplishing the goals for which the Maintenance and Operations Fund is established for the next fiscal year, and assess such cost to the Lots ("Maintenance and Operations Fund Assessment"). The Association may include in such Maintenance and Operations Fund Assessment amounts for the establishment for reserves to meet extraordinary expenses or such other amounts which are reasonably related to the purpose of the Maintenance and Operations Fund. The Maintenance and Operations Fund Assessment shall be assessed to Lots within Forest Heights on the same formula as set forth in Section 10.2.

10.6 Transit System Assessment. The Association may establish a fund to be known as the "Transit System Fund," for the exclusive purpose of establishing, maintaining, operating, and subsidizing the mass transportation system required by the City of Portland as a condition of the City's approval of the Forest Heights Planned Unit Development, and the improvement, maintenance, and operation of properties, services and

facilities devoted to this purpose. For the purpose of funding the Transit System Fund, the Association shall not less often than annually estimate the cost of accomplishing the goals for which the Transit System Fund is established for the next fiscal year, and assess such cost to the Lots ("Transit System Fund Assessment"). The Association may include in such Transit System Fund Assessment amounts for the establishment for reserves to meet extraordinary expenses or such other amounts which are reasonably related to the purpose of the Transit System Fund. The Transit System Fund Assessment shall be assessed to Lots within Forest Heights on the same formula as set forth in Section 10.2.

10.7 Reallocation Upon Annexation or Withdrawal of Property. When additional property or phases are annexed to or withdrawn from Forest Heights, the Association shall, within 60 days of the annexation, recompute the budget in accordance with Section 10.1 based upon the additional Lots and Common Areas and recompute assessments for each Lot based upon the formula set forth in Section 10.2. Newly annexed Lots shall be subject to assessment from the time of annexation of such Lots to Forest Heights, in accordance with the provisions of Section 10.2. The Association shall send notice of the assessment to the Owners of newly annexed Lots not later than 60 days after the annexation or with the next occurring annual assessment whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date the notice is mailed or at such other time or times set in accordance with this Declarations or the Bylaws as the Association may specify in the notice. If additional property or phases are annexed to Forest Heights during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots which were within Forest Heights prior to the annexation in the manner specified in Section 10.2 above, except that notice of the adjustment in the assessment shall be sent to Owner not later than 60 days after the annexation or with the next occurring annual assessment, whichever is sooner. To the extent that any adjustment results in a credit for the Owner, such credit shall be applied towards the next occurring payment or payments on the annual assessment.

10.8 Payment of Assessments. The Association shall, not less than annually, provide notice to the Owner of each Lot of the amount of the assessment for such Lot calculated in accordance with Section 10.2 of this Declaration. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date the notice is mailed or at such other time or times set in accordance with this Declarations or the Bylaws as the Association may specify in the notice.

10.9 Creation of Lien: and Personal Obligation of Assessments. Declarant, for each Lot owned by it within Forest

Heights, 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, expenses or attorneys' fees imposed pursuant to Section 11.6, shall be a charge on the land and 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 Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article XI below.

## **ARTICLE XI**

### **ENFORCEMENT**

11.1 Use of Common Areas. In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Lots or Common Areas, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) impose reasonable fines upon the Owner, in the manner and amount the Board of Directors deems appropriate in relation to the violation, which fines shall be paid into the Maintenance and Operations Fund, or (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Lot.

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the Improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives

for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have, in addition to any other rights or remedies provided in this declaration, at law or in equity, the right to do any or all of the following:

(a) Fines. Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation,

(b) Remove Cause of Violation. Enter onto the offending Lot, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation, or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Maintenance and Operations Fund, or

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

11.3 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 of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth below and, in addition, the Association may exercise any or all of the following remedies:

(a) Suspension of Rights; Acceleration. The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Lot.

(b) Lien. The Association shall have a lien against each Lot for any assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.352 to 87.382 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale,

and may acquire and hold, lease, mortgage and convey the Lot. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

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

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

11.4 Notification of First Mortgagee. The Board of Directors shall notify any first mortgagee of any Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days.

11.5 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 which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the assessment lien, however, if a first mortgagee acquires a Lot in Forest Heights by foreclosure or deed in lieu of foreclosure, such mortgagee and a subsequent purchaser shall not be liable for any of the common expenses chargeable to the Lot which became due before the mortgagee or purchaser acquired title to the Lot by foreclosure or deed in lieu of foreclosure. Such sale or transfer, however, shall not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

11.6 Interest, Expenses, and Attorneys' Fees. 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 three percentage points per annum above the prevailing Portland, Oregon prime rate at the time, 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 of the Association not to exceed thirty percent (30%) of such assessment. 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 of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or

to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

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

11.8 Enforcement by City of Portland. The provisions of this Declaration relating to the preservation and maintenance of Common Areas shall be deemed to be for the benefit of the City of Portland as well as the Association and Owners of Lots, and the City may, but shall not be required to, enforce such provisions by appropriate proceedings at law or in equity.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

12.1 Amendment and Repeal. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of Forest Heights, may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Class A votes, together with the vote or written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Multnomah County and Washington County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, increase the number of lots or units, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas, Limited Common

Areas, or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment shall not be effective until approved by the City of Portland.

12.2 Regulatory Amendments. Notwithstanding the provisions of Section 12.1 above, until termination of the Class B membership, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

12.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in Forest Heights and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in Forest Heights and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Class A votes and the vote or written consent of the Class B member, if any, and the written approval of the holders of mortgages on Lots in the project to the extent required by Article XII. Any such termination shall become effective only if prior to the intended termination date (a) a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Multnomah County and Washington County, Oregon, and (b) such termination has been approved by an order or resolution of the City of Portland and a copy of such order or resolution has been recorded in the Deed Records of Multnomah County and Washington County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

12.4 Right of First Mortgagees Relating to Maintenance. At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 12.4 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the association at the last known address of each.

12.5 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

12.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering Forest Heights 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 such Owner's Lot and other areas within Forest Heights. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

12.7 Nonwaiver. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.8 Construction; Severability. This Declaration and all declarations annexing property to Forest Heights shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and all

declarations annexing property to Forest Heights shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

12.9 Number. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires.

12.10 Captions. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

12.11 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 12.11.

(a) Addresses. All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:

(i) If to an Owner, then to the last address for such Owner shown in the Association's records.

(ii) If to Declarant or to the Association, then to Declarant or the Association at:

Mr. George J. Marshall  
Owner's Representative  
Forest Heights  
P.O. Box 280  
Wilsonville, OR 97070  
With a copy to:

Miller, Nash, Wiener,  
Hager & Carlsen  
111 S.W. Fifth Avenue  
Portland, Oregon 97204  
Attn: Richard A. Cantlin  
and

FPE, Inc.  
117 S.W. Taylor St.  
Portland, Oregon 97204  
Attn: Homer G. Williams

(b) Change of Address. Any party hereto may change the address to which notices shall be directed by giving ten days' written notice of such change delivered as provided herein.

12.12 Cable and Telephone Systems. Declarant hereby the right (but not the obligation) to erect, repair, and maintain or grant to a third party or third parties the right to erect, repair, and maintain on, under, or over portions of Forest Heights (a) one or more satellite receivers and/or transmission disks and other equipment for the purpose of providing cable television service to Forest Heights and other neighboring properties, and (b) equipment and structures connected with providing telephone systems (private or otherwise) and services, and security systems and services to Forest Heights and other neighboring properties, so long as such equipment and structures comply with all applicable city, state, and federal laws and regulations. Declarant hereby reserves and may grant to a third party or parties an easement over all or such parts of the Common Area as are reasonably required to accomplish such purposes. It is the intention of Declarant that any business or businesses operated by Declarant or a third party or parties in accordance with this Section 12.12 shall be owned and operated for Declarant's or such third party's or parties' commercial advantage and to this end Declarant or such third party or third parties shall be considered as, and shall be entitled the rights and easements granted hereunder to, other utility companies or service providers. Nothing in this Declaration shall be construed to mean that the ownership of such equipment and structures and benefits of such business or businesses shall belong to the Association or to any Owner or Owners.

