

M. 04744-99

M 264744-99

AFTER RECORDING, RETURN TO:

Howard M. Feuerstein, Esq.  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2300  
Portland, Oregon 97204

RECORDED BY OREGON TITLE AS AN ACCOMMODATION ONLY. NO  
PROPERTY IS ACCEPTED BY THE COMMISSION OF TITLE OR FOR THE

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR GRAND OAKS SUMMIT**

Pahlisch Nielsen Homes, LLC

Declarant

INDEX

	<u>Page</u>
ARTICLE 1            DEFINITIONS .....	2
1.1    "Additional Property" .....	2
1.2    "Architectural Review Committee" .....	2
1.3    "Assessments" .....	2
1.4    "Association" .....	2
1.5    "Common Areas" .....	2
1.6    "Common Easement Areas" .....	3
1.7    "Declarant" .....	3
1.8    "Grand Oaks Summit" .....	3
1.9    "Improvement" .....	3
1.10   "Initial Development" .....	3
1.11   "Limited Common Areas" .....	3
1.12   "Limited Common Easement Areas" .....	3
1.13   "Living Unit" .....	3
1.14   "Lot" .....	3
1.15   "Master Plan" .....	3
1.16   "Mortgage" .....	3
1.17   "Owner" .....	3
1.18   "Project" .....	4
1.19   "Project Assessments" .....	4
1.20   "Project Association" .....	4
1.21   "Project Common Area" .....	4
1.22   "Project Declaration" .....	4
1.23   "Project Parcel" .....	4
1.24   "Public Areas" .....	4
1.25   "Sold" .....	4
1.26   "The Property" .....	4
1.27   "This Declaration" .....	4
ARTICLE 2            PROPERTY SUBJECT TO THIS DECLARATION .....	5
2.1    Initial Development .....	5
2.2    Annexation of Additional Property .....	5
2.3    Withdrawal of Property .....	6

	<u>Page</u>
ARTICLE 3 LAND CLASSIFICATIONS .....	6
3.1 Land Classifications within Initial Development .....	6
3.2 Conversion of Lots to Common Areas .....	7
ARTICLE 4 PROPERTY RIGHTS IN COMMON AREAS .....	7
4.1 Owners' Easements of Enjoyment .....	7
4.2 Common Easement Areas .....	7
4.3 Title to Common Areas .....	7
4.4 Extent of Owners' Rights .....	8
(a) Association Easements .....	8
(b) Public and Utility Easements .....	8
(c) Use of the Common Areas .....	8
(d) Alienation of the Common Areas .....	9
(e) Limitations on Use .....	9
4.5 Delegation of Use .....	9
4.6 Easements Reserved by Declarant .....	9
4.7 Limited Common Areas .....	10
ARTICLE 5 PROPERTY RIGHTS IN LOTS .....	10
5.1 Use and Occupancy .....	10
5.2 Easements Reserved .....	10
(a) Adjacent Common Area .....	10
(b) Right of Entry .....	10
(c) Utility Easements .....	10
ARTICLE 6 GENERAL USE RESTRICTIONS .....	11
6.1 Structures Permitted .....	11
6.2 Residential Use .....	11
6.3 Offensive or Unlawful Activities .....	11
6.4 Animals .....	11
6.5 Maintenance of Structures and Grounds .....	12
6.7 Vehicles .....	12
6.8 Signs .....	12
6.9 Rubbish and Trash .....	13
6.10 Landscape .....	13
6.11 Temporary Structures .....	13
6.12 Fences and Hedges .....	13

