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Nancy Blankenship - County Clerk	

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
TARTAN DRUIM HOME OWNERS ASSOCIATION**

**TARTAN DRUIM, LLC  
Declarant**

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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
TARTAN DRUIM HOME OWNERS ASSOCIATION**

**THIS DECLARATION** is made this 12th day of August, 2015, by **TARTAN DRUIM, LLC**, an Oregon limited liability company (“**Declarant**”).

**R E C I T A L S :**

A. Declarant owns the real property located within the plat of “**Tetherow Phase 5**” recorded **June 2, 2008 in Cabinet H, Page 720, and as Document No. 2008-23839**, Deschutes County, Oregon.

B. Declarant desires to subject the property described in “**Exhibit A**” attached hereto and made a part hereof, 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 under the Oregon Planned Community Act, ORS 94.550 to 94.783, as a Class I planned community home project to be known as “**Tartan Druim.**”

C. Tartan Druim is a part of a mixed-use planned development known as “Tetherow” and shall be annexed to Tetherow and the Declaration of Covenants, Conditions, Restrictions and Easements for Tetherow recorded in the official records of Deschutes County, Oregon on October 3, 2007 as Document No. 2007-53418, as amended and supplemented, (“**Master Declaration**”) by a Declaration of Annexation to Tetherow dated August 4th, 2015 and recorded August 10th, 2015 in the Official Records of Deschutes County, Oregon, as Document No. 2015-032859 (“**Annexation Declaration**”). Tartan Druim shall be designated as a Neighborhood within Tetherow and this Declaration shall be a Neighborhood Declaration for purposes of the Master Declaration.

**NOW, THEREFORE**, Declarant hereby declares that the property described in “**Exhibit A**”, 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 all persons who occupy any portion of the Property, and shall inure to the benefit of Declarant, each Owner and the Association (as such terms are defined below).

**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, that is made subject to this Declaration as provided in Section 2.2 below.

1.2 **Annexation Declaration** means the Declaration of Annexation to Tetherow dated August 4th, 2015 and recorded August 10th, 2015 in the Records of Deschutes County, Oregon.

1.3 **Assessments** mean all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, the Bylaws of the Association or the provisions of the Oregon Planned Community Act, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Working Fund Assessments, and Individual Assessments as described in Article 8 below.

1.4 **Association** means the nonprofit corporation to be formed to serve as an Owners' association as provided in Section 6.1 of this Declaration, and its successors and assigns.

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

1.6 **Bylaws** means the duly adopted bylaws of the Association set forth in the attached **Exhibit B** as the same may hereafter be amended or replaced.

1.7 **Declarant** means Tartan Druim, LLC, an Oregon limited liability company, and its successors and assigns who acquire any of the rights or assume any of the obligations of Declarant under this Declaration. If less than all of Declarant's rights or obligations are transferred to a successor or assign, then the successor or assign shall only be deemed a Declarant with respect to those rights or obligations that are specifically assigned to or assumed by the successor or assign. One or more persons or entities may be a Declarant. Declarant constitutes a Neighborhood Declarant under the Master Declaration.

1.8 **Home** means a building or buildings located upon a Lot including the garage portion thereof, within the Property and designated for separate occupancy as a dwelling, together with any attached deck or patio.

1.9 **Initial Property** means the property referred to in Section 2.1 below.

1.10 **Lot** means each of Lots 222 through 230 and Lots 250 through 260, as depicted on the Plat, and any Additional Property that is made subject to this Declaration pursuant to Section 2.2 and is designated as a Lot in the declaration submitting the Additional Property to this Declaration, and includes the Home and any other improvements located thereon.

1.11 **Master Association** means the Tetherow Owners Association established under the Master Declaration.

1.12 **Master Declarant** means the Declarant under the Master Declaration.

1.13 **Master Declaration** means the Declaration of Covenants, Conditions, Restrictions and Easements for Tetherow recorded October 3, 2007 in the Records of Deschutes County,



Oregon, as Document No. 2007-53418, as the same may be amended or supplemented from time to time in accordance with the provisions thereof.

**1.14 Mortgage** means a mortgage or a deed of trust; **mortgagee** means a mortgagee or a beneficiary of a deed of trust; **mortgagor** means a mortgagor or a grantor of a deed of trust.

**1.15 Neighborhood Assessments** means all Assessments other than the Master Association Assessments (as defined in Section 8.8 below).

**1.16 Neighborhood Common Areas** means Tract W and that area of land identified as Cartwright Court as depicted on the Plat and any Additional Property that is made subject to this Declaration pursuant to Section 2.2 and is designated as Neighborhood Common Areas in the declaration submitting the Additional Property to this Declaration, including any improvements located thereon. The Neighborhood Common Areas shall also include all other real and personal property that the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

**1.17 Neighborhood Common Easement Areas** means those easements established for the benefit of all property within Tartan Druim pursuant to this Declaration or any plat or declaration annexing Additional Property to Tartan Druim.

**1.18 Occupant** means the occupant of a Home who is the Owner, lessee or any other person authorized by the Owner to occupy the premises.

**1.19 Owner** means the person or persons, including Declarant, owning any Lot in the Property, including a vendee under a land sale contract to whom possession of the Lot has been passed, but does not include a tenant or holder of a leasehold interest or a contract vendor (when possession has passed to the contract vendee pursuant to the terms of the land sale contract) or other person holding only 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.

**1.20 Plat** means the plat of **TETHEROW PHASE 5, recorded June 2, 2008, in Cabinet H, Page 720, Deschutes County, Oregon**, and all amendments or supplements thereto.

**1.21 Rules and Regulations** means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

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

**1.23 Tartan Druim** means the Initial Property and any Additional Property annexed to this Declaration.

**1.24 The Property** means the Initial Development and any Additional Property annexed pursuant to Section 2.2 below.

1.25 **This Declaration** means all of the easements, covenants, restrictions and charges set forth herein, 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.

1.26 **Turnover Meeting** means the meeting called by Declarant pursuant to Section 6.7 below at which Declarant will turnover administrative responsibility for the Property to the Association.

## Article 2

### PROPERTY SUBJECT TO THESE COVENANTS

2.1 **Initial Property**. Declarant hereby declares that the real property described in “**Exhibit A**” is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration

2.2 **Annexation of Additional Property**. Subject to compliance with any applicable requirements or conditions under the Master Declaration, Declarant may from time to time and in its sole discretion annex to the Property 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 the Property. The annexation of such real property shall be accomplished as follows:

(a) The Owner or Owners of such real property shall record a declaration that shall be executed by or bear the approval of Declarant and Master Declarant, if required under the Master Declaration, and shall among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions that 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) The Additional Property included in any such annexation shall thereby become a part of the Property and subject to this Declaration and Master Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to the Additional Property.

(c) Subject to approval of the Master Declarant as required by the Master Declaration, a declaration with respect to any Additional Property may:

(1) 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 Additional Property.

(2) 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 Additional Property.

(d) There is no limitation on the number of Lots or Homes that Declarant may create or annex to the Property, except as may be established by applicable ordinances of Deschutes County. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by Deschutes County.

(e) Nothing in this Declaration shall establish any duty or obligation on Declarant to annex any property to this Declaration, and no owner of property excluded from this Declaration shall have any right to have such property annexed to this Declaration or Tartan Druim.

(f) Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 6.3 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 8.9 below.

**2.3 Improvements.** Declarant does not agree to build any improvements on the Property other than as required by Deschutes County, but may elect, at Declarant's option, to build additional improvements.

**2.4 Withdrawal of Property.** Property may be withdrawn from Tartan Druim only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Property 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 plat of the Initial Property, 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 Deschutes County. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Deschutes County, Oregon. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 8.9 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

#### PROPERTY RIGHTS IN NEIGHBORHOOD COMMON AREAS

**3.1 Designation of Neighborhood Common Areas.** Tract W and that area of land identified as Cartwright Court as depicted on the Plat, shall be Neighborhood Common Areas for purposes of this Declaration, along with the Neighborhood Common Easement Areas referred to below.

**3.2 Owner's Easements of Enjoyment.** Subject to the provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Neighborhood Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

**3.3 Title to the Neighborhood Common Areas.** Title to the Neighborhood Common Areas, except Neighborhood Common Easement Areas, shall be conveyed by deed or other instrument to the Association by Declarant no later than the Turnover Meeting and the Association shall unconditionally accept the conveyance. Title to Neighborhood 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, to the public if part of dedicated street rights-of-way, or in the owner of the real property within which such areas are located.

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

(a) **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 Neighborhood Common Areas, including the Neighborhood Common Easement Areas:

(1) An easement on all Neighborhood 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 and any such easement shown on any plat of the Property.

(2) An easement over all roadways for vehicular access within the Property and to adjacent areas.