12.13 Private Agreement. This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Forest Heights and the City is under no obligation to enforce any of its provisions. This Declaration does not restrict the City's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and the City's regulations. The City will limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot or an Improvement in Forest Heights to know the requirements of this Declaration and the covenants and agreements contained herein. In the event there is a conflict between a City regulation and this Declaration, any question regarding which provision controls shall be directed to the Architectural Control Committee. The City will not be liable for any approvals or permits which are granted in compliance with City regulations, but which are not in compliance with this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 22 day of August, 1989.

NAURU PHOSPHATE ROYALTIES  
(PORTLAND), INC.

By *G. Marshall*  
Its VICE PRES.

STATE OF OREGON        )  
                                  ) ss.  
County of                )

The foregoing instrument was acknowledged before me on this 22<sup>nd</sup> day of AUGUST, 1989, by GEORGE MARSHALL who is the VICE PRESIDENT of Nauru Phosphate Royalties (Portland), Inc., on behalf of the corporation.

*Ann E. Thompson*  
Notary Public for Oregon  
My Commission Expires: 2/25/92

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PAGE 1 of 5

RECORDING SECTION  
MULTNOMAH COUNTY

State of Oregon  
County of Multnomah

I hereby certify that the attached instrument was received and duly recorded by me in Multnomah County records:

Cindy Swick, Deputy

	RECORD	<u>15</u>
FEEES -	SURVEY	<u>3</u>
	D.O.R.	_____

94003389  
Washington County

FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR FOREST HEIGHTS

THIS FIRST AMENDMENT (this "Amendment") TO THE DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOREST HEIGHTS (the "Declaration ") is adopted this 16<sup>th</sup> day of October, 1993, by the FOREST HEIGHTS HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation, pursuant to ORS 94.590.

The Declaration recorded on August 22, 1989, in the real property records of Multnomah County, Oregon at Book 2230, Page 777 and recorded on August 29, 1989 in the real property records of Washington County, Oregon at No. 89-40525 is hereby amended as follows:

1. In Section 1.12, delete the second sentence and replace it with the following:

"A Living Unit shall be first deemed to exist when the Living Unit has received final development plan approval and the plat thereof has been recorded in the county in which the Living Unit is located."

2. In Section 10.2 (b) , delete the first sentence and replace it with the following:

"Residential Lots (including Condominium units) shall pay one assessment unit per Lot unless such Lot contains more than one Living Unit. Any Residential Lot containing more than one Living Unit shall pay one assessment unit per Living Unit."

3. All other terms and conditions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Treasurer of the Forest Heights Homeowners' Association hereby certifies by execution of this Amendment on the date first written above that 75 percent of the Class A votes of the planned community and the Class B member agree to adopt this Amendment.

FOREST HEIGHTS HOMEOWNERS' ASSOCIATION

By: [Signature]  
Name: LARRY PORTER  
Its: Treasurer

STATE OF OREGON            )  
  ) ss.  
County of Multnomah )

W This instrument was acknowledged before me on January 11, 1994, by Larry Porter as Treasurer of the Forest Heights Homeowners' Association.

[Signature]  
Notary Public for Oregon  
My Commission Expires: 5/21/96



Terms of the "Declaration of Protective Covenants, Conditions and restrictions for Forest Heights" showing existing language and proposed amendments:

Section 1.12

1.12 "Living Unit<sup>u</sup> means a building or a portion of a building located or to be located upon a Lot within Forest Heights and designated for separate residential occupancy (whether or not occupied) or ownership, including a house, apartment or dwelling unit within a multiple occupancy building and, except where the context requires otherwise, a Condominium unit, but not including any building or portion of a building located on a Common Area. ~~For the purpose of determining when voting rights under Article VII and assessment obligations under Article X arise, a Living Unit shall be first deemed to exist when a building permit for the building or portion of the building in which the Living Unit is located has been issued for the construction of such building or portion thereof. A Living Unit shall be first deemed to exist when the Living Unit has received final development plan approval and the plate thereof has been recorded in the county in which the Living Unit is located.~~

Section 10.2 (b):

~~(b) Residential Lot. Residential Lot (including Condominium units) shall pay one assessment unit per Living Unit. Residential Lots (including Condominium units shall pay one assessment unit per Lot unless such Lot contains more than one Living Unit. Any Residential Lot containing more than one Living Unit. The amount of the assessment per assessment unit shall be determined by dividing the balance of the annual budget after reduction for the amount assessable to Lots other than Residential Lots, if any by the total number of assessment units.~~



FILED  
IN THE OFFICE OF THE SECRETARY  
OF STATE OF THE STATE OF ORE.  
AUG 17 1989  
CORPORATION DIVISION

## ARTICLES OF INCORPORATION

OF

### FOREST HEIGHTS HOMEOWNERS' ASSOCIATION, INC.

The undersigned natural person of the age of 18 years or more, acting as incorporator under the Oregon Nonprofit Corporation Law set forth in Chapter 61 of the Oregon Revised Statutes, hereby adopts the following Articles of Incorporation:

#### ARTICLE I

##### DEFINITIONS

In construing these Articles,

1. "Commercial Lots" means those Lots designated as such in the declaration annexing any of such Lots to the Property.
2. "Condominium" means any property submitted to the Oregon Condominium Act in the manner provided by ORS 94.004 through 94.480.
3. "Declarant" means Nauru Phosphate Royalties (Portland), Inc., and its successors and assigns if such successor or assignee should acquire Declarant's interest in the remainder of the Property, or in less than all of the Property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under the Declaration.
4. "Declaration" means the Declaration of Protective Covenants, Conditions and Restrictions Affecting Forest Heights, dated , 1989, and all of the easements, covenants, restrictions and charges set forth therein, together with any rules or regulations promulgated thereunder, as the same may be amended or supplemented from time to time in accordance with the provisions thereof.
5. "Lot" means a platted or partitioned lot, tract or Condominium unit within the Property, with the exception of any

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tract or Lot marked on a plat of the Property as being common or open space or so designated in the Declaration or the declaration annexing such property to the Property.

6. "Member" or "Membership" means any Owner or such Owner's membership in the Corporation.

7. "Owner" means the person or persons, including Declarant, owning any Lot in the Property (including the holder of a vendee's interest under a land sales contract), but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot (including the holder of a vendor's interest under a land sales contract). The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

8. "Property" means Forest Heights as defined in Article II of the Declaration.

9. "Residential Lots" means those Lots designated as such in the Declaration or in the declaration annexing any of such Lots to the Property.

10. "Termination Date" means the earlier of the date on which (i) eighty percent (80%) of the Lots in the final phase of the Property have been sold and conveyed to Owners other than Declarant, or (ii) Declarant elects in writing to terminate its Class B Membership (as defined in Article IV below).

11. "Turnover Date" means the date on which Lots representing seventy-five percent (75%) of the voting power computed in accordance with Section 8.3(a) of the Declaration have been sold and conveyed to Owners other than Declarant.

12. "Turnover Meeting" means the meeting of Declarant and the Board of Directors called for the purposes of turning over administrative control of this Corporation to the Corporation.

## ARTICLE II

### NAME

The name of this Corporation is Forest Heights Homeowners' Association, Inc., and its duration shall be perpetual.

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### **ARTICLE III**

#### **PURPOSE**

This nonprofit Corporation is a mutual benefit corporation. The purposes for which this Corporation are organized are: To engage in any and all activities necessary or appropriate to administer and enforce the Declaration and to exercise all powers granted or conferred thereby.

### **ARTICLE IV**

#### **MEMBERS**

This Corporation shall have two classes of Members. Class A Members shall be those Owners with the exception of the Declarant, provided that beginning on the date on which the Class B Membership is converted to Class A Membership as set forth in the Declaration, Class A Members shall include all Owners including the Declarant. The Declarant shall be the sole Class B Member. The characteristics, qualifications, rights, limitations, and obligations attaching to each class of Members shall be as specified in the Declaration and the Bylaws of this Corporation.

### **ARTICLE V**

#### **PROHIBITED ACTIVITIES**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Members, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III of these Articles. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income taxation under Section 528 of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States internal revenue law) or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States internal revenue law).

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## **ARTICLE VI**

### **DISSOLUTION**

Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future provision of the United States internal revenue law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Circuit Court of the State of Oregon for the County in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as the court shall determine.