	<u>Page</u>
6.13 Service Facilities .....	13
6.14 Antennas and Satellite Disks .....	13
6.15 Exterior Lighting or Noisemaking Devices .....	13
6.16 Pest Control. ....	14
6.17 Grades, Slopes and Drainage .....	14
6.19 Association Rules and Regulations .....	14
ARTICLE 7 ARCHITECTURAL REVIEW COMMITTEE .....	14
7.1 Architectural Review .....	14
7.2 Committee Decision .....	15
7.3 Committee Discretion .....	15
7.4 Membership: Appointment and Removal .....	15
7.5 Majority Action .....	16
7.6 Liability .....	16
7.7 Nonwaiver .....	16
7.8 Appeal .....	16
7.9 Effective Period of Consent .....	16
7.10 Estoppel Certificate .....	16
ARTICLE 8 ASSOCIATION .....	17
8.1 Organization .....	17
8.2 Membership .....	17
8.3 Voting Rights .....	17
8.4 General Powers and Obligations .....	18
8.5 Specific Powers and Duties .....	18
(a) Maintenance and Services .....	18
(b) Insurance .....	18
(c) Rulemaking .....	19
(d) Assessments .....	19
(e) Enforcement .....	19
(f) Employment of Agents, Advisers and Contractors .....	19
(g) Borrow Money, Hold Title and Make Conveyances .....	19
(h) Transfer, Dedication and Encumbrance of Common Area .....	19
(i) Create Classes of Service and Make Appropriate Charges .....	19
(j) Implied Rights and Obligations .....	20
8.6 Liability .....	20
8.7 Interim Board; Turnover Meeting .....	20
8.8 Contracts Entered into by Declarant or Prior to Turnover Meeting .....	20
8.9 Project Associations .....	20

	<u>Page</u>
ARTICLE 9	MAINTENANCE, UTILITIES AND SERVICES . . . . . 21
9.1	Maintenance and Lighting of Common Areas . . . . . 21
9.2	Maintenance of Utilities . . . . . 21
9.3	Security . . . . . 21
9.4	Services . . . . . 22
9.5	Project Maintenance . . . . . 22
9.6	Owner's Responsibility . . . . . 22
ARTICLE 10	ASSESSMENTS . . . . . 23
10.1	Purpose of Assessments. . . . . 23
10.2	Types of Assessments . . . . . 23
10.3	Apportionment of Assessments . . . . . 23
10.4	Annual Assessments . . . . . 23
10.5	Special Assessments . . . . . 23
10.6	Emergency Assessments . . . . . 24
10.7	Limited Common Area Assessments. . . . . 24
10.8	Individual Assessments . . . . . 24
10.9	Annexation of Additional Property . . . . . 24
10.10	Operations Fund . . . . . 25
10.11	Reserve Fund . . . . . 25
10.12	Creation of Lien and Personal Obligation of Assessments . . . . . 26
ARTICLE 11	ENFORCEMENT . . . . . 26
11.1	Use of Common Areas . . . . . 26
11.2	Nonqualifying Improvements and Violation of General Protective Covenants 26
11.3	Default in Payment of Assessments; Enforcement of Lien . . . . . 27
11.4	Reports to First Mortgagees . . . . . 28
11.5	Subordination of Lien to Mortgages . . . . . 28
11.6	Interest, Expenses and Attorneys' Fees . . . . . 28
11.7	Nonexclusiveness and Accumulation of Remedies . . . . . 28
11.8	Enforcement by City of Corvallis. . . . . 29
ARTICLE 12	MORTGAGEES . . . . . 29
12.1	Reimbursement of First Mortgagees . . . . . 29
12.2	Right of First Mortgagees Relating to Maintenance . . . . . 29

ARTICLE 13 MISCELLANEOUS PROVISIONS . . . . . 29

13.1 Amendment and Repeal . . . . . 29

13.2 Regulatory Amendments . . . . . 30

13.3 Duration . . . . . 30

13.4 Joint Owners . . . . . 30

13.5 Lessees and Other Invitees . . . . . 31

13.6 Nonwaiver . . . . . 31

13.7 Construction; Severability; Number; Captions . . . . . 31

13.8 Notices and Other Documents . . . . . 31

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR GRAND OAKS SUMMIT**

THIS DECLARATION is made this 5 day of April, 1999, by  
PAHLISCH NIELSEN HOMES, LLC, an Oregon limited liability company ("Declarant").

**OBJECTIVES**

A. Declarant owns or controls certain real property within the City of Corvallis, Benton County, Oregon. Declarant proposes to develop this property as a planned development to be known as "Grand Oaks Summit."