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

The Neighborhood Common Areas shall be subject to such easements as may be shown on the Plat as well as public and private utility easements for the installation and maintenance of sanitary sewers, waterlines, surface water management, storm drainage and access over their entirety. In addition, Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Neighborhood Common Areas to governmental bodies or other utilities performing utility services and to communications companies, and may grant free access over the Neighborhood Common Areas to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

(b) **Use of the Neighborhood Common Areas.** Subject to Declarant's rights under Article 12, the Neighborhood Common Areas shall not be partitioned or otherwise divided into parcels for residential use. Except as otherwise provided in this Declaration, the Neighborhood Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Neighborhood Common Areas, including the Neighborhood Common Easement Areas. The Neighborhood Common Areas and facilities thereon shall be used for the purposes for which the same are reasonably intended, and their use, operation and maintenance shall not be obstructed, damaged or unreasonably interfered with by any Owner. Nothing herein shall prevent Declarant or the Association from placing of a sign or signs upon the Neighborhood Common Areas identifying Tartan Drumm or identifying items of interest, including directional signs, provided that such signs comply with any applicable sign ordinances. The Board

of Directors shall have authority to abate any trespass or encroachment upon the Neighborhood Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. The Association, upon affirmative vote of the Owners holding at least seventy-five percent (75%) of the Class A Association voting rights and the written consent of the Class B member, if any, and if approved by order or resolution of Deschutes County, may dedicate or convey any portion of the Neighborhood Common Areas to a park district or other public body.

(c) **Alienation of the Neighborhood Common Areas.** Except as otherwise provided in Section 3.4(b) above, the Association shall not by act or omission seek to abandon, partition, subdivide, encumber as security for a debt, sell or transfer the Neighborhood Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the Owners holding at least eighty percent (80%) of the Class A Association voting rights vote to approve such action and the Class B member, if any, has given its prior written approval. A sale, transfer or grant of security interest in any portion of the Neighborhood Common Areas in accordance with this Section 3.4(c) may provide that the Neighborhood Common Areas so conveyed shall be released from any restrictions imposed on such Neighborhood Common Areas by this Declaration or the Bylaws. No such sale, transfer, or grant of security interest may, however, deprive any Lot of such Lot's right of access or support without the written consent of the Owner of the affected Lot.

(d) **Association Authority to Grant Easements and Other Property Interests in Neighborhood Common Areas.** The Association may execute, acknowledge and deliver leases, easements, rights of way, licenses, and other similar interest affecting the Neighborhood Common Areas and consent to vacation of roadways within and adjacent to the Neighborhood Common Areas. Except for those matters described in ORS 94.665(4)(b), which the Board of Directors may approve without Owner consent, the granting of any interest pursuant to this Section 3.4(d) must be approved by at least seventy-five percent (75%) of the Owners present at a meeting of the Association or with the consent of at least seventy-five percent (75%) of all Owners solicited by any means the Board determine is reasonable. If a meeting is held to conduct the vote, the meeting notice shall include a statement that the approval of the granting of an interest in the Neighborhood Common Areas will be an item of business on the agenda of the meeting.

(e) **Limitation on Use.** Use of the Neighborhood Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(1) The right of the Association to suspend such use rights of an Owner and his or her family members, guests, tenants and contract purchasers to the extent provided in Article 9 below.

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

**3.5 Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of enjoyment to the Neighborhood Common Areas to members of his or her family, guests, tenants, or contract purchasers who reside on the Property, whose use of the Neighborhood Common Areas shall be subject to this Declaration and the Rules and Regulations.

**3.6 Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Neighborhood Common Areas to carry out sales activities and events necessary or convenient for the sale of Lots, including, without limitation, advertising and “For Sale” signs. In addition, Declarant hereby reserves to itself and for the Owners of Lots in all future phases of the Property a perpetual easement and right-of-way for access over, upon and across the Neighborhood 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 Neighborhood 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 of, use of, enjoyment of or access to an Owner’s Lot by that Owner or his or her family, tenants, employees, guests or invitees. Declarant and Declarant’s agents, successors and assigns shall have an easement over and upon the Neighborhood Common Areas as may be reasonably necessary for the purpose of inspecting, completing or making repairs to existing structures or other improvements located on the Neighborhood Common Areas.

#### Article 4

### PROPERTY RIGHTS IN LOTS

**4.1 Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 5 below and all other provisions of this Declaration for the mutual benefit of all Owners.

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

(a) **Adjacent Common Areas.** The Owner of any Lot which adjoins any Neighborhood Common Areas 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 Neighborhood Common Areas. The Owner and occupant of each Lot shall be responsible for controlling such Owner’s or occupant’s pets so as to not harm or otherwise disturb persons performing such maintenance on behalf of the Association.

(b) **Utility Easements.** Easements for the benefit of Declarant and the Association for installation and maintenance of utilities and drainage facilities are reserved over portions of certain Lots and Common Areas as shown on the Plat or as otherwise reserved in any recorded document. 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 systems, or in drainage infiltration facilities.

(c) **Utility Inspection and Repairs.** Each utility service provider and its agents or employees shall have authority to access all Lots, but not Homes constructed thereon, and the Neighborhood Common Areas, on which communication, power, gas, drainage, sewage or water facilities may be located for the purpose of installing, operating, maintaining, improving or constructing such facilities, reading meters, inspecting the condition of pipes and facilities, and completing repairs. The Owner of any such Lot will be given advance notice if possible. In the case of an emergency, as determined solely by the utility service provider, no prior notice will be required.

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

(e) **Easements for Maintenance, Emergency, and Enforcement (Association).** Declarant grants to the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities. The Association shall also have the right, but not the obligation, to enter upon any Lot (including any dwelling thereon) for emergency, security, and safety reasons, to perform maintenance and to enter any portion of the Lot other than the dwelling located thereon to inspect for the purpose of ensuring compliance with and enforce the Declaration. Such right may be exercised by any member of the Board, any duly authorized agents and assignees of the Association, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

(f) **Easements for Maintenance and Enforcement (Master Association and Master Declaration).** Declarant grants to the Master Association easements over the Property as necessary to enable the Master Association to fulfill its maintenance responsibilities. The Master Association shall also have the right, but not the obligation, to enter upon any Lot to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Master Declaration. Such right may be exercised by any member of the Board, any duly authorized agents and assignees of the Master Association, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

(g) **Future Easements.** Declarant reserves the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the development of any of the Property. The location of any such

easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

## Article 5

### RESTRICTIONS ON USE

**5.1 Social/Athletic Membership in Club.** If, and to the extent required by the Master Declaration, each Owner shall maintain at least a Social/Athletic Membership in the Club (as defined in the Master Declaration).

**5.2 Rental of Homes.** An Owner shall be entitled to rent or lease his/her Home if:

(a) **Written Rental Agreements Required.** There is a written rental or lease agreement specifying that: (i) the tenant shall be subject to all provisions of the Master Declaration, this Declaration, the Bylaws and the Rules and Regulations, and (ii) failure to comply with any provision of the Master Declaration, this Declaration, the Bylaws or the Rules and Regulations shall constitute a default under the rental agreement.

(b) **Minimum Rental Period.** The period of the rental or lease is not less than thirty (30) days continuously to a single tenant.

(c) **Tenant Must Be Given Documents.** The Owner gives each tenant a copy of the Master Declaration, this Declaration, the Bylaws and the Rules and Regulations.

(d) **Owner Responsibility.** The Owner shall be responsible for any violations by the Owner's tenants and shall be solely responsible for either correcting or eliminating such violations, or getting the tenant to do same.

**5.3 Minimum Dwelling Size.** No dwelling intended or used as the primary dwelling on a Lot may be constructed or maintained unless the interior floor area of such dwelling (excluding garage) contains at least 2,200 square feet. The maximum permissible interior floor area shall be limited only by constraints of the building site area and other reasonable limitations as may be established by the Architectural Review Committee.

**5.4 Appearance.** Each Owner shall maintain such Owner's Home and Lot in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall be the responsibility of each Owner and shall be restored within a reasonable period of time. No part of any Lot or any part of the Neighborhood Common Areas shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Trash, garbage or other wastes shall be kept only in sanitary containers in the garages, except when outside awaiting pickup during garbage pickup days.

**5.5 Windows, Decks, Porches and Outside Walls.** To preserve the attractive appearance of the Property, the Association may regulate the nature of items that may be placed in or on windows, decks, porches, and the outside walls so as to be visible from the street or Neighborhood Common Areas. Window coverings, curtains, shutters, drapes or blinds, other than those of commercially produced quality, shall not be permitted to be visible from any public or



private street, pathway, Neighborhood Common Area or adjacent property. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks. No window air conditioners will be permitted.

**5.6 Garages.** All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage, and shall not be used as office or living space, except that Declarant may use garages as sales offices prior to permanent occupancy of the Homes.

**5.7 Rain Drains and Sewers.** All rain drains and storm sewers shall be kept free of debris, and Owners shall not cause any such drains or sewers to become blocked, clogged or otherwise to back up into any Lot.

**5.8 Clothes Hanging Devices.** Outdoor clothes hanging devices shall be temporary, un-affixed structures not exceeding six (6) feet in height and shall not be visible from any public or private street, Neighborhood Common Areas or the Golf Course.

**5.9 Lot Consolidation and Division.** No Lot may be consolidated with another Lot and no Lot may be partitioned or subdivided except by Declarant.