## **ARTICLE VII**

### **REGISTERED OFFICE**

The location of the initial registered office of this Corporation shall be 3500 U.S. Bancorp Tower, 111 S.W. Fifth Avenue, Portland, Oregon 97204. The initial registered agent shall be Richard A. Cantlin at such address.

## **ARTICLE VIII**

### **NOTICE**

The address to which notices may be mailed by the Oregon Secretary of State until the principal office of the Corporation has been designated in an annual report is:

George J. Marshall  
31960 Charbonneau Drive  
Post Office Box 280  
Wilsonville, Oregon 97070

## **ARTICLE IX**

### **DIRECTORS**

1. The number of directors constituting the initial Board of Directors of this Corporation is three. The names and addresses of the persons who are to serve as the initial directors until their successors are elected and qualified are:

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George J. Marshall  
31960 Charbonneau Drive  
Post Office Box 280  
Wilsonville, OR 97070

Robert Hartford  
117 S.W. Taylor St.  
Portland, OR 97204

Ann E. Thompson  
117 S.W. Taylor St.  
Portland, OR 97204

The incorporator has obtained the consent of each person named above to serve as a director.

2. Prior to the Turnover Date, Declarant shall appoint all directors.
3. From and after the Turnover Date, the Board of Directors shall be comprised of three directors elected in the manner provided in Article X. Voting for directors shall not be cumulative.

## **ARTICLE X**

### **ELECTION OF DIRECTORS**

From and after the Turnover Date, directors shall be elected in the following manner:

1. Until the Termination Date, two directors shall be appointed by Declarant. The remaining director shall be elected by a majority vote of the remaining Owners at a meeting called as provided in the Bylaws of the Corporation, with each Residential Lot Owner having one vote for each Residential Lot owned, each Condominium unit Owner having one vote for each Condominium unit owned, and each Commercial Lot Owner having the number of votes set forth in the declaration annexing the Commercial Lot to the Property. When more than one person holds an ownership interest in any Residential Lot or Condominium unit, the vote for such Residential Lot or Condominium unit shall be exercised as the holders of such interests determine, but in no event shall more than one vote be cast with respect to any such Residential Lot or Condominium unit.

2. From and after the Termination Date, all directors shall be elected by the Owners, with each Owner having the number of votes set forth in Section 1 of this Article X. Within thirty (30) days after the Termination Date, a meeting of Owners shall be called as provided in the Bylaws of the Corporation for the purpose of electing replacement directors. At such meeting the directors elected pursuant to Section 1 above shall resign and their successors shall be elected by the Owners as provided in this Section 2, the Declaration and the Bylaws of the Corporation.

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## **ARTICLE XI**

### **TERMS OF DIRECTORS**

1. Subject to Article X, Section 2, the first director elected by Declarant pursuant to the terms of Article X, Section 1 shall serve a three-year term, the second a two-year term, and the remaining director elected by the Owners shall serve a one-year term.
2. The first director elected by the Owners pursuant to the terms of Article X, Section 2 shall serve a three-year term, the second a two-year term, and the third a one-year term.
3. Except as provided in Sections 1 and 2 of this Article XI, all directors shall serve three-year terms. Any director may serve more than one term.

## **ARTICLE XII**

### **INDEMNIFICATION**

1. The Corporation shall indemnify each of its directors and officers to the fullest extent permissible under the Oregon Nonprofit Corporation Law, as the same exists or may hereafter be amended, against all expense, liability, and loss (including, without limitation, attorneys' fees) incurred or suffered by such person by reason of or arising from the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors, and administrators. The Corporation may, by action of the board of directors, provide indemnification to employees and agents of the Corporation who are not directors or officers with the same scope and effect as the indemnification provided in this Section 1 to directors and officers. The indemnification provided in this Section 1 shall not be exclusive of any other rights to which any person may be entitled under any statute, bylaws, agreement, resolution of Members or directors, contract, or otherwise.
2. Each director or uncompensated officer of the Corporation shall have no personal liability to the Corporation or its Members for monetary damages for conduct as a director or officer, provided this Section 2 shall not eliminate or limit the liability of a director or officer for (i) any breach of the director's or officer's duty of loyalty to the Corporation or its Members; (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) any unlawful distribution; (iv) any transaction from which

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the director or officer derived an improper personal benefit; or (iv) any other act or omission specified by the provisions of the Oregon Nonprofit Corporation Law, as the same exists or may hereafter be amended. No subsequent repeal of or amendment to this Section 2 shall adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or amendment.

**ARTICLE XIII**

**CONSENT TO AMENDMENTS TO BYLAWS**

The Bylaws of the Corporation may not be amended such that any "special Declarant rights" (as defined in ORS 94.550(12)) are modified without the Declarant's consent and the Declarant may unilaterally amend the Bylaws in accordance with ORS 94.585 and Section 13.2 of the Declaration.


**ARTICLE XIV**

**INCORPORATOR**

The name of the incorporator is George J. Marshall, and his address is 31960 Charbonneau Drive, Post Office Box 280, Wilsonville, Oregon 97070.

I, the undersigned incorporator, declare under penalties of perjury that I have examined the foregoing and to the best of my knowledge and belief it is true, correct and complete

~~and believe it is true, correct and~~

  
\_\_\_\_\_  
Incorporator

**FIRST AMENDED AND RESTATED BYLAWS**  
**OF**  
**FOREST HEIGHTS HOMEOWNERS' ASSOCIATION, INC.**

ARTICLE I

DEFINITIONS

In construing these Bylaws,

1.1 "Architectural Review Committee" means the committee appointed pursuant to Article VII of the Declaration.

1.2 "Association" means the Corporation as defined in these Bylaws.

1.3 "Board" means the Board of Directors of this Corporation constituted in accordance with Article V of these Bylaws.

1.4 "Class A Member or Class A Membership" means all Owners with the exception of Declarant (except that beginning on the date on which the Class B Membership is converted to Class A Membership, as set forth in the Declaration, Class A Members shall be all Owners including Declarant) or such Owners membership in the Corporation.

1.5 "Class B Member or Class B Membership" means Declarant or Declarant's membership in the Corporation until such membership is converted to Class A membership in accordance with the Declaration.

1.6 "Commercial Lots" means those Lots designated as such in the declaration annexing any of such Lots to the Property.

1.7 "Common Areas" means those Lots or tracts designated as common or open space on any plat of any of the Property, or in the Declaration, or in any declaration annexing property to the Property, including any improvements thereon, and shall also include Common Easement Areas (as defined in the Declaration) and any Lots converted to Common Areas as provided in the Declaration.

1.8 "Condominium" means any property submitted to the Oregon Condominium Act in the manner provided by ORS 94.004 through 94.480.

1.9 "Corporation" means Forest Heights Homeowners' Association, Inc., an Oregon nonprofit corporation.

1.10 "Declarant" means Nauru Phosphate Royalties (Portland), Inc., and its successors and assigns if such successor or assignee should acquire Declarant's interest in the remainder of the Property, or in less than all of the Property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under the Declaration.

1.11 "Declaration" means the Declaration of Protective Covenants, Conditions and Restrictions Affecting Forest Heights, recorded August 22, 1989, and all of the easements, covenants, restrictions, and charges set forth therein, together with any rules or regulations promulgated thereunder, as the same may be amended or supplemented from time to time in accordance with the provisions thereof.

1.12 "Living Unit" means a building or a portion of a building located or to be located upon a Lot within Forest Heights and designated for separate residential occupancy (whether or not occupied) or ownership, including a house, apartment or dwelling unit within a multiple occupancy building and, except where the context requires otherwise, a Condominium unit, but not including any building or portion of a building located on a Common Area. A Living Unit shall be first deemed to exist when the Living Unit has received final development plan approval and the plat thereof has been recorded in the county in which the Living Unit is located.

1.13 "Lot" means a platted or partitioned lot, tract, or Condominium unit within the Property, with the exception of any tract or Lot marked on a plat of the Property as being common or open space or so designated in the Declaration or the declaration annexing such property to the Property.

1.14 "Officers" means those officers of the Corporation as defined in and elected in accordance with Article V of these Bylaws.

1.15 "Owner" means the person or persons, including Declarant, owning any Lot in the Property (including the holder of a vendee's interest under a land sales contract), but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot (including the holder of a vendor's interest under a land sales contract). The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but

termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.16 "President" means the President of the Corporation as defined in Article VI, Section 5, of these Bylaws.