B. Declarant hopes to create in Grand Oaks Summit a carefully planned community which will provide an attractive place to live. Declarant will provide leadership in organizing and administering Grand Oaks Summit project during the development period, but expects property owners in Grand Oaks Summit to accept the responsibility for community administration by the time the development is complete.

E. The purpose of this Declaration is to provide for the ownership, maintenance and use of certain Common Areas which will be owned and operated by an owners association for the benefit of all properties now or later made subject to this Declaration. In addition, areas made subject to this Declaration may be subject to Project Declarations which impose additional or different restrictions on the use of property within such projects and may establish Project Common Areas for the benefit of the owners within such projects.

F. Funds for the maintenance and operation of Common Areas generally will be provided through assessments against those who purchase property within Grand Oaks Summit, although to assist with the development of Grand Oaks Summit, Declarant may from time to time itself provide some improvements. For the protection of all Owners of property in Grand Oaks Summit there will be a system designed to assure that each person who purchased property in Grand Oaks Summit will pay an equitable share of the moneys necessary for the maintenance and development of Common Areas.

G. Purchasers of property within Grand Oaks Summit hereby consent to the Master Plan for Grand Oaks Summit approved by the City of Corvallis, as the same may subsequently be amended. By adoption of such Master Plan and this Declaration, Declarant is not committing itself to take any action for which definite provision is not made below. One who acquires property in Grand Oaks Summit will have the advantage of any further development of Grand Oaks Summit, but shall not have any legal right to insist that there be development except as

provided in this instrument or in the instruments which hereafter may be recorded annexing areas to Grand Oaks Summit and subjecting areas to this Declaration.

H. Declarant has recorded the plat of "Grand Oaks Summit" in the plat records of Benton County, Oregon. Declarant desires to subject the property described in such plat to the conditions, restrictions and charges set forth in this instrument for the benefit of such property and its present and subsequent owners, and to establish such property as the first phase of the planned development to be known as "Grand Oaks Summit."

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

ARTICLE 1

DEFINITIONS

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

1.1 "Additional Property" means any land, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2 below.

1.2 "Architectural Review Committee" or "the Committee" means the committee appointed pursuant to Article 7 below.

1.3 "Assessments" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 10 below.

1.4 "Association" means the nonprofit corporation to be formed to serve as the owners association as provided in Article 8 below, and its successors and assigns.

1.5 "Common Areas" means those lots or tracts designated as such on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Grand Oaks Summit, including any Improvements thereon, and shall also include Common Easement Areas, Limited Common Areas and any Lots converted to Common Areas as provided in Section 3.2 below. Common Areas do not include Project Common Areas.



1.6 "Common Easement Areas" means those easements established for the benefit of all property within Grand Oaks Summit pursuant to this Declaration or any plat or declaration annexing Additional Property to Grand Oaks Summit.

1.7 "Declarant" means Pahlisch Nielsen Homes, LLC, an Oregon limited liability company, and its successors and assigns if such successor or assignee should acquire Declarant's interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.8 "Grand Oaks Summit" means the Initial Property and any Additional Property annexed to this Declaration.

1.9 "Improvement" means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter, landscaping or other product of construction efforts on or in respect to the Property.

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

1.11 "Limited Common Areas" means those Common Areas established for the exclusive use or enjoyment of certain Lots as designated in this Declaration or any declaration annexing property to Grand Oaks Summit, including Limited Common Easement Areas.

1.12 "Limited Common Easement Areas" means those easements established for the exclusive use or enjoyment of certain Lots as designated in this Declaration or any declaration annexing property to Grand Oaks Summit.

1.13 "Living Unit" means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy.

1.14 "Lot" means a platted or partitioned lot unit within the Property, with the exception of any lot marked on a plat of the Property as being common or open space or so designated in this Declaration or the declaration annexing such property to Grand Oaks Summit. Lot does not include Common Areas, Project Common Areas or Public Areas.

1.15 "Master Plan" means the Master Plan of Grand Oaks Summit approved by the City of Corvallis, Oregon, as the same may hereafter be amended.

1.16 "Mortgage" means a mortgage or a trust deed; "mortgagee" means a mortgagee or a beneficiary of a trust deed; and "mortgagor" means a mortgagor or a grantor of a trust deed.