**5.10 Picketing and Demonstrations.** By acceptance of the deed to any Lot covered by this Declaration, the Owner covenants and agrees with the Owners of all other Lots within the Property, that no Owner or resident of any Lot shall engage in or allow or encourage others to engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards (other than the display of signs permissible under the Master Declaration) within public view, upon any Lot or within any Neighborhood Common Areas, easement or street right-of way adjacent to any Lot, or affixed to any vehicle or apparatus upon or adjacent to any Lot. This prohibition shall not affect the right of any person to participate in any other form of public protest conducted outside of the Property. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on his or her constitutional right of free speech and to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; the right to engage in a profession, business or life-style of their own choosing provided that the conduct of such profession, business or life-style is not illegal and does not otherwise violate any provision of this Declaration.

**5.11 Golf Course Property.** The Property is located adjacent to the Golf Course Property (as defined in the Master Declaration) and is subject to all conditions, covenants, restrictions, easements and rights set forth in Article 6 of the Master Declaration with respect to the ownership, use and operation of the Golf Course Property. Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that neither Declarant, the Association, nor any of their respective successors or assigns has made any representations, warranties or guarantees with regard to: (i) the continuing existence, ownership or operation of the Golf Course Property or (ii) the preservation, without impairment, of any view of, over and across the Golf Course Property from a Home. Each Owner, by acceptance of a deed to a Lot, also acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments

include: (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Lot or other portions of the Property, utilized by an Owner; (b) the entry of golfers onto an Owner's Lot or other portions of the Property utilized by an Owner to retrieve golf balls; (c) overspray in connection with the watering of roughs, fairways and greens on the golf course; (d) noise from golf course maintenance and operation equipment (including, without limitation, irrigation systems, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (e) odors arising from irrigation and fertilization of the turf situated on the golf course; (f) the application of pesticides and chemicals to the golf course throughout the year and the use of reclaimed water, treated waste water or other sources of non-potable water for the irrigation of the golf course; (g) disturbance and loss of privacy resulting from golf cart traffic and golfers; and (h) noise, vehicular and pedestrian traffic, congestion and loss of privacy as a result of tournaments held on the golf course. Each Owner expressly assumes such detriments and risks and agrees that neither the Association, Declarant, Master Association, Master Declarant, Golf Course Owner, nor any of their respective successors or assigns, shall be liable to the Owner or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Townhome to the Golf Course Property, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant, Master Association, Master Declarant, Golf Course Owner, or any of their respective successors or assigns. Each Owner hereby agrees to indemnify and hold harmless the Association, Declarant, Master Association, Master Declarant, Golf Course Owner, and each of their respective successors and assigns, against any and all such claims by the Owner's invitees. The foregoing release and indemnity is in addition to the release and indemnity set forth in the Master Declaration.

**5.12 Rules and Regulations.** In addition, 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 the Lots, Homes and the Neighborhood Common Areas as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be furnished by the Board of Directors to each Owner. The Rules and Regulations may be adopted by the Board of Directors, except as may be otherwise provided in the Bylaws of the Association.

**5.13 Master Declaration.** Each Owner and Lot shall be subject to the restrictions contained in the Master Declaration, which restrictions are incorporated herein by this reference.

## Article 6

### ASSOCIATION

Declarant has organized, or before conveyance of the first Lot shall organize an association of all of the Owners within the Property. Such Association, and its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name "**Tartan Druim Home Owners Association,**" and shall have such property, powers and obligations as are set forth in this

Declaration, the Bylaws and the Articles of Incorporation of the Association for the benefit of the Property and all Owners of property located therein.

**6.1 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. In the event that the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association having the same name and purpose, and all of the property, powers and obligations of the Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association and such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be confirmed and evidenced by appropriate conveyances and assignments by the 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.

**6.2 Membership.** Every Owner of a Lot shall, immediately upon creation of the Association thereafter during the entire period of such Owner's ownership of a Lot, 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.

**6.3 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 (1) 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. If the Owners of a Lot cannot agree upon how to exercise their right, then the vote for that Lot shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order established the authority of co-Owner to vote.

**Class B.** The Class B member shall be Declarant and shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When all of the Lots in Tartan Druim have been sold and conveyed to Owners other than a successor Declarant and Declarant has relinquished the right to annex Additional Property into Tartan Druim.

(b) At such earlier time as Declarant may elect to terminate such special voting rights.

**6.4 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.

(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 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.

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

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 7 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 5.12 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect assessments as provided in Article 8 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. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as manager; 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, recreational experts, 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; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of

\$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights of the Association; provided, however, that the foregoing limitations shall not apply to any of the following actions: (i) the defense of claims or litigation asserted against the Association or the Board of Directors, including the assertion of counterclaims by the Association or the Board of Directors in any proceedings instituted against either of them; (ii) actions by the Association for the collection of delinquent assessments, fines or other charges due and payable under the Declaration, these Bylaws or the Rules and Regulations; (iii) actions initiated by the Association during Declarant's period of administrative control; (iv) actions challenging condemnation proceedings; (v) actions initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association; and (vi) actions to summarily abate, enjoin and remove a structure or condition that violates the Declaration, these Bylaws or the Rules and Regulations. The limitations set forth in this paragraph shall increase by ten percent (10%) on each fifth (5th) anniversary of the recording of the Declaration.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration and, subject to Section 3.4(c) above, encumber the Neighborhood 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 Neighborhood Common Area, and shall accept any real or personal property, leasehold or other property interests within the Property conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Neighborhood Common Area.** Subject to the requirements set forth in Section 3.4(c) above, the Association may sell, transfer or encumber all or any portion of the Neighborhood Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Neighborhood 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 therefore to the users of such services without being required to render such services to those of its members who do not assent to such charges, subject to such 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 of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same, subject to compliance with any applicable requirements under ORS 94.630.

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

(k) **Shared Use Facilities.** The Association may enter into shared use agreements with other entities for shared use by Owners of facilities, including, without limitation, recreational facilities, streets, access gates and parking facilities.

(l) **Master Association Assessments.** The Association may collect from the Owners assessments owing under the Master Declaration for forwarding to the Master Association.

**6.6 Liability.** The liability of a member of the Board of Directors or an officer or committee member of the Association to the Association or any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties as a member of the Board of Directors or an officer or committee member of the Association shall be eliminated to the maximum extent permitted by law. In the event any member of the Board of Directors or an officer or committee member of the Association is threatened with or made a party to any proceeding because the individual is or was a member of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

**6.7 Interim Board; Turnover Meeting.** Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board of Directors until replaced by Declarant or their successors have been elected by the Owners at the Turnover Meeting. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership as provided in Section 6.3 above. At the Turnover Meeting, the interim directors shall resign and their successors shall be elected by the Owners as provided in the Bylaws. If the Declarant fails to call the Turnover Meeting as required by this section, any Owner or Mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

**6.8 Contracts Entered into by Declarant or Prior to Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts and employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association prior to the Turnover Meeting shall have a term of not more than of three (3) years, except as otherwise provided in ORS 94.700(2). In addition, any such contract, unless otherwise exempted under ORS 94.700(2), shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days written notice of termination given to the other party not later than sixty (60) days after the Turnover Meeting.

**6.9 Managing Agent or Manager.** On behalf of the Association, the Board of Directors may employ or contract for a professional managing agent or a manager at a compensation to be established by the Board of Directors. The Board of Directors may delegate to the managing agent or manager such duties and powers as the Board of Directors may authorize.

**6.10 Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Deschutes County, Oregon. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as "**Exhibit B**" to this Declaration.

**6.11 Master Association.** It is contemplated that from time to time either the Master Association or the Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. Any such contract shall be approved by the Board of Directors.

## Article 7

### MAINTENANCE, SERVICES, CASUALTY, CONDEMNATION AND DAMAGE

**7.1 Maintenance of Lots and Homes.** Except as provided in Section 7.2 herein, each Owner shall maintain the Owner's Lot and Home as provided in Section 10.1 of the Master Declaration.

**7.2 Maintenance of Lot Landscaping.**

(a) The Association shall be responsible for the maintenance, repair, replacement and upkeep of all landscaping and related irrigation equipment located on the Lots, except for any landscaping and related irrigation equipment located in any fenced rear or side yard areas, in any enclosed courtyards, or on any patios or decks. The Association shall have the right to remove and replace any landscaping improvements for which the Association has maintenance responsibility as determined by the Board of Directors. The Board of Directors may adopt Rules and Regulations clarifying the Association's maintenance obligations or identifying other elements of the Lots to be maintained by the Association. All costs incurred by the Association in performing its maintenance and repair obligations described in this Section 7.2 shall be a common expense paid out of Assessments as described in Article 8. In the event, however, the need for such maintenance or repair is caused by the willful or negligent act or omission of an Owner, his or her family, tenants, guests or invitees, the costs of such maintenance and repair may, in the discretion of the Board of Directors, be charged to the Owner as an Individual Assessment.