1.17 "The Property" means Forest Heights as defined in the Declaration.

1.18 "Residential Lots" means those Lots designated as such in the Declaration or in the declaration annexing any of such Lots to the Property.

1.19 "Secretary" means the Secretary of the Corporation as defined in Article VI, Section 6, of these Bylaws.

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

1.21 "Termination Date" means the earlier of the date on which (i) eighty percent (80%) of the Lots in the final phase of the Property have been sold and conveyed to Owners other than Declarant, or (ii) Declarant elects in writing to terminate its Class B Membership.

1.22 "Turnover Date" means the date on which Lots representing seventy-five percent (75%) of the voting power computed in accordance with Section 8.3(a) of the Declaration have been sold and conveyed to Owners other than Declarant.

1.23 "Turnover Meeting" means the meeting of the Owners, Declarant, and the Board called for the purpose of turning over administrative responsibility for the Property to the Corporation.

## ARTICLE II

### OFFICES

The principal office of the Corporation in the state of Oregon shall be located in the city of Portland, county of Multnomah. The Corporation may have such other offices, either within or without the state of Oregon, as the Board may determine or as the affairs of the Corporation may require from time to time. The Corporation shall have and continuously maintain in the state of Oregon a registered office, and a registered agent whose office is identical with such registered office, as required by the Oregon Nonprofit Corporation Law. The registered office may be, but need not be, identical with the principal office in the state of

Oregon, and the address of the registered office may be changed from time to time by the Board.

### ARTICLE III

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

Section 1. Membership. Every Owner of one or more Lots within the Property shall, immediately upon creation of the corporation and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Corporation. Such membership shall commence, exist, and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

Section 2. Voting Rights. Voting rights within the Corporation shall be allocated as follows:

(a) Residential Lots and Commercial Lots. Residential Lots shall be allocated one vote per Lot, except that any Residential Lot containing a multi-family structure for which an occupancy permit therefore has been issued shall be allocated the greater of one vote or one vote for every ten (10) Living Units located on such Lot. Condominium units shall be entitled to one vote for each Condominium unit. Each Commercial Lot and each other Lot not falling into a Residential or Commercial Lot classification shall be entitled to the number of votes set forth in the declaration annexing such Lots to the Property.

(b) Classes of Voting Membership. The Corporation shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including Declarant). Class A members shall be entitled to voting rights for each Lot owned computed in accordance with Article III, Section 2(a) above. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more votes be cast with respect to any Lot than is determined as set forth in Article III, Section 2(a) above.

Class B. The Class B member shall be Declarant and shall be entitled to three times the voting rights computed under Article III, Section 2(a) for each Lot owned by

Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When eighty percent (80%) of the Lots in the final phase of development of the Property have been sold and conveyed to Owners other than Declarant; or

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

Section 3. Powers and Obligations. The Corporation shall have, exercise and perform all of the following powers, duties, and obligations:

(a) Declaration. The powers, duties and obligations granted to the Corporation by its Articles of Incorporation, the Declaration, and these Bylaws.

(b) Statutory Powers. The powers, duties, and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon and of a homeowners association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time.

(c) General. Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Corporation pursuant to the declaration or otherwise promoting the general benefit of the Owners within the Property. The powers and obligations of the Corporation may from time to time be amended, repealed, enlarged or restricted by changes in the Declaration made in accordance with the provisions therein, accompanied by changes in the Articles of Incorporation or Bylaws of the Corporation made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

## ARTICLE IV

### MEETINGS OF OWNERS

Section 1. Annual Meetings Prior to Turnover Date. Prior to the Turnover Date, a meeting of Owners shall be held annually. Such meeting shall be called in accordance with Section 3 below.

Section 2. Meetings to Elect Directors. Any meeting of Owners held for the purpose of electing directors pursuant to this Article IV shall be conducted in accordance with the following procedures:

2.1 The first such meeting shall be held at least 30 days prior to the Turnover Meeting on a date selected by the Secretary. Subsequent meetings shall be held at least 30 days prior to the expiration of the term of any director. Each meeting held pursuant to this Article IV, Section 2.1 shall be an annual meeting. Such meeting shall be called in accordance with Article IV, section 3 below.

2.2 Within thirty (30) days after the Termination Date, a meeting of Owners shall be called as provided in Section 3 below for the purpose of electing replacement directors. At such meeting the directors elected pursuant to Article IV, Section 3.1 of Article V shall resign and their successors shall be elected by the Owners as provided in the Declaration, the Articles of Incorporation of this Corporation, and these Bylaws.

Section 3. Notice of Meeting. Any meeting held pursuant to this Article IV shall be held on such date, at such time, and at such place within Multnomah County or Washington County, Oregon, as may be designated by the Secretary. Written notice of each meeting of the Owners under this Article IV shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting, but not more than 50 days before such meeting, to each Owner entitled to vote thereat, addressed to the Owner's address last appearing on the books of the Corporation, or supplied by such Owner to the Corporation for the purpose of notice, and to any mortgagee having requested notice. Such notice shall specify the place, day, and hour of the meeting, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, or any proposal to remove a director or officer. Notice of any such meeting may be waived by any Owner at any time. No Owner who is present at a meeting may object to the adequacy or timeliness of the notice given.

Section 4. Proxies; Quorum; Voting. Each Owner and Declarant shall have the number of votes provided for in Article III, Section 2(b), of these Bylaws. Any Owner may give a proxy to any person, so long as such proxy is in writing, signed by such Owner, and filed with the Secretary. A proxy shall expire on the earlier of (a) 11 months after the date of the proxy; or (b) the date of the sale of the Owner's Lot by its Owner. The presence, in person or by proxy, of Owners together entitled to cast at least 20 percent of the total votes entitled to be cast at any meeting shall constitute a quorum. The affirmative vote of a majority of the votes represented and voting shall constitute the act of

the Owners. Voting of the Members may be by mail with respect to any matter before the Members. In any case in which voting by mail is necessary or desirable, the Secretary shall give written notice to all Members, which notice shall (a) include a written resolution setting forth the proposed action, (b) state that the Members are entitled to vote by mail for or against such resolution, and (c) specify a date not less than 25 days after the date of such notice by which all votes must be received at the principal office of the Corporation. Votes received after the date specified shall not be effective unless the date specified is extended by majority vote of the Board of Directors for the purpose of obtaining sufficient affirmative votes as otherwise required for such action. This date shall not be extended in any event, however, unless the appropriate percentage of the votes received by the initial date specified are affirmative.

Section 5. Annual Meetings. At any annual meeting of Owners, the President of the Corporation, and any other officer the Board or the President may designate, shall report on the activities and financial condition of the Corporation.

Section 6. Special Meetings. Special meetings of the Owners may be called at any time by the President or a majority of the board of directors, or upon written request of the Owners who are entitled to vote 25 percent of all of the votes of Class A membership.

## **ARTICLE V**

### **BOARD OF DIRECTORS**

Section 1. General. The affairs of the Corporation shall be managed by the Board, which shall be comprised of the number of directors determined as provided in Section 2 of this Article V. The Board shall have all requisite power, duty and authority to perform its obligations under the Declaration, including without limitation the power, duty, and authority to enforce the provisions of the Declaration and to acquire and pay for out of the common fund provided by assessments pursuant to the Declaration, all goods and services necessary or appropriate for the proper functioning of the Corporation in accordance with the Declaration.

Section 2. Number and Classification of Directors. The directors shall not be required to be Owners. The Board shall be comprised of three directors. Until the Turnover Date, Declarant shall appoint all directors, except that the Declarant may revocably or irrevocably delegate the power to appoint directors hereunder by written instrument delivered to the Association naming the party to whom the power to appoint

directors has been delegated. On the Turnover Date, the directors selected by Declarant shall submit their resignations, effective upon the appointment or election of their successors as provided in Article V, Section 3. From and after the Turnover Date, the directors shall be elected in the manner provided in Article V, Section 3. Voting for directors shall not be cumulative.