1.17 "Owner" means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a person holding only

HPK-25-88 THE GRAND OAKS SUMMIT TOWNHOMES

a security interest in a Lot. 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.

1.18 "Project" means any separately designated and developed portion of the Property and comprised of discrete types of development or use, including, without limitation, townhomes or other attached dwellings. Any such Project shall be designated as a Project in the Project Declaration, this Declaration or the declaration annexing such portion of the Property to Grand Oaks Summit.

1.19 "Project Assessments" means assessments levied pursuant to a specific Project Declaration.

1.20 "Project Association" means any association established for a specific Project pursuant to a Project Declaration.

1.21 "Project Common Area" means the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the owners within the Project and their families, tenants, employees, guests and invitees.

1.22 "Project Declaration" means a declaration of easements, covenants, conditions and restrictions imposing a unified development scheme on a particular Project, which declaration shall have been executed by or bear the written approval of Declarant.

1.23 "Project Parcel" means the portion of the Property upon which a Project is located, as indicated, if appropriate, on the plat relating to the Project and as designated in the Project Declaration.

1.24 "Public Areas" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the declaration annexing such property to Grand Oaks Summit.

1.25 "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.

1.26 "The Property" means Grand Oaks Summit.

1.27 "This Declaration" means all of the easements, covenants, restrictions and charges set forth in this instrument, 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, including the provisions of any supplemental declaration annexing property to Grand Oaks Summit.

## ARTICLE 2

### 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 real property within that certain plat entitled "Grand Oaks Summit," except Tract "A" thereof, filed in the plat records of Benton County, Oregon, in Book 10 at Page 4 of Plat Records.

The Initial Development contains 48 single-family Lots and will contain not more than 48 Living Units.

2.2 Annexation of Additional Property. Declarant may from time to time and in its sole discretion annex to Grand Oaks Summit as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Grand Oaks Summit. The annexation of such Additional Property shall be accomplished as follows:

(a) 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, designate the Project of which such property is a part, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such Additional Property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The Additional Property included in any such annexation shall thereby become a part of Grand Oaks Summit 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.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

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

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such

property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots or Living Units which Declarant may create or annex to Grand Oaks Summit, except as may be established by applicable ordinances of the City of Corvallis. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the City of Corvallis.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Upon annexation to Grand Oaks Summit, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(g) 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 10.9 below.

2.3 Withdrawal of Property. Declarant may withdraw property from Grand Oaks Summit only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Development or any Additional 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 respective plat of the Initial Development, or in the case of Additional Property, prior to the sale of the first Lot in the property annexed by the supplemental declaration, subject to the prior approval of the City of Corvallis. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Benton County, Oregon. 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 10.9 below. Such right of withdrawal shall not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

### ARTICLE 3

#### LAND CLASSIFICATIONS

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

(a) Lots, which shall consist of Lots 1 through 48 of the plat of the Initial Development.

(b) Common Areas, which shall be the areas marked as Tracts "C," "D," "E," "F," and "G" on the plat of the Initial Development, plus the Limited Common Areas referred to below.

(c) Limited Common Areas, which shall be the area marked as Tract "B" on the plat of the Initial Development, which shall pertain to and be used for vehicular access to and from Lots 12 through 14, and the Limited Common Easement Area within Lots 15, 16, 17, 22, 23 and 24, which areas shall pertain to and be used for vehicular access to and from the abutting Lots.

(d) Public Areas, which shall be Tract "H" and the streets and public alleyways shown on the plat of the Initial Development.

(e) There are no Common Easement Areas within the Initial Development.

3.2 Conversion of Lots to Common Areas. Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Benton County, Oregon. Such declaration shall be executed by Declarant, as owner of the Lots.

#### ARTICLE 4

##### PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to provisions of this Article, every Owner and his invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot. The use of Limited Common Areas, however, shall be limited to the Owners and invitees of the Lots designated in the declaration establishing the Limited Common Area.

4.2 Common Easement Areas. Common Easement Areas shall be reserved for signage and visual landscape features. Such areas are to be maintained by the Association and no changes in landscaping will be permitted within such 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 so as to trespass or encroach upon the Common Easement Areas, nor may any such areas be used by the Owner for storm water treatment purposes.