(b) Upon proposal by the Board of Directors and approval by seventy-five percent (75%) of the total voting power of the Association, the Association's obligation for maintenance of Lot landscaping as provided in Section 7.2(a) above may be terminated. In such event and as provided in Section 8.11, the Association will have no obligation to refund any portion of the Assessments paid to the Reserve Fund in connection with the Lot landscaping maintenance responsibilities.

**7.3 Maintenance and Lighting of Neighborhood Common Areas.** The Association shall maintain any lighting for and perform all maintenance and repairs upon the Neighborhood Common Areas, including Neighborhood Common Easement Areas and the improvements located thereon, including, without limitation, grass, trees, walks, private roads, entrance gates, street lighting and signs, parking areas, walkways and trails, and surface water drainage systems unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to render them fit for the purposes for which they are intended and in compliance with standards required by applicable Governmental Authorities as that term is defined in the Master Declaration, including, but not limited to, the Fire Protection Standards as defined in the Master Declaration.

**7.4 Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of any utilities, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, located in the Neighborhood Common Areas. Each Owner shall maintain at such Owner's expense utility lines to the extent located within the Home.

**7.5 Easement Maintenance Obligations.** Declarant or its designee shall be responsible for the installation and construction of the surface water drainage system as described in the Drainage Easement. Thereafter, the Association shall be responsible for the operation, maintenance, repair and replacement of the surface water drainage system in accordance with the terms and conditions of the Drainage Easement for the benefit of the Owners and shall indemnify, defend and hold Declarant harmless from and against any and all claims, liabilities, costs and expenses arising out of or related to any act or omission of the Association in connection with such operation, maintenance, repair or replacement. All maintenance, repair and other costs incurred by the Association in connection with the operation, maintenance, repair and replacement of the surface water drainage system in accordance with the terms and conditions of the Drainage Easement shall be a common expense of the Association funded from Assessments.

**7.6 Maintenance Plan and Inspections.** The Association shall at all times maintain the Property for which the Association has maintenance, repair or replacement responsibility under this Declaration or the Bylaws or the Oregon Planned Community Act in good condition and repair. Declarant shall initially prepare and thereafter the Board of Directors shall implement, review and update a maintenance plan (the "**Maintenance Plan**") for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration, the Bylaws or the Oregon Planned Community Act. The Maintenance Plan shall describe the maintenance, repair or replacement to be conducted, include a schedule for maintenance, repair or replacement, be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association and address issues that include, but are not limited to, warranties and the useful life of the items of which the Association has maintenance, repair or replacement responsibility. The Board of Directors shall review and update the Maintenance Plan as necessary. Changes or updates to the Maintenance Plan shall be based on advice of competent experts or consultants. For a period of 10 years following recording of the Declaration, any changes to the Maintenance Plan without the approval of the Declarant and the original general contractor may void any applicable warranty and will release them from liability for any damage resulting from such change.

**7.7 Utilities and Services.** The Association may provide or contract for such utilities and services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, cable, telecommunications, garbage and trash removal and security services.

**7.8 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its board of directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each person



using the Property assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefore.

**7.9 Access at Reasonable Hours.** As provided in Section 4.2 above, the Association, and any person authorized by the Association shall have the right to enter upon any Lot at any reasonable time, and from time to time at reasonable intervals, for the purpose of performing the maintenance and services provided for in this Article 7 and no such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

**7.10 Corrective Maintenance.** The Association shall have the authority to require each Owner to keep his or her respective Lot and Home at a high standard of maintenance. If an Owner fails to maintain his or her Home or Lot to the standards established by the Board of Directors pursuant to the authority of this section, the Association will have the right and the authority at its option, after giving reasonable notice and opportunity to be heard to the respective Owner, to cause such repairs and maintenance to be performed as are necessary to meet the foregoing standard and charge the respective Owner for such repairs and maintenance.

**7.11 Option to Provide Maintenance Services through Association.** Upon request of an Owner, the Association may, but shall not be obligated to, provide maintenance and repair services which would otherwise be the responsibility of such Owner under this Article, provided that the respective Owner shall reimburse the Association, as an Individual Assessment, for such services immediately upon completion. Alternatively, upon proposal by the Board of Directors and approval by fifty-one percent (51%) of the total voting power of the Association, the charge for such maintenance and repair services may be designated a common expense of the Association to be paid with funds collected from the Owners pursuant to the assessment procedures set forth in Article 8 below. In the event the Owners elect to designate any such maintenance and repair services as a common expense of the Association then: (i) such designation shall identify specifically which services are to become included as common expenses (with any maintenance and repair responsibilities not so included to remain the obligation of the Owners under Section 7.1 above); and (ii) the Association may add a charge to such common expenses sufficient to cover the costs of administering, coordinating and invoicing for such additional maintenance and repair services.

**7.12 Damage or Destruction by Casualty.** In the event of damage to or destruction of any portion of the Common Neighborhood Areas by fire or other casualty (excluding ordinary wear or tear), the following provisions shall apply:

(a) **Common Neighborhood Areas.** If any improvements on the Common Neighborhood Areas are damaged or destroyed by fire or other casualty and the estimated cost of the repair or replacement that is not otherwise covered by the Association's property insurance proceeds does not exceed the deductible amount under the Association's property insurance policy, then the Association shall cause the damaged or destroyed improvements to be repaired or restored to their former condition, subject to current governmental regulations and building codes, as soon as reasonably possible and the proceeds from the Association's property insurance policy for such damage or destruction, if any, shall be used for such purpose. If the insurance proceeds are not sufficient to pay the entire cost of the repair or restoration, the Board of Directors, if necessary, may assess each Owner such additional amounts as required to pay the cost of repair or restoration.

(b) **Damage Caused by Intentional Acts or Negligence.** If, due to act or neglect of an Owner or a member of his or her family or his or her household pet or of a guest or other Occupant or visitor of such Owner, damage shall be caused to the Neighborhood Common Areas or maintenance, repairs or replacements shall be required that would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance (including any deductible), as an Individual Assessment.

**7.13 Condemnation.** If any portion of the Neighborhood Common Areas is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and to each mortgagee. The Association shall represent the Owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the Neighborhood Common Areas and each Owner appoints the Association to act as his other attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking of Neighborhood Common Areas shall be payable to the Association. Proceeds shall first be applied to restore or repair any remaining Neighborhood Common Area, including a structure on Neighborhood Common Area, which may be required to permit the continued enjoyment of such Neighborhood Common Area. Thereafter, the Association shall deposit such sums in the Operations Fund (as defined in 8.10 below) or apply these sums to such capital improvements as shall be authorized pursuant to Section 8.5 of this Declaration.

## Article 8

### ASSESSMENTS

**8.1 Purpose of Assessments.** The Neighborhood Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants of the Property and for the improvement, operation and maintenance of the Neighborhood Common Areas and other areas to be maintained by the Association. The Master Association Assessments shall be used in accordance with the Master Declaration.

**8.2 Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Individual Assessments, and Master Association Assessments, all as more particularly described below.

**8.3 Commencement and Apportionment of Assessments.**

(a) **When Subject to Assessment.** Except as otherwise proved in Section 8.11(b) with respect to the commencement of Assessments for reserves, each Lot shall become subject to Neighborhood Assessments upon the sale of the Lot to an Owner other than Declarant or a successor Declarant and Lots owned by Declarant or a successor Declarant shall not be subject to Neighborhood Assessments. Each Lot shall become subject to Master Association Assessments as provided in the Master Declaration.

(b) **Apportionment.** Annual Assessments, Special Assessments, and Emergency Assessments shall be assessed equally among all Lots subject to assessment. Individual Assessments shall be assessed equally except in cases where the costs of maintenance of certain Lots are materially disproportionate to the mean costs of maintaining all of the Lots, in which case the disproportionately benefited Lots may, upon the decision of the Board of Directors, be subject to a differing assessment in accordance with Section 6.5(i). Master Association Assessments shall be levied against the Lots in accordance with the Master Declaration. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any of the Neighborhood Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

(c) **Declarant's Obligation to Fund Operating Expense Shortfalls Prior to Turnover Meeting.** In lieu of the obligation to pay Neighborhood Assessments, Declarant shall contribute to the Association any difference between the Actual Operating Expenses and the Actual Operating Income of the Association for each full or partial fiscal year of the Association prior to the Turnover Meeting. Such contribution may be satisfied in the form of cash payments, "in-kind" contributions of services or materials, or a combination of both, at the election of Declarant. As used herein, "Actual Operating Expenses" shall mean the normal operating expenses actually incurred by the Association in the performance of its ordinary and regular operations in accordance with this Declaration and the Bylaws, but shall exclude: (i) contributions or liabilities for reserves or other contingencies; (ii) capital expenditures resulting from a casualty or other similar loss or otherwise approved by the Owners in accordance with Section 8.5; (iii) expenses resulting from the acts or omissions of an Owner other than Declarant, including without limitation, the nonpayment of Assessments as and when due; (iv) unforeseen expenses not reasonably anticipated to be incurred in the performance of the Association's normal operations; (v) expenses levied by the Master Association, which are to be funded from Master Association Assessments; and (vi) prepaid expenses attributable to the period after the Turnover Meeting. As used herein, "**Actual Operating Income**" shall mean all Neighborhood Assessments levied against the Lots subject to assessment, whether or not actually paid and collected, plus any other income actually received by the Association, but shall exclude: (i) any portion of the Annual Assessments attributable to reserves; (ii) Special Assessments or Individual Assessments levied to fund capital expenditures resulting from a casualty or other similar loss or otherwise approved by the Owners in accordance with Section 8.5; (iii) Individual Assessments levied to fund expenses resulting from the acts or omissions of an Owner other than Declarant; (iv) Neighborhood Assessments levied prior to the Turnover Meeting for any period after the Turnover Meeting. The foregoing obligation to fund operating expense shortfalls shall only apply to the period prior to the Turnover Meeting and Declarant shall have no obligation to fund any operating expense shortfalls of the Association for any period after the Turnover Meeting.