Section 3. Election of Directors. From and after the Turnover Date, the Board shall be elected as follows:

3.1 Until the Termination Date, two directors shall be selected by Declarant. The remaining directors shall be elected by a majority vote of the Owners, with each Owner entitled to the votes specified in Article III above. When more than one person holds an ownership interest in any Residential Lot or Condominium unit, the vote for such Residential Lot or Condominium unit shall be exercised as the holders of such interests determine, but in no event shall more than one vote be cast with respect to any such Residential Lot or Condominium unit.

3.2 From and after the Termination Date, all directors shall be elected by the Owners, with each Owner having the number of votes set forth in Article III above.

Section 4. Terms of Directors

4.1 The first directors appointed by Declarant pursuant to Article V, Section 3.1, shall serve a three-year term, the second a two-year term, and the remaining director elected by the Owners shall serve a one-year term.

4.2 The first director elected by the Owners pursuant to the terms of Article V, Section 3.2, shall serve a three-year term, the second a two-year term, and the third a one-year term.

4.3 Except as provided in Article V, Sections 4.1 and 4.2, all directors shall serve three-year terms. Any director may serve more than one term,

Section 5. Resignation. Any director may resign at any time by sending a written notice of such resignation to the Secretary. Unless otherwise specified in such notice, a resignation shall take effect upon receipt of the notice by the Secretary.

Section 6. Vacancies. Vacancies on the Board caused by the death or resignation of a director shall be filled by vote of the majority of the remaining directors, even if they

constitute less than a quorum. Any director so selected shall serve the remainder of the replaced director's term.

Section 7. Meetings of the Board

7.1 The initial meeting of the Board shall occur within 90 days after the date the Articles of Incorporation for the corporation are filed.

7.2 All meetings of the Board shall be open to all Owners. For other than emergency meetings, notice of Board meetings shall be mailed to all Owners, at the last address for such Owners in the records of the Corporation, not less than 10 days before the meeting, posted at a place or places on the Properties at least three days prior to the meeting, or provided by a method otherwise reasonably calculated to inform Owners of the meeting. Emergency meetings may be held without notice, if the reason for the emergency is stated in the minutes of the meeting. Only emergency meetings of the Board may be conducted by telephonic communication.

7.3 The Board shall meet annually, within 90 days after the end of each fiscal year. At each annual meeting, in addition to the actions required by Article X of the Declaration, the Treasurer shall present to the Board a report on the financial condition of the Corporation, including a report of receipts and disbursements for the preceding calendar year, the allocation thereof to each Lot, and the estimated receipts and expenses for the coming year.

7.4 Special meetings of the Board may be called at any time by the President or two directors. Such meetings shall be scheduled by the Secretary within 30 days after the Secretary's receipt of the written requests signed by two or more directors; provided that if the purpose of a special meeting is to elect a successor Secretary pursuant to Section 2 of Article VI or to consider removal of the Secretary pursuant to Section 3 of Article VI, such meeting may be scheduled by the President or, if the meeting is also for the purpose of electing a successor President or removing the President, any other director.

7.5 Meetings of the Board shall be held at such place within Multnomah County or Washington County, Oregon, as may be designated from time to time by the Board.

7.6 The Secretary shall give written notice to each director of each Board meeting at least ten (10) but not more than thirty (30) days prior to the date set for such meeting, stating the purpose, time, and place of the meeting. Notice shall be sent to the address of each director as listed on the

books of the corporation, or to such other address as any director may designate by written notice to the Secretary given at least ten days prior to the giving of notice of the meeting. Notice of any meeting may be waived by any director at any time. No director who is present at a meeting may object to the adequacy or timeliness of the notice given. When a meeting is adjourned for fewer than thirty (30) days, whether or not a quorum is present at the adjourned meeting, no notice of the resumption or reconvening of such adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place.

Section 8.     Voting by the Board. Each director shall have one vote. So long as a quorum is constituted, the vote of directors together holding more than 50 percent of the total votes shall be a binding vote of the Board for all purposes, unless a greater percentage is required by law or the Declaration.

Section 9.     Quorum. The presence in person of a majority of the directors shall constitute a quorum for voting at a Board meeting. The Board shall have the power to adjourn a meeting even if less than a quorum is present.

Section 10.    Removal. Any director, other than a director appointed by Declarant or an ex officio director, may be removed, with or without cause, by the affirmative vote of Owners present and entitled to vote at any meeting of the Owners at which a quorum is present. No removal of a director is effective unless the matter of removal was included in the notice of the meeting.

## ARTICLE VI

### OFFICERS

Section 1.     Officers. The Officers of the Corporation shall be the President, the Treasurer, and the Secretary, each of whom shall be elected by the Board. The same person shall not concurrently hold more than one office. The Board may designate such additional Officers as it deems appropriate.

Section 2.     Election and Term of Office. The Officers of the Corporation shall be elected annually by the Board and shall hold office at the pleasure of the Board and until their successors are elected and qualified. If any office becomes vacant, the Board shall elect a successor to fulfill the unexpired term at a special meeting of the Board called for such purpose.

Section 3.     Removal. The Board may remove any Officer, at any time, with or without cause, and a successor may be elected at a special meeting of the Board called for such purpose.

Section 4.     Compensation. Other than reimbursement of out-of-pocket expenses incurred on behalf of the Corporation, neither the President, the Treasurer, nor the Secretary shall receive any compensation from the Corporation for acting as an Officer, unless such compensation is authorized by the Board.

Section 5.     President. The President shall be a director and shall be the chief executive officer of the Corporation. The President shall not be required to be an Owner. The President shall preside at all meetings of the Board and, except to the extent otherwise provided in the Declaration, shall have all of the general powers and duties normally incident to the office of the chief executive officer of a corporation.

Section 6.     Secretary. The Secretary shall not be required to be a director or an Owner. The Secretary shall keep the minutes of all proceedings of the Board and all other Corporation records and shall attend to the giving of all notices to the Board and other notices pursuant to these Bylaws or the Declaration or required by law. The Secretary shall perform all other duties incident to the office of secretary of a corporation or as may be directed by the Board. The Secretary shall perform all of such duties at the expense of the Corporation.

Section 7.     Treasurer. The Treasurer shall not be required to be a director or an Owner. The Treasurer shall be responsible for Corporation funds and shall keep full and accurate financial records and books of account sufficient for proper accounting purposes showing all receipts and disbursements necessary for the preparation of all financial data and tax returns. The Treasurer shall be responsible for the deposit of all Corporation funds in such depositories as may from time to time be designated by the Board, and shall disburse Corporation funds for such purposes as may be permitted under these Bylaws or the Declaration. The Treasurer shall perform all other duties incident to the office of Treasurer of a corporation or as may be directed by the Board. The Treasurer shall perform all such duties at the expense of the Corporation.

## **ARTICLE VII**

### **SHARES OF STOCK AND DIVIDENDS PROHIBITED**

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

## ARTICLE VIII

### LOANS TO DIRECTORS AND OFFICERS PROHIBITED

Section 1. No loan shall be made by the Corporation to its directors or Officers. The directors of the Corporation who vote for or assent to the making of a loan to a director or Officer of the Corporation, and any Officer or Officers participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount of such loan until the repayment thereof.

Section 2. Any director against whom a claim shall be asserted under or pursuant to this Article VIII shall be entitled to contribution from the other directors who voted for the action upon which the claim is asserted. To the extent that any director is required to pay such claim, he shall be subrogated to the rights of the Corporation against the debtor on the loan.

## ARTICLE IX

### CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board may authorize any Officer or Officers, agent or agents of the Corporation, in addition to the Officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Among other things, such contracts may provide for the employment of personnel necessary for the maintenance, upkeep, and repair of the Common Areas.

Section 2. Checks, Drafts, Etc. All checks, vouchers, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation (including checks or vouchers for the payment of the expenses incurred in maintaining the Common Areas), shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by the Board.

Section 3. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

Section 4. Gifts. The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation.

## ARTICLE X

### ARCHITECTURAL AND DESIGN CONTROL

Section 1. Establishment of the Architectural Review Committee. The Architectural Review Committee shall consist of as many persons, but not less than three, as Declarant may from time to time appoint. Declarant may remove any member of the Committee from office at any time and appoint new or additional members at any time. The Corporation shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board shall assume responsibility for appointment and removal of the members of the Architectural Review Committee, or if it fails to do so, the Board shall serve as the Architectural Review Committee.