4.3 Title to Common Areas. Title to the Common Areas, except Common Easement Areas, shall be conveyed to the Association by Declarant, free and clear of monetary liens, 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. Title to Common Easement Areas, subject to the

easements set forth in this Declaration, shall rest in the Owners of the respective Lots within which such areas are located, or to the public if part of dedicated street right of ways.

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

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

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

(iii) An easement for the purpose of making repairs to any existing structures on Common Areas.

(b) **Public and Utility Easements.** The public is hereby granted access easements over all alley areas, pedestrian accesses, trails and common area tracts within the Property. In addition, Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(c) **Use of the Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, 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 identifying the Property or any Project or identifying pathways or items of interest, provided such signs are approved by the Architectural Review Committee. 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. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area. In such case, those Owners will not be required to share in the costs of maintaining the facility, as is more particularly described in Section 10.9.

(d) **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least 80 percent of the Class A Association voting rights and the Class B member (as defined in Section 8.3 below), if any, have given their prior written approval and unless approved by the City of Corvallis. The Association shall first offer to dedicate such property to the City of Corvallis. This provision shall not apply to the easements described in Section 4.4(a) above. The Association, upon approval in writing of at least 50 percent of the Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of the City of Corvallis, may dedicate or convey any portion of the Common Areas to a park district or other public body. Notwithstanding any other provision of this Declaration, Declarant, Grand Oaks Summit, L.L.C., shall convey Tract "O" to the City of Corvallis for park purposes without the necessity of obtaining the consent of any Owners.

(e) **Limitations on Use.** 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 11 below.

(ii) The right of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration.

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

4.6 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the owners of Lots in all future phases of Grand Oaks Summit a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant and future phases of the Property. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests or invitees.

4.7 Limited Common Areas. The respective Limited Common Areas shall be subject to a reciprocal access easement for the exclusive use by the Owners of the adjoining Lots for vehicular access. Such areas shall be operated, maintained, replaced and improved by the Association, but the entire cost thereof shall be assessed to the Owners of Lots to which such Limited Common Areas pertain.

ARTICLE 5

PROPERTY RIGHTS IN LOTS

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

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

(a) Adjacent Common Area. The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common 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 and/or improvements of 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 may be reserved over portions of certain Lots, as shown on any recorded plat. Within the easements, the Architectural Review Committee will not permit any structure, planting or other material to be placed or permitted to remain on the easement area 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, except Common Easement Areas, which will be maintained by the Association.



## ARTICLE 6

GENERAL USE RESTRICTIONS

6.1 Structures Permitted. No structures shall be erected or permitted to remain on any Lot except structures containing Living Units and structures normally accessory thereto. Such 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 the applicable City of Corvallis regulations, is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee.

6.2 Residential Use. Lots shall only be used for residential purposes. Except with the consent of the Board of Directors of the Association, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any 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 such Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home or apartment for purposes of sales or rental in Grand Oaks Summit, and (c) the right of the Owner of a 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 Corvallis ordinances.

6.3 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to Owners or occupants. No unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.

6.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any 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 their respective owners. No animal shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside a Lot or within a Common

Easement Area. An Owner or occupant may be required to remove a pet upon receipt of the third written notice from the Association Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

6.5 Maintenance of Structures and Grounds. Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and fences on alleys and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the Architectural Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Lot (other than Common Easement Areas) neatly trimmed, property 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 restored within a reasonable period of time.

6.6 Parking. Except as may otherwise be provided in the Rules and Regulations of the Association, parking of boats, trailers, motorcycles, trucks, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and parking of any other vehicles in excess of one ton in weight shall not be allowed to remain overnight on any part of the Property or on public streets within the Property, 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 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. Vehicles may not be used for storage of materials for more than forty-eight (48) hours without approval from the Architectural Review Committee. Parking in or blocking of alleys is prohibited.

6.7 Vehicles. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot unless screened from view, on the Common Area or on any street for a period 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 the occupants of the area. 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 the Property and charge the expense of such removal to the Owner.