**8.4 Annual Assessments.** The Board of Directors shall from time to time and at least annually prepare a budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over assessment and any common profits of the Association. The budget shall take into account the projected income and expenses of the Association for the fiscal year covered by the budget and shall

provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 8.11 below and shall take into account the Maintenance Plan adopted pursuant to Section 7.6 above. Each Lot subject to assessment ("Annual Assessment"); provided, however, that in order to achieve stabilized Annual Assessment rates during the initial development of the Property and subject to Declarant's obligation to fund operating expense shortfalls in accordance with Section 8.3(c) above, for any period prior to the Turnover Meeting, the rate of the Annual Assessment shall be based upon a budget, as prepared and modified from time to time by Declarant; of the projected total income and expenses of the Association at full build-out of all Lots included, or anticipated to be included, in Tartan Dr. in, as determined by Declarant, even though certain Lots may not initially be developed or subject to assessment. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. Annual Assessments may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

**8.5 Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("**Special Assessment**"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions that in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together for acquisition or construction of new capital improvements or additions with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. The foregoing limitation on Special Assessments shall not be applicable to the maintenance, repair, replacement or reconstruction of existing improvements by the Association in accordance with its obligations in Article 7. Special Assessments shall be apportioned as provided in Section 8.3(b) above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

**8.6 Emergency Assessments.** If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noted as to the reason therefore, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("**Emergency Assessment**"). The amount of any Emergency Assessment shall be offset by any payment required to be made by Declarant pursuant to 8.3(c) above. Emergency Assessments shall be apportioned as set forth in Section 8.3 above and payable as determined by the Board of Directors.

**8.7 Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited (“**Individual Assessment**”). Individual Assessments include, without limitation, charges for services provided under Section 6.5(i) and Section 7.2 and any common expense that the Board of Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due thirty (30) days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

**8.8 Master Association Assessments.** In addition to all other Assessments described in this Declaration, each Owner shall be required to pay assessments to the Master Association. As provided in the Master Declaration, the Association shall have the right and obligation to collect the Master Association Assessments from the Owners and remit payment of the Master Association Assessments to the Master Association.

**8.9 Annexation of Additional Property.** When Additional Property is annexed to the Property, the Lots included therein shall become subject to Neighborhood Assessments as provided in Section 8.3(a) and the Neighborhood Assessments shall be apportioned in accordance with Section 8.3(b). Upon the annexation of Additional Property, the additional Lots subject to assessment shall pay Annual Assessments at the same rate then being paid by all other Lots subject to Annual Assessments. The Board of Directors, however, at its option, may elect to recalculate the budget based upon the additional Lots subject to Annual Assessments and recalculate the Annual Assessments for all Lots subject to Annual Assessments, including any Lots within the Additional Property, for the balance of the fiscal year provided, however, that for any period prior to the Turnover Meeting, the rate of the Annual Assessment shall be based on the full build-out budget described in Section 8.4. Lots included within Additional Property annexed to the Property shall become subject to Master Association Assessments as provided in the Master Declaration.

**8.10 Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 8.11 separate and apart from its other funds, in a bank account in the name of the Association to be known as the “**Operations Fund**.” All expenses of the Association shall be paid from the Operations Fund or from the Reserve Fund referred to in Section 8.11. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Neighborhood Common Areas and of the Lots situated upon the Property, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 7.
- (b) Payment of the cost of insurance as described in the Bylaws of the Association.

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

(d) Payment of the cost of water service, sewer service and garbage and trash disposal for the Neighborhood Common Areas or that are commonly billed.

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

(f) In the event any condemnation of a portion of the Neighborhood Common Areas should result in a surplus in the Operations Fund not needed for payment of the other items described in this section, such surplus shall be divided by the number of Lots within the Property and such amounts paid equally to the holder of any first mortgage or deed of trust on each Lot, or if none, to the Owner of the Lot.

#### **8.11 Reserve Fund.**

(a) **Establishment of Account.** Declarant, on behalf of the Association, shall conduct an initial reserve study as described in paragraph (c) of this section and establish a bank account in the name of the Association (the “**Reserve Fund**”) to fund major maintenance, repair or replacement of all property for which the Association has maintenance, repair and replacement responsibility under this Declaration that will normally require replacement in whole or in part in more than one (1) year and less than thirty (30) years, for exterior painting of the Neighborhood Common Areas or other property to be maintained by the Association, if the Neighborhood Common Areas or such other property includes exterior painted surfaces, and for other items, whether or not involving Neighborhood Common Areas, if the Association has responsibility to maintain the items, including items required by the Maintenance Plan established pursuant to Section 7.6. The Reserve Fund need not include those items that can reasonably be funded from the general budget or other funds of the Association or for those items for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund.** The Reserve Fund shall be funded by Assessments against the individual Lots, which sums shall be included in the Annual Assessment for the Lots. The reserve portion of the Annual Assessment for each Lot, including each Lot owned by Declarant or a successor Declarant, shall commence upon the earlier to occur of: (i) the date on which the Lot is sold to an Owner other than Declarant or a successor Declarant or (ii) the date on which the Lot is first occupied for residential use; provided, however, that Declarant hereby reserves the right, for itself and any successor Declarant, to defer payment of accrued Assessments for reserves on each Lot owned by Declarant or a successor Declarant until the date on which the Lot is conveyed to an Owner other than Declarant or a successor Declarant but in no event beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date on which the Owners assume administrative control of the Association. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) **Reserve Studies.** The reserve portion of the initial Assessment determined by Declarant shall be based on a reserve study described in this paragraph (c) which shall be completed subsequent to the completion of all improvements to the neighborhood common area. The Board of Directors shall annually conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board of Directors, in its discretion, may deem appropriate. The reserve study shall:

- (1) Identify all items for which reserves are to be established;
- (2) Include the estimated remaining useful life of each item as of the date of the reserve study; and
- (3) Include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of its useful life.

(d) **Use of Reserve Fund.** The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund subject to the requirements set forth in ORS 94.670(2). If, after reviewing the reserve study or reserve study update, the Board of Directors determines that the Reserve Fund will be adequately funded for the following year, then the Board may vote to reduce or eliminate the reserve portion of the Annual Assessments for that particular year. Additionally, following the Turnover Meeting, on an annual basis, the Board, with the approval of all Owners, may elect not to fund the Reserve Fund for the following year regardless of whether or not the Reserve Fund is fully funded. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of their Reserve Fund as a separate item in any sales agreement.

**8.12 Creation of Lien and Personal Obligation of Assessments.** Each Owner of a 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 Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such 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 9 below.

**8.13 Voluntary Conveyance.** In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, upon request of an Owner or Owner's agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

## Article 9

### ENFORCEMENT

**9.1 Violation of Protective Covenants.** If an Owner violates any provision of this Declaration, the Bylaws of the Association or the Rules and Regulations (other than a default in the payment of Assessments, which is addressed in Section 9.2 below), then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's 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, then the Association acting through its Board of Directors shall, after notice and opportunity to be heard as provided in the Bylaws, have the right to do any or all of the following:

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

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration, the Bylaws or the Rules and Regulations 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 levied against the Owner as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings.

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

(d) Suspend the voting rights and the right to use the Neighborhood Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Lot and further provided that the Board of Directors shall provide the Owner with written notice and an opportunity to be heard prior to suspending the Owner's right of access to or use of any Neighborhood Common Areas to the extent required by applicable law.

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



**9.2 Default in Payment of Assessments; Enforcement of Lien.** If an assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Neighborhood Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot and further provided that the Board of Directors shall provide the Owner with written notice and an opportunity to be heard prior to terminating any utility services or suspending the Owner's right of access to or use of any Neighborhood Common Areas to the extent required by applicable law.

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

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

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

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

**9.4 Subordination of Lien to Mortgages.** The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first Mortgage of record. The sale or transfer of a Lot shall not affect the assessment lien thereon. However, the sale or transfer of a Lot pursuant to the foreclosure of a first Mortgage or the execution of a deed in lieu of foreclosure of a first Mortgage shall extinguish the Association's lien with respect to Assessments and other charges that become due prior to such sale or transfer. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the Mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges. No sale, foreclosure, or transfer of a Lot shall extinguish the personal obligation of the Owner who owned the Lot at the time the Assessments or other charges became due.