Section 2. Duties and Powers. The Architectural Review Committee shall perform and shall be empowered to perform all acts as provided in Article VII of the Declaration.

## ARTICLE XI

### FINANCIAL MATTERS

Section 1. General. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board and committees having any of the authority of the Board and shall keep at its registered or principal office a record of the names and addresses of the directors. All books and records of the corporation may be inspected by any director, or his agent or attorney, for any proper purpose at any reasonable time.

Section 2. Financial Statements. The Board may appoint a certified public accountant or certified public accounting firm as auditor, who shall not be an officer of the Corporation or own any interest in any Lot, to audit the books

and financial records of the Corporation. Within 90 days after the end of each fiscal year, the Board shall distribute to each Owner and, upon request, any Mortgagee (as such term is defined in the Declaration) of a Lot a copy of the annual financial statement consisting of balance sheet and income and expense statement for the preceding fiscal year. The corporation shall make available to Owners and to holders, insurers or guarantors of any mortgage on a Lot, for their inspection and copying, upon request, during normal business hours or under other reasonable circumstances, current copies of the Declaration, Articles of Incorporation, Bylaws, and rules concerning the Property, the Corporation's most recent financial statement, the current operating budget of the Corporation, and all other records of the Corporation.

Section 3. Tax Returns. The Board shall cause to be filed, the necessary income tax returns for the Corporation.

Section 4. Fiscal Year. The Corporation's fiscal year shall commence January 1 and shall end on December 31.

## **ARTICLE XII**

### **INSURANCE**

The Board shall at all times cause any insurable improvements located on the Common Areas and each Owner shall at all times cause all insurable buildings and improvements located on his or her Lot to be insured against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, for the full replacement value thereof. Owners may obtain any other insurance they deem prudent. The insurance coverage obtained and maintained by the Board may not be brought into contribution with insurance bought by Owners or their mortgagees. The Board shall also at all times maintain public liability insurance covering all Common Areas and all damage or injury caused by the negligence of the Corporation. At the discretion of the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the Articles of Incorporation of the Corporation. Premiums for insurance obtained by the Board pursuant to this section shall be a common expense of the Corporation. The policies may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining

whether the insurance equals at the least the full replacement cost. At least every two years, the Board shall review the insurance coverage of the Corporation. If reasonably available, the Board shall obtain insurance policies with the provisions specified in ORS 94.680.

## ARTICLE XIII

### TRANSFER OF CONTROL

Section 1. Transitional Committee. Within 60 days after the conveyance to Owners other than Declarant of a total of 50 percent of the votes of all phases of the Property computed in accordance with Article III, Section 2(a), of these Bylaws, Declarant shall call a special meeting of the Owners to select a transitional committee. Declarant shall give notice in accordance with Article IV, Section 3, of these Bylaws to each Owner of the special meeting. At such meeting, the Owners in attendance, other than Declarant, by vote of a majority of those present, shall select two members of a transitional committee composed of three members. The third member shall be selected by Declarant. The members of the transitional committee shall serve until the Turnover Meeting. The function of the transitional committee shall be that of enabling ease of transition from control of the administration of the Corporation by Declarant to control by the Owners, If the meeting required pursuant to this Section 1 is not called by Declarant, within the time specified, the meeting may be called and notice given by any Owner. Notwithstanding the foregoing, if the Owners do not select members of the transitional committee as provided above, Declarant shall have no further obligation to form the transitional committee. There shall be no requirement that a transitional committee be formed and no transitional committee shall be appointed, once the Turnover Meeting has been held.

Section 2. Turnover Meeting. On a date that is not later than 120 days after the Turnover Date, Declarant shall call the Turnover meeting. Declarant shall give notice of such meeting as provided in Article IV, Section 3, herein to each Owner. The notice shall state the purpose of the meeting and the time and place at which the meeting is to be held. At the Turnover Meeting: (a) Declarant shall relinquish control of the administration of the Corporation and the Owners shall assume the control, (b) the Owners and Declarant shall elect a board of directors in accordance with these Bylaws, and (c) Declarant shall deliver to the Corporation all of the items set forth in ORS 94.616(3). At and after the Turnover Meeting, Declarant shall continue to have the voting rights described in Article III, Section 2(b), of these Bylaws.

## ARTICLE XIV

### RULES AND REGULATIONS

The Board shall have power to adopt and publish rules and regulations governing the use of the Common Areas and facilities, and the personal conduct of the Owners and their guests and tenants thereon, and to establish penalties for the infraction thereof, Such rules and regulations may be adopted upon a majority vote of the members of the Board present at a meeting at which there is a quorum of Board members and as to which notice has been given as provided in these Bylaws. Such notice shall include a verbatim copy of all proposed rules and regulations. No rule or regulation shall be adopted without first having been delivered or mailed to each Owner at the last address for such Owner in the records of the Association. Upon adopting any such rules and regulations copies thereof shall be delivered to each Member and a copy shall be posted in a conspicuous place on the Property. Any rule or regulation which conflicts with these Bylaws or the Declaration shall be null and void.

## ARTICLE XV

### MAINTENANCE, UTILITIES AND SERVICES

Section 1. Maintenance and Lighting of Common Areas. The Corporation shall perform all maintenance upon, and where the Corporation deems appropriate provide exterior lighting for, the Common Areas, Common Easement Areas, Limited Common Areas (all as defined in the Declaration) and in other areas not yet annexed to Forest Heights but which in the Corporation's or Declarant's reasonable judgment benefit Owners of property in Forest Heights, including, but not limited to the property known as the Mill Pond area, the property at the main entry to Forest Heights, and the property along Miller Road leading from the main entry into Forest Heights, and landscaping within dedicated rights of way, including but not limited to grass, trees, walks, private roads, entrance gates and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a safe condition to at least applicable City of Portland standards, and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended.

Section 2. Maintenance of Utilities. The Corporation shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer

service lines, domestic water service lines, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for maintaining utility lines within his Lot.

Section 3. Services. To the extent required by the City of Portland, the corporation shall provide or contract for a bus transit system for the benefit of the Property and shall perform, on an annual basis, a transportation report as may be required by the City of Portland. The Corporation may provide or contract for such other services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, garbage and trash removal for Common Areas and security services.

## ARTICLE XVI

### ASSESSMENTS

Section 1. Annual Budgets. The Board shall from time to time and at least annually prepare an operating budget for the Corporation, taking into account the current costs of maintenance and services and future needs of the Corporation, any previous overassessment and any net earnings of the Corporation. The budget shall provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law. Within 30 days after adopting a proposed annual budget for the planned community, the Board shall provide a summary of the budget to all Owners. If the Board is petitioned by Owners representing 20 percent of the votes of the membership, the Board shall call a meeting of the Owners to consider rejection of the budget. The date of the meeting shall be not less than 14 or more than 30 days after the summary is provided to the Owners. At the meeting, whether or not a quorum is present, the budget shall be adopted unless 75 percent of the votes of the membership rejects the budget. If the proposed annual budget is rejected, the last annual budget shall continue in effect until the Owners approve a subsequent budget.

Section 2. Assessment Formula. All Lots shall be subject to assessment on the following basis:

(a) Commercial Lots. The Owner of each Commercial Lot shall pay assessments computed by dividing the true cash value of such Commercial Lot, as shown on the records of the county Assessor, by the true cash value of all Lots within the Property, as shown on such records, in order to determine the percentage of true cash value of the Property attributable to such Commercial Lot. The percentage so calculated times the

total annual budget of the Corporation, multiplied by 1.5 (i.e., a weighted factor of 50 percent), shall be the assessment payable by such Commercial Lot.

(b) Residential Lots. Single-family Residential Lots (including Condominium units) shall pay one assessment unit per Lot unless such Lot contains more than one Living Unit. Any Residential Lot containing more than one Living Unit shall pay one assessment unit per Living Unit. The amount of the assessment per assessment unit shall be determined by dividing the balance of the annual budget after reduction for the amount assessable to Lots other than Residential Lots, if any, by the total number of assessment units.

(c) Limited Common Areas. The costs of maintaining Limited Common Areas shall be separately assessed to the Lots adjoining the same, as described in Section 4.6 of the Declaration.