6.8 Signs. No signs shall be erected or maintained on any Lot except that not more than one "For Sale" or "For Rent" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot, except that two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner.

subject to reasonable regulations adopted by the Architectural Review Committee relating to size and length of display.

6.9 **Rubbish and Trash.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots, streets or Common Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors of the Association, the Association may have such materials removed and charge the expense of such removal to the Owner.

6.10 **Landscape.** All landscaping shall be completed within six (6) 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.

6.11 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently, except during the period of initial construction of a dwelling on the Lot.

6.12 **Fences and Hedges.** No fences or boundary hedges shall be installed without prior approval of the Architectural Review Committee. Fences adjacent to pedestrian accesses between Lots will be limited to a maximum of four feet in height unless set back at least five feet from the boundary and the Association and the Owner of the Lot have agreed upon the responsibility for maintenance of the five foot strip.

6.13 **Service Facilities.** Service facilities (garbage, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property.

6.14 **Antennas and Satellite Disks.** Exterior antennas and satellite receiver and transmission dishes shall not be permitted to be placed upon any Lot except in accordance with rules established by the Architectural Review Committee in accordance with Section 7.3.

6.15 **Exterior Lighting or Noisemaking Devices.** Except with the consent of the Architectural Review Committee, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than as originally installed by the builder of the home and security and fire alarms.

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

6.17 **Grades, Slopes and Drainage.** Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

6.18 **Additional Restrictions.** Each Owner of a Lot, and such Owner's family, tenants, employees, guests and invitees, shall also comply with any additional use restrictions contained in any supplemental declaration annexing such Lot to Grand Oaks Summit and in any Project Declaration applicable to such Lot.

6.19 **Association Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory Rules and Regulations governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. 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 affected Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

## ARTICLE 7

### ARCHITECTURAL REVIEW COMMITTEE

7.1 **Architectural Review.** No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations and compliance with the setback requirements contained in the conditions of approval of Order No. 98-92 of the City of Corvallis. The building plans to be submitted shall consist of one complete set of plans and specifications in the usual form showing insofar as appropriate, (i) the size the dimensions of the Improvements, (ii) the exterior design, (iii) approximate exterior color scheme, (iv) location of Improvements on the Lot, including

setbacks, driveway and parking areas, and (v) location of existing trees to be removed. These plans and specifications shall be left with the Committee until sixty (60) days after notice of completion has been received by the Committee. This is for the purpose of determining whether, after inspection by the Committee, the Improvement complies substantially with the plans and specifications submitted and approved. The Architectural Review Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases in which the Architectural Review Committee consent is required by this Declaration or any Project Declaration, the provisions of this Article shall apply, except that this Article shall not apply to construction by Declarant.

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

**7.3 Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for Grand Oaks Summit or any specific Project therein. Consideration such as siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any applicable Federal Communications Commission rules.

**7.4 Membership: Appointment and Removal.** The Architectural Review Committee shall consist of as many persons, but not less than two, as the Declarant may from time to time appoint. The Declarant may remove any member of the Committee from office at its discretion at any time and may appoint new or additional members at any time. The Association 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 of Directors of the Association 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 of Directors shall

assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

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

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

7.7 **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.

7.8 **Appeal.** At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors of the Association pursuant to Section 7.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the 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 notification.

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

7.10 **Estoppel Certificate.** Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee 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, in which event the 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.

## ARTICLE 8

### ASSOCIATION

Declarant shall organize an association of all of the Owners within Grand Oaks Summit. Such Association, its successors and assigns, shall be organized under the name "**Grand Oaks Summit Owners Association**" 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 the Property and all Owners of Lots 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. In that event 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, and 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 Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 **Membership**. Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Association. Such membership 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 Rights**. The Association shall have two classes of voting membership:

**Class A**. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. 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 than one vote be cast with respect to any Lot.

**Class B.** The Class B member shall be the Declarant and shall be entitled to three votes 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 Grand Oaks Summit as permitted by the Master Plan 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 General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

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

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

(c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act, whether or not such Act is applicable to this Declaration.

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

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

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

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

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.



(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 6.19 of this Declaration.

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

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

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

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

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