**9.5 Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a

rate equal to the greater of twelve percent (12%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, whichever is higher, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors.

**9.6 Costs and Attorneys' Fees.** In the event of any suit or action to enforce this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act, or to collect any money due hereunder or to foreclose a lien, the prevailing party in such suit or action shall be entitled to recover all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and 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.

**9.7 Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 9, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement under this Declaration, and in such order as the Association may determine. Such action shall not cure nor waive any default under this Declaration or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this section shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second Mortgage on any Lot to do the same or similar acts.

**9.8 Non-exclusiveness 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.

## Article 10

### DISPUTE RESOLUTION

**10.1 Dispute Resolution.** Except as provided in Section 10.1(g), the following provisions of this Section 10.1 shall apply to any claim, controversy or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the manager or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws or the Property:

(a) **Mediation.**

(1) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Deschutes County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

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

(3) If a qualified dispute resolution program exists within Deschutes County, Oregon and an offer to use the program is not made as required under paragraph (1) of this section, then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the non-initiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(4) Unless a stay has been granted under paragraph (3) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(5) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

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

(b) **Arbitration.** Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 10.1(a) above or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 10. The decisions and award of the arbitrator shall be final, binding and non-appealable. The arbitration shall be conducted in Bend, Oregon, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action (“lis pendens”).

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

(d) **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provision of this Article 10, in the event any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

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

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

(g) **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 10 (but shall be subject to the applicable provisions of Section 10.1(h) below): (i) actions relating to the collection of fees, Assessments, and other charges imposed or levied by the Association (other than actions for the collection of fines, which actions shall be subject to mediation provisions as described above); (ii) actions by the Association or any Owner related to the removal of a structure or correction of any

other condition that violates this Declaration, the Bylaws or Rules and Regulations and where irreparable harm will occur due to delay and (iii) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 10. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 10.

(h) **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the non-prevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act; to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations, to rescind this Declaration, or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

**10.2 Survival.** The mediation and arbitration agreement set forth in this Article 10 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

## Article 11

### MORTGAGEES

**11.1 Reimbursement of First Mortgagees.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Neighborhood Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Neighborhood Common Areas. First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association, to the extent the same was the responsibility of the Association.

**11.2 Right of First Mortgagees Relating to Maintenance.** At any time that the Neighborhood Common Areas are not maintained or repaired by the Association pursuant to Article 7 to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the first Mortgagee, upon giving written notice as hereinafter provided,

shall be entitled to exercise the rights of the Owner of a Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one (1) year following the date of such notice. During this one (1) 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 11.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last known address of each.

## Article 12

### DECLARANT'S SPECIAL RIGHTS

**12.1 General.** In addition to all other rights reserved in this Declaration or the Bylaws, Declarant shall have the special Declarant rights described in this Article 12. Unless a different time period is indicated elsewhere in this Declaration, Declarant shall have the special Declarant rights described in this Article 12 until Declarant no longer owns any Lot within the Property and has relinquished all rights to annex Additional Property to the Property.

**12.2 Voting Rights.** Voting rights shall be as set forth in Section 6.3 and the Bylaws.

**12.3 Marketing Rights.** Subject to the Master Declaration and rules of the Master Association, Declarant shall have the right to maintain any signage of any size at any location, a sales office and model on one or more of the Lots which Declarant may or may not own, to be staffed by the employees of Declarant or any licensed real estate sales agents. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations of the Property, including, without limitation, the Neighborhood Common Area.

**12.4 Declarant's Easements.** Declarant has reserved easements over the Property as more fully described in Article 3.

**12.5 Appearance and Design of Tartan Druim.** Declarant shall not be prevented from changing the exterior appearance of the Neighborhood Common Area, including the landscaping or any other matter directly or indirectly connected with project in any manner deemed desirable by Declarant, provided that Declarant obtains governmental consents required by law. Declarant may change exterior and/or interior designs from initial plans, any previous phases or construction, and provisions in this document, without notice. This may include designs, colors, and type of materials, provided Declarant obtains any necessary governmental consent.

**12.6 Construction by Declarant.** All construction by Declarant is presumed to have been approved by the Board and Association and to meet any applicable architectural standards established by the Board or the Association.

**12.7 Exemptions from Assessments.** To the maximum extent allowed by law, Declarant shall be exempted from Assessments as set forth in Article 8.

**12.8 Conversion of Property Classifications.** Subject to the Master Declaration and written consent of the Master Declarant so long as the Master Declarant has the right, Declarant reserves the right to convert Lots into Neighborhood Common Areas and Neighborhood Common Areas into Lots, change the plan of development for Tartan Druim and to amend this Declaration at any time prior to the sale or transfer of any Lot to any person or entity other than Declarant or a successor Declarant.

**12.9 Other Rights.** Any and all rights of Declarant under the Oregon Planned Community Act, and all other rights, powers, easements, exemptions and entitlements reserved for Declarant elsewhere in this Declaration or the Bylaws.

### **Article 13**

#### **AMENDMENT AND REPEAL**

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

**13.2 Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Lots, based upon one vote for each such Lot, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration, and the written consent of the Master Declarant so long as the Master Declarant has the right to approve amendments of the Master Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot, unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment. No amendment of this Declaration may amend, alter or exempt application of any provision of the Master Declaration.

**13.3 Recordation.** Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

**13.4 Regulatory Amendments.** Notwithstanding the provisions of Section 13.2 above, until the Turnover Meeting, Declarant shall have the right to amend this Declaration or the Bylaws

of the Association in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall be approved in accordance with Section 13.2 above.

## Article 14

### MISCELLANEOUS PROVISIONS

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

**14.2 Enforcement.** The Association, or any Owner or the owner of any recorded Mortgage on any part of the Property shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**14.3 Construction; Severability; Number; Caption.** This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration 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. 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. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**14.4 Notices.** All notices to the Association or to the Board of Directors shall be sent care of the manager of the Association, or if there is no manager, to the principal office of the Association or to such other address as the Board of Directors may designate from time to time. All notices to any Owner shall be sent to such address as may have been designated by such Owner from time to time, in writing, to the Board of Directors, or, if no address has been designated, then to the Owner's Lot. All notices shall be sent by: (i) messenger service (or hand delivery); (ii) overnight courier service; or (iii) regular U.S. Mail. Notwithstanding the foregoing, in the discretion of the Board of Directors, any notice, information or other written material required to



be given to an Owner or director under this Declaration or the Bylaws or pursuant to the Oregon Planned Community Act, may be given by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, provided that the electronic mail, facsimile or other form of electronic communication may not be used to notify an Owner of: (i) the failure to pay an Assessment; (ii) the foreclosure of an Association lien under ORS 94.709; or (iii) an action the Association may take against an Owner. An Owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the Board of Directors to provide notice in any other manner permitted under this Declaration or the Bylaws or the Oregon Planned Community Act. Notices shall be deemed given on the date the notices are sent in accordance with the procedures outlined herein.

**14.5 Resolution of Document Conflicts.** In the event of a conflict among any of the provisions in the documents governing Tartan Druim, such conflict shall be resolved by looking to the following documents in the order shown below:

- (a) The Master Declaration and any rules, guidelines or resolutions adopted thereunder;
- (b) This Declaration;
- (c) The Articles;
- (d) The Bylaws; and
- (e) The Rules and Regulations.

Notwithstanding the foregoing, if this Declaration, the Articles, the Bylaws or the Rules and Regulations impose a stricter or more stringent standard or requirement than the Master Declaration, then the stricter or more stringent standard or requirement shall apply.

**14.6 Private Agreement.** This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Tartan Druim. This Declaration does not restrict Deschutes County's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and regulations of Deschutes County, which 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 and/or improvement in Tartan Druim to know the requirements of this Declaration and the covenants and agreements contained herein. In the event there is a conflict between a regulation of Deschutes County and this Declaration, any question regarding which provision controls shall be directed to the Association. In no event will Deschutes County be liable for any approvals or permits that are granted in compliance with the regulations of Deschutes County, the State of Oregon or any other jurisdiction, but that are not in compliance with this Declaration. Declarant and/or the Association will not be liable for any approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of Deschutes County, the State of Oregon or any other jurisdiction.

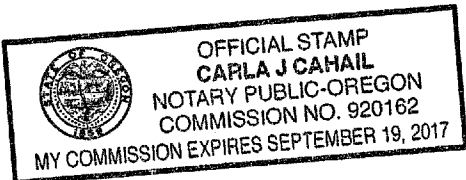
**IN WITNESS WHEREOF,** Declarant has executed this Declaration as of the date set forth above.

TARTAN DRUIM, LLC, an Oregon limited liability company

By: John P. Lietz  
Its: MANAGER

STATE OF OREGON )  
County of Deschutes ) SS

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of Aug, 2015 by, John P. Lietz as Member of Tartan Druim. LLC, an Oregon limited liability company, on behalf of the said members of the company.