(d) Other Lot Classifications. To the extent that other Lots are annexed into the Property which do not fall into the Residential Lot, Commercial Lot, or Limited Common Area classifications, such lots shall be assessed as Commercial Lots or in such other manner as is designated in the declaration annexing such Lots to the Property.

Section 3. Capital Improvement Assessments. The Corporation may purchase, construct or otherwise acquire additional equipment, facilities or other capital improvements for the general use and benefit of all the members of the Corporation, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment." Any such assessment shall be assessed to the Lots within the Property on the same formula as set forth in Article XVI, Section 2. No new Capital Improvement Assessment may be imposed under this section which, for any one purchase, construction or other acquisition, or group of related purchases, constructions or other acquisitions, in the aggregate exceeds \$10,000, unless approved by the vote or written consent of the Class B member, if any, and by not less than seventy-five percent (75%) of the votes of the Class A members who are voting in person, by absentee ballot or by proxy at a meeting duly called for the purpose of approving the Capital Improvement Assessment. To the extent that the additional equipment, facilities, or other capital improvement purchased, constructed, or otherwise acquired by the Corporation shall include items of Common Property (as hereinafter defined) which will normally require replacement, in whole or in part, in more than three and less than thirty years, such Capital Improvement Assessment shall be

accompanied by a corresponding Common Property Reserve Account Assessment (as hereinafter defined) as required by Article XVI, section 4 below.

Section 4. Reserve Account for Replacing Common Property. Declarant shall establish a reserve account which shall be called the Common Property Reserve Account," and which will be kept separate and apart from all other funds of the corporation. Except as provided in Article XVI, Section 4(b) below, the Common Property Reserve Account shall be used exclusively for replacement of items of Common Property which will normally require replacement, in whole or in part, in more than three and less than thirty years and not for regular or periodic maintenance expenses, "Common Property shall mean any real property or interest in real property within the Property which is owned or leased by the Corporation or designated as such in any plat of property within the Property, or in the Declaration, or in any declaration annexing such property to the Property.

(a) Assessments. Not less often than annually, the corporation shall inventory all items of Common Property which will normally require replacement, in whole or in part, in more than three and less than thirty years, and shall estimate the remaining life of each item of Common Property and the current replacement cost of each of such items, The Corporation may identify items for which a reserve account assessment is required as those items which are insurable by a common carrier of all-purpose risk insurance. For the purpose of funding the Common Property Reserve Account, the corporation shall impose an assessment to be called the "Common Property Reserve Account Assessment" against each Lot within the Property on the same formula as set forth in Article XVI, Section 2. The total Common Property Reserve Account Assessment shall be equal to the sum of the estimated replacement cost of each item of Common Property which has an estimated life of greater than three but less than thirty years, divided by the estimated number of years of life for such item of Common Property (not the estimated years of life remaining). Declarant shall not be required to pay any assessment under this Article XVI, Section 4 assessed to a Lot owned by Declarant until such date as the Lot is conveyed by Declarant.

(b) Loan From Common Property Reserve Account. After the Turnover Meeting, the Board may borrow funds from the Common Property Reserve Account to meet high seasonal demands on the Corporation's regular operating fund or to meet other temporary expenses'. Funds borrowed to meet high seasonal demands or temporary expenses under this Subsection

must be repaid from special assessment or maintenance fees within six months of the date such funds are borrowed.

(c) Increase, Reduction, or Elimination of Common Property Reserve Account Assessments. At any time after the second year after the Turnover Meeting future assessments for the Common Property Reserve Account may be increased, reduced or eliminated by the vote of Owners of Lots representing seventy-five percent (75%) of the votes computed in accordance with Article 111, Section 2(a), above.

Section 5. Maintenance and Operations Fund Assessment. The Corporation shall establish a fund to be known as the "@@Maintenance and Operations Fund," which shall be kept separate and apart from the Corporation's other funds. The Corporation shall use the Maintenance and Operations 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, maintenance, and operation of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots in the Property, and for the operation of the Association, including but not limited to:

(a) Maintenance, Utilities, and Services. Payment of the cost of maintenance, utilities, and services as described in Article XV.

(b) Insurance. Payment of the cost of insurance as described in Article XII.

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

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

For the purpose of funding the Maintenance and Operations Fund, the Corporation shall not less often than annually estimate the cost of accomplishing the goals for which the Maintenance and Operations Fund is established for the next fiscal year, and assess such cost to the Lots ("Maintenance and Operations Fund Assessment"). The Corporation may include in such Maintenance and Operations Fund Assessment amounts for the establishment for reserves to meet extraordinary expenses or such other amounts which are reasonably related to the purpose of the Maintenance and Operations Fund. The Maintenance and Operations Fund Assessment shall be assessed

to Lots within the Property on the same formula as set forth in Article XVI, Section 2 above.

Section 6. Transit System Assessment. The Corporation may establish a fund to be known as the "Transit System Fund," for the exclusive purpose of establishing, maintaining, operating, and subsidizing the mass transportation system required by the City of Portland as a condition of the City's approval of the Forest Heights Planned Unit Development, and the improvement, maintenance, and operation of properties, services and facilities devoted to this purpose. For the purpose of funding the Transit System Fund, the Corporation shall not less often than annually estimate the cost of accomplishing the goals for which the Transit System Fund is established for the next fiscal year, and assess such cost to the Lots ("Transit System Fund Assessment"). The Corporation may include in such Transit System Fund Assessment amounts for the establishment for reserves to meet extraordinary expenses or such other amounts which are reasonably related to the purpose of the Transit System Fund. The Transit System Fund Assessment shall be assessed to Lots within Forest Heights on the same formula as set forth in Article XVI, Section 2.

Section 7. Reallocation Upon Annexation or Withdrawal of Property. When additional property or phases are annexed to or withdrawn from the Property, the Corporation shall, within 60 days of the annexation, recompute the budget in accordance with Article XVI, Section 1 based upon the additional Lots and Common Areas and recompute assessments for each Lot based upon the formula set forth in Article XVI, Section 2. Newly annexed Lots shall be subject to assessment from the time of annexation of such Lots to the Property, in accordance with the provisions of Article XVI, Section 2. The Corporation shall send notice of the assessment to the Owners of newly annexed Lots not later than 60 days after the annexation or with the next occurring annual assessment whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date the notice is mailed or at such other time or times set in accordance with the Declaration or the Bylaws as the Corporation may specify in the notice. If additional property or phases are annexed to the Property during the Corporation's fiscal year, the Corporation shall send notice of and shall collect adjustments to assessments for Lots which were within the Property prior to the annexation in the manner specified in Section 2 above, except that notice of the adjustment in the assessment shall be sent to Owner not later than 60 days after the annexation or with the next occurring annual assessment, whichever is sooner. To the extent that any adjustment results in a credit for the Owner, such credit

shall be applied towards the next occurring payment or payments on the annual assessment.

Section 8. Payment of Assessments. The Corporation shall, not less than annually, provide notice to the Owner of each Lot of the amount of the assessment for such Lot calculated in accordance with Article XVI, Section 2 of the Declaration. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date the notice is mailed or at such other time or times set in accordance with the Declaration or these Bylaws as the Corporation may specify in the notice.

Section 9. Creation of Lien; and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Property, and each Owner of any Lot shall pay to the Corporation all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in the Declaration or these Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Article XVI, Section 10 below, shall be a charge on the land and 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 Lot at the time when the assessment or charge fell due.

Section 10. Default in Payment of Assessments: Enforcement of Lien. If an assessment or other charge levied under these Bylaws or the Declaration is not paid within thirty (30) days of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth below and, in addition, the Corporation may exercise any or all of the following remedies:

(a) Suspension of Rights; Acceleration. The Corporation may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under the Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Corporation immediately due and payable. In no event, however, shall the Corporation deprive any Owner of access to and from such Owner's Lot.

(b) Lien. The Corporation shall have a lien against each Lot for any assessment levied against the Lot and any fines or other charges imposed under the Declaration or these Bylaws against the Owner of the Lot from the date on which the assessment, fine or charge is due. The provisions

regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.352 to 87.382 shall apply to the Corporation's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Corporation, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

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

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

Section 11. Interest, Expenses, and Attorneys' Fees. Any amount not paid to the Corporation when due in accordance with these Bylaws or the Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the prevailing Portland, Oregon prime rate at the time, or such other rate as may be established by the Board, 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 not to exceed thirty percent (30%) of such assessment. In the event the Corporation 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. In the event the Corporation shall bring any suit or action to enforce the Declaration or these Bylaws, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Corporation all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

Section 12. Nonexclusiveness and Accumulation of Remedies. An election by the Corporation to pursue any remedy provided for herein shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies

provided herein are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the corporation.