Carla J. Cahail  
Notary Public for the State of Oregon  
My Commission Expires: 9-19-17

## **EXHIBIT A**

### **Initial Property**

Lots 222 through 230 and Lots 250 through 260, and Tracts AS, U, W and that area of land identified as Cartwright Court as shown on the plat of Tetherow Phase 5, recorded in the Official Records of Deschutes County, Oregon on June 2, 2008 in Cabinet H at Page 721.

### **Neighborhoods and Land Classifications Within Initial Property**

**Neighborhood:** Tartan Druim

**Lots:** 222 through 230 and 250 through 260

**Limited Common Areas:** None

**Neighborhood Common Areas:** Tract W and Cartwright Court

**Common Area:** Tracts U and AS

**EXHIBIT B**

Bylaws

**EXHIBIT B**

**BYLAWS OF**

**TARTAN DRUIM HOME OWNERS ASSOCIATION**

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**BYLAWS OF  
TARTAN DRUIM OWNERS ASSOCIATION**

**Article 1**

**Definitions**

**1.1 Association.** “Association” means **TARTAN DRUIM HOME OWNERS ASSOCIATION**, a nonprofit corporation organized and existing under the laws of the State of Oregon.

**1.2 Articles of Incorporation.** “Articles of Incorporation” means the Articles of Incorporation of the Association filed with the Corporation Division of the Oregon Secretary of State, as the same may be subsequently amended pursuant to the terms thereof.

**1.3 Declaration.** The “Declaration” means the Declaration of Covenants, Conditions, Restrictions and Easements for Tartan Druim Neighborhood to which these Bylaws are attached, as the same may be subsequently amended or supplemented pursuant to the terms thereof.

**1.4 Incorporation by Reference.** Except as otherwise provided herein, the terms that are defined in Article 1 of the Declaration are used in these Bylaws as therein defined.

**Article 2**

**Membership**

**2.1 Membership.** Each Owner of a Lot shall, immediately upon creation of the Association and thereafter during the entire period of the Owner’s ownership of a Lot, 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.

**2.2 Membership List.** The Secretary shall maintain at the principal office of the Association a membership list showing the name and address of the Owner of each Lot. The Secretary may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Board of Directors.

**Article 3**

**Meetings And Voting**

**3.1 Place of Meetings.** Meetings of the members of the Association shall be held at such reasonable place convenient to the members as may be designated in the notice of the meeting.

**3.2 Turnover Meeting.** Declarant shall call a meeting of the Owners within ninety (90) days after termination of the Class B membership as provided in Section 3.7 below for the purpose of turning over administrative control of the Association to the Owners. Notice of such meeting shall be given to all Owners as provided in Section 3.5. If a quorum of the Owners is present, the Owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the Board of Directors. If Declarant fails to call the meeting, the meeting may be called and notice given by any Owner, the Transitional Advisory Committee or Mortgagee of a Lot. The expense of giving the notice shall be paid or reimbursed by the Association. In the event of a lack of quorum at such Turnover Meeting, it may be adjourned as provided in Section 3.6. Nothing in this section shall be construed as preventing Declarant from calling the Turnover Meeting prior to such date.

**3.3 Annual Meeting.** The Association shall hold an annual meeting of the members. The annual meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors. The first annual meeting shall be held within one year of the incorporation of the Association. The first annual meeting of the members held for the election of directors shall be the Turnover Meeting.

**3.4 Special Meetings.** A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called by the president or secretary upon receipt of a written request stating the purpose of the meeting from members having at least thirty percent (30%) of the voting rights entitled to be cast at such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting.

**3.5 Notice of Meeting.**

(a) Written or printed notice stating the place, day and hour of the meeting, the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, any proposal to remove a director or officer and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting. Such notice shall be given either personally, by mail or, to the extent permitted by law, by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member entitled to vote at such meeting, and to all Mortgagees who have requested such notice. If mailed, such notices shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at his most recent address as it appears on the records of the Association or to the mailing address of his Lot.

(b) When a meeting is adjourned for thirty (30) days or more, or when a redetermination of the persons entitled to receive notice of the adjourned meeting is required by law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases, no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

(c) For a period of ten (10) years following recording of the Declaration, notices of meetings (including agendas) shall also be given to Declarant (or any designee of Declarant specified in any written notice to the Association) in the same manner as given to Owners, and Declarant or a representative of Declarant shall be entitled to attend such meetings.

**3.6 Quorum.** At any meeting of the Association, members having at least twenty percent (20%) of the voting rights entitled to be cast at such meeting, present in person or by proxy or absentee ballot, if permitted by the Board of Directors, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time not less than forty-eight (48) hours or more than thirty (30) days from the time the original meeting was called until a quorum is present.

**3.7 Voting Rights.** The Association shall have two (2) 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 (1) vote for each Lot owned. When more than one (1) 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 (1) vote be cast with respect to any Lot. If the Owners of a Lot cannot agree upon how to exercise their vote, then the vote for that Lot shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

**Class B.** The Class B member shall be Declarant and shall be entitled to ten (10) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(1) When all of the Lots in Tartan Druim Neighborhood have been sold and conveyed to Owners other than a successor Declarant and Declarant has relinquished the right to annex Additional Property into Tartan Druim Neighborhood; or

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

**3.8 Fiduciaries and Joint Owners.** An executor, administrator, guardian or trustee may vote or grant consent with respect to any Lot owned or held in such capacity, whether or not the specific right shall have been transferred to his or her name; provided that such person shall satisfy the Secretary that he or she is the executor, administrator, guardian or trustee, holding such Lot in such capacity. Whenever any Lot is owned by two (2) or more persons jointly, according to the records of the Association, the vote of such Lot may be exercised by any one of the Owners, in the absence of protest by a co-owner. In the event of disagreement among the co-Owners, the vote of such Lot shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

**3.9 Tenants and Contract Vendors.** Unless otherwise expressly stated in a written rental agreement or lease, all voting rights allocated to a Lot shall be exercised by the Owner. Unless otherwise stated in a written contract, all voting rights allocated to a Lot shall be exercised by the vendee of any recorded land sale contract on the Lot.

**3.10 Casting of Votes and Consents.** The voting rights or consent of an Owner may be cast in person at a meeting of the Association or, at the discretion of the Board of Directors, by proxy in accordance with paragraph (a) of this Section, by absentee ballot in accordance with paragraph (b) of this Section, by written ballot in accordance with paragraph (c) of this Section, or by any other method specified in the Declaration, these Bylaws or the Oregon Planned Community Act.

(a) **Proxies.** A proxy must be dated and signed by the Owner, is not valid if it is undated or purports to be revocable without notice, and terminates one (1) year after its date unless the proxy specifies a shorter term. The Board of Directors may not require that a proxy be on a form prescribed by the Board of Directors. An Owner may not revoke a proxy given pursuant to this paragraph except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting. A copy of a proxy in compliance with this paragraph provided to the Association by facsimile, electronic mail or other means of electronic communication utilized by the Board of Directors is valid.

(b) **Absentee Ballots.** An absentee ballot, if authorized by the Board of Directors, shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by absentee ballot shall include instructions for delivery of the completed absentee ballot, including the delivery location and instructions about whether the ballot may be canceled if the ballot has been delivered according to the instructions. An absentee ballot shall be counted as an Owner present for the purpose of establishing a quorum. Even if an absentee ballot has been delivered to an Owner, the Owner may vote in person at a meeting if the Owner has returned the absentee ballot and canceled the absentee ballot, if cancellation is permitted in the instructions given under this paragraph.

(c) **Ballot Meetings.** At the discretion of the Board of Directors, any action that may be taken at any regular or special meeting of the Association may be taken without a meeting by written ballot to the extent and in the manner provided in ORS 94.647, provided that action by written ballot may not substitute for (i) the Turnover Meeting; (ii) the annual meeting of the Association if more than a majority of the Lots are the principal residences of the occupants; (iii) a meeting of the Association if the agenda includes a proposal to remove a director from the Board of Directors; and (iv) a special meeting of the Association called at the request of the Owners.

(d) **Electronic Ballots.** To the extent authorized by the Board of Directors and permitted by the Oregon Planned Community Act, any vote, approval or consent of an Owner may be given by electronic ballot.

(e) **Mortgages.** An Owner may pledge or assign such Owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to

receive all notices to which the Owner is entitled under these Bylaws and to exercise the Owner's voting rights from and after the time that the Mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

**3.11 Majority Vote.** The vote of a majority of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy, at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

**3.12 Rules of Order.** Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association. A decision of the Association may not be challenged because the appropriate rules of order were not used unless a director entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied. Further, a decision of the Association is deemed valid without regard to procedural errors related to the rules of order one (1) year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

## Article 4

### Directors: Management

**4.1 Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors of three (3) persons. All directors, other than interim directors appointed by Declarant, shall be Owners or co-Owners of Lots. Notwithstanding the foregoing, if a corporation, limited liability company, or partnership owns a Lot or an interest in an entity that owns a Lot, then an officer, employee or agent of the corporation, a member, manager, employee or agent of the limited liability company, or a partner, employee or agent of the partnership may serve on the Board of Directors.