## **ARTICLE XVII**

### **AMENDMENTS TO BYLAWS**

Except as expressly provided in the Declaration, these Bylaws may be amended or repealed and new Bylaws may be adopted by a majority of the directors present at any regular meeting or at any special meeting, if at least two days' written notice is given of intention to amend or to repeal and adopt new bylaws at such meeting accompanied by a copy or summary of the amendment. No special declarant right (as defined in ORS 94.550(12)) contained in these Bylaws may be amended without the consent of Declarant and Declarant may unilaterally make the amendments to the Bylaws permitted by Section 13.2 of the Declaration and ORS 94,585.

## **ARTICLE XVIII**

### **WAIVER OF NOTICE**

Whenever any notice is required to be given under the provisions of the Oregon Nonprofit Corporation Law, as it exists or may be amended in the future, or under the provisions of the Articles of Incorporation or the Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## **ARTICLE XIX**

### **HEADINGS**

The headings contained in these Bylaws are for convenience and shall not in any way affect the meaning or interpretation of these Bylaws.

## **ARTICLE XX**

### **INDEMNIFICATION**

#### **10.1 Directors and Officers**

The Corporation shall indemnify its directors and officers to the fullest extent not prohibited by law.

## 10.2 Committee Members, Employees and Other Agents

The corporation shall have the power to indemnify its committee members, employees and other agents to the fullest extent not prohibited by law.

## 10.3 No Presumption of Bad Faith

The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of this Corporation, or, with respect to any criminal proceeding, that the person had reasonable cause to believe that the conduct was unlawful.

## 10.4 Advances of Expenses

The expenses incurred by a director or officer in any proceeding shall be paid by the Corporation in advance at the written request of the director or officer, if the director or officer:

- (a) Furnishes the Corporation a written affirmation of such person's good faith belief that such person is entitled to be indemnified by the Corporation; and
- (b) Furnishes the Corporation a written undertaking to repay such advance to the extent that it is ultimately determined by a court that such person is not entitled to be indemnified by the Corporation. Such advances shall be made without regard to the person's ability to repay such expenses and without regard to the person's ultimate entitlement to indemnification under this Bylaw or otherwise.

## 10.5 Enforcement

Without the necessity of entering into an express contract, all rights to indemnification and advances under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and the director or officer who serves in such capacity at any time while this Bylaw and any other applicable law, if any, are in effect. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (a) the claim for indemnification or advances is denied, in whole or in part, or (b) no disposition of such claim is made within ninety (90) days of request thereof. The

claimant in such enforcement action, if successful in whole or in part, shall be entitled to be also paid the expense of prosecuting the claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any proceeding in advance of its final disposition when the required affirmation and undertaking have been tendered to the Corporation) that the claimant has not met the standards of conduct which makes it permissible under the law for the Corporation to indemnify the claimant, but the burden of proving such defense shall be on the corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because the claimant has met the applicable standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its members) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

#### 10.6 Nonexclusivity of Rights

The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of articles of incorporation, bylaws, agreement, vote of members or disinterested directors or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, committee members, employees or agents respecting indemnification and advances to the fullest extent not prohibited by law.

#### 10.7 Survival of Rights

The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, committee members, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### 10.8 Insurance

To the fullest extent not prohibited by law, the Corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

## 10.9 Amendments to Law

For purposes of this Bylaw, the meaning of "law" within the phrase "to the fullest extent not prohibited by law" shall include, but not be limited to, the Oregon Business Corporation Act, as the same exists on the date hereof or as it may be amended; provided, however, that in the case of any such amendment, such amendment shall apply only to the extent that it permits the Corporation to provide broader indemnification rights than the Act permitted the Corporation to provide prior to such amendment.

## 10.10 Savings Clause

If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, the corporation shall indemnify each director or officer to the fullest extent permitted by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law.

## 10.11 Certain Definitions

For the purposes of this Section, the following definitions shall apply:

(a) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether brought in the right of the Corporation or otherwise and whether civil, criminal, administrative or investigative, in which the director or officer may be or may have been involved as a party or otherwise by reason of the fact that the director or officer is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(b) The term "expenses" shall be broadly construed and shall include, without limitation, all costs, charges and expenses (including fees and disbursements of attorneys, accountants and other experts) actually and reasonably incurred by a director or officer in connection with any proceeding, all expenses of investigations, judicial or administrative proceedings or appeals, and any expenses of establishing a right to indemnification under these Bylaws, but shall not include amounts paid in settlement, judgments or fines.


(c) "Corporation" shall mean Forest Heights Homeowners' Association and any successor corporation thereof.

(d) Reference to a "director," "officer," "committee member," "employee" or "agent" of the Corporation shall include, without limitation, situations where such person is serving at the request of the Corporation as a director, officer, committee member, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(e) References to "other enterprises" shall include employee benefit plans. References to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan. References to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries. A person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Bylaw.

\* \* \*

I, Nancy Hendrickson, as Secretary of Forest Heights Homeowners' Association, Inc., do hereby certify the foregoing to be the First Amended and Restated Bylaws of the Corporation, as adopted by the Board effective as of the 22<sup>nd</sup> day of March, 1993.

 Secretary

## FOREST HEIGHTS

### STATEMENT OF DECLARANT'S INTEREST

1. This project is a part of a planned community called Forest Heights. Forest Heights is presently planned to consist of approximately 601 acres located in the City of Portland, Oregon. Forest Heights currently consists of the following subdivisions. References to "lots" are for single family, detached residential sites. References to "units" are for medium density, attached units. Under current zoning, these can include duplexes, townhomes, rowhouses, condominiums, and apartments.

Phase 1:	Ridgeline	86 lots	
	Tract Y	69 units	
	Tract V	27 units	
	Tract X	8 units	
	Mill Ridge	<u>58</u> lots	
	Total		248
Phase 2:	Mill Woods	99 lots	
	Mill Pond	69 lots	
	Tract S (south)	70 units	
	Tract R	Commercial	
	Tract W	161 units	
	Tract U	<u>32</u> units	
	Total		432
Phase 3:	Forest Hollow	54 lots	
	Forest Ridge	80 lots	
	Mill Creek	34 lots	
	Tract U	<u>32</u> units	
	Total		200
Phase 4:	Single Family Detached Lots	131 lots	
	Tract T	96 units	
	Tract S (north)	<u>47</u> units	
	Total		274
	Phase 5:	Single Family Detached Lots	107 lots
Tract Q		106 units	
Tract Z		<u>64</u> units	
Total			277

Phase 6:	Single Family		
	Detached Lots (East)	74 lots	
	Single Family		
	Detached Lots (West	136 lots	
	Tract R	<u>2</u> units	
	Total		235
Phase 7:	Single Family		
	Detached Lots	<u>227</u> lots	
	Total		<u>227</u>
	TOTAL UNITS		1,893

2. The declarant (hereinafter called the "Developer" for purposes of this summary) has applied to add acres to Forest Heights and has not limited the right to do so in the future. See Declaration, Objectives, page 2, and Section 2.2(d), page 6.

3. The Developer controls the project until the lots representing 75 percent of the votes in all phases of Forest Heights have been sold to owners other than the Developer. See Declaration, Section 8.3 (b), page 23.

4. In addition to retaining the right to add more lots, the Developer may retain certain other rights after the Association elected by the Homeowners has assumed administrative responsibilities. See Declaration, Declarant's Control After Turnover, Section 8.8, Page 25.

5. The Declaration requires the Developer to deed the common property to the Association at a future date. See Declaration, Section 4.3, page 8.

6. Liens on the property will be disclosed in a preliminary title report.

7. As used in this statement, "phase" means a group of lots in the planned community that the Developer designates as such in the Declaration, by reference to lot numbers on the plat.

8. This Statement of Declarant's Interest is provided in accordance with ORS 94.740 and 94.745.

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