**4.2 Interim Directors.** Upon the recording of the Declaration, Declarant shall appoint an interim board of three (3) directors, who shall serve until replaced by Declarant or until their successors are elected by the Owners at the Turnover Meeting. The interim board shall serve as the Board of Directors of the Association until the Turnover Meeting.

**4.3 Transitional Advisory Committee.** Unless the Turnover Meeting has already been held, Declarant shall call a meeting of the Owners for the purpose of forming a Transitional Advisory Committee. The meeting shall be called within sixty (60) days after the date Declarant conveys fifty percent (50%) or more of the Lots then existing in Tartan Druim Neighborhood to Owners other than a successor Declarant. The committee shall consist of two (2) or more Owners elected by the Owners other than Declarant and not more than one (1) representative of Declarant. The members shall serve until the Turnover Meeting. The Transitional Advisory Committee shall be advisory only and its purpose shall be to enable ease of transition from administrative control of the Association by Declarant to control by the Owners. The committee shall have access to any

information, documents and records that Declarant must turn over to the Owners at the time of the Turnover Meeting. If Declarant fails to call the meeting to elect a Transitional Advisory Committee within the time specified, the meeting may be called and notice given by any Owner. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

#### **4.4 Nominations, Election and Tenure of Office.**

(a) At the Turnover Meeting, the interim directors shall resign and the members shall elect three (3) directors, two (2) to serve for two (2) years and one (1) to serve for one (1) year. The two (2) nominees receiving the greatest number of votes shall serve for two (2) years. In the event of a tie, term selection shall be by random means. Thereafter, the successors to each director shall serve for terms of two (2) years each.

(b) All directors shall hold office until their respective successors shall have been elected by the members. Election shall be by plurality and there shall be no cumulative voting.

(d) Nominations for election to the Board of Directors may be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the members or any other meeting of the members called for the purpose of election of directors. The Board of Directors may organize a Nominating Committee and appoint the members thereof prior to each annual meeting of the members for the purpose of nominating directors to be elected at the annual meeting of the members. If a Nominating Committee is formed, it shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more members. The Nominating Committee may make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled.

#### **4.5 Vacancies.**

(a) A vacancy in the Board of Directors shall exist upon the death, resignation, disqualification or removal of any director, or if the authorized number of directors is increased, or if the members fail at any annual or special meeting of members at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting. Vacancies in interim directors shall be filled by Declarant.

(b) Vacancies in the Board of Directors, other than interim directors and other than vacancies caused by the removal of directors by the members in accordance with Section 4.6 below, may be filled by a majority of the remaining directors even though less than a quorum, or by a sole remaining director. Each director so elected shall hold office for the balance of the unexpired term and until his successor is elected.

**4.6 Removal of Directors.** All or any number of the directors, other than interim directors, may be removed, with or without cause, at any meeting of members at which a quorum is present, by a vote of a majority of the number of votes entitled to be cast at an election of directors. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

**4.7 Powers.** The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to, those set forth in the Declaration and the following:

(a) Carry out the program for maintenance, upkeep, repair and replacement of any property required to be maintained by the Association as described in the Declaration and these Bylaws including, without limitation, implementation of the Maintenance Plan and inspections as required by the Declaration.

(b) Determination of the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.

(c) Preparation of an annual budget for the Association, and assessment and collection of the Assessments.

(d) Employ and dismiss such personnel as may be necessary for such maintenance, upkeep and repair.

(e) Employ legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights of the Association; provided, however, that the foregoing limitations shall not apply to any of the following actions: (i) the defense of claims or litigation asserted against the Association or the Board of Directors, including the assertion of counterclaims by the Association or the Board of Directors in any proceedings instituted against either of them; (ii) actions by the Association for the collection of delinquent assessments, fines or other charges due and payable under the Declaration, these Bylaws or the Rules and Regulations; (iii) actions initiated by the Association during Declarant's period of administrative control; (iv) actions challenging condemnation proceedings; (v) actions initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association; and (vi) actions to summarily abate, enjoin and remove a structure or condition that violates the Declaration, these Bylaws or the Rules and Regulations. The limitations set forth in this paragraph shall increase by ten percent (10%) on each fifth (5<sup>th</sup>) anniversary of the recording of the Declaration. To the extent required by the Oregon Planned Community Act, the Board shall notify the Owners before instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the Board shall periodically report to the Owners as to the status (including settlement offers), progress, and method of funding such litigation. Nothing in this paragraph shall be construed as requiring the Board to disclose any privileged communication between the Association and its counsel.

(f) Open bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Prepare and file, or cause to be prepared and filed, any required income tax returns or forms for the Association.

(h) Purchase Lots at foreclosure or other judicial sales in the name of the Association, or its designee.

(i) Sell, lease, mortgage, vote the votes appurtenant to (other than for the election of directors), or otherwise deal with Lots acquired by the Association or its designee.

(j) Obtain insurance or bonds pursuant to the provisions of these Bylaws, and reviewing such insurance coverage at least annually.

(k) Make additions and improvements to, or alterations of, the Neighborhood Common Areas, or modify, close, remove, eliminate or discontinue use of any common facility, including any improvement or landscaping, except that any such modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreational or community building must be approved by a majority vote of the members at a meeting or by written ballot held or conducted in accordance with these Bylaws.

(l) From time to time adopt, modify, or revoke such rules and regulations governing the details for the operation of the Association, the conduct of persons and the operation and use of the Lots and Neighborhood Common Areas as the Board of Directors may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. Such action may be overruled or modified by vote of not less than seventy-five percent (75%) of the voting rights of each class of members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of rules and regulations will be under consideration.

(m) Enforcement by legal means of the provisions of the Declaration, these Bylaws and any rules and regulations adopted hereunder.

(n) In the name of the Association, maintain a current mailing address of the Association, file annual reports with the Oregon Secretary of State and maintain and keep current the information required to enable the Association to comply with ORS 94.670.

(o) Subject to Section 6.8 of the Declaration, enter into management agreements with professional management firms.

(p) The Association may collect from the Owners assessments owing under the Master Declaration for forwarding to the Master Association.

(q) Enter into shared use agreements with other entities for shared use by Owners of facilities and enter into agreements with the Master Association for the provision and performance of various services.



#### **4.8 Meetings.**

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other persons calling the meeting.

(b) Annual meetings of the Board of Directors shall be held within thirty (30) days following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two (2) directors.

(d) Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Board of Directors shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association. A decision of the Board of Directors may not be challenged because the appropriate rules of order were not used unless a director entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied. Further, a decision of the Board of Directors is deemed valid without regard to procedural errors related to the rules of order one (1) year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

(e) For a period of ten (10) years following recording of the Declaration, notices of meetings (including agendas) shall also be given to Declarant (or any designee of Declarant specified in any written notice to the Association) in the same manner as given to the directors, and Declarant or a representative of Declarant shall be entitled to attend such meetings.

#### **4.9 Open Meetings.**

(a) All meetings of the Board of Directors shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (i) consultation with legal counsel; (ii) personnel matters, including salary negotiations and employee discipline; (iii) negotiation of contracts with third parties; and (iv) collection of unpaid assessments. Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered, as precisely as possible, when and under what circumstances the deliberations can be disclosed to the Owners. The statement, motion or decision to meet in the executive session shall be included in the minutes of the meeting, and any contract or action considered in executive session shall not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which shall be reasonably identified in the open meeting and included in the minutes.

(b) Meetings of the Board of Directors may be conducted by telephonic communication or by other means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the Lots are principal residences of the occupants, then: (i) for other than emergency meetings, notice of each Board of Directors' meeting shall be posted at a place or places on the property at least three (3) days prior to the meeting, or notice shall be

provided by a method otherwise reasonably calculated to inform the Owners of such meeting; and (ii) only emergency meetings of the Board of Directors may be conducted by telephonic communication or such other means. The meeting and notice requirements of this section may not be circumvented by chance or social meetings or by any other means.

#### **4.10 Notice of Meetings.**

(a) Notice of the time and place of meetings shall be given to each director orally, or delivered in writing personally, by mail or to the extent permitted by the Oregon Planned Community Act, by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors at least twenty-four (24) hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or sent electronically not less than seventy-two (72) hours before the meeting. If mailed, the notice shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the person giving the notice. Such notice need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned.

(b) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

#### **4.11 Quorum and Vote.**

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

(c) A director who is present at a meeting of the Board of Directors at which action is taken on any Association matter is presumed to have assented to the action unless the director votes against the action or abstains from voting on the action because the director claims a conflict of interest. When action is taken on any matter at a meeting of the Board of Directors, the vote or abstention of each director present must be recorded in the minutes of the meeting. Directors may not vote by proxy or by secret ballot at meetings of the Board of Directors, except that officers may be elected by secret ballot.

**4.12 Liability.** The liability of a member of the Board of Directors or an officer or committee member of the Association to the Association or any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties as a member of the Board of Directors or an officer or committee member of the Association shall be eliminated to the maximum extent permitted by law. In the event any member of the Board of Directors or an officer or committee member of the Association is threatened with or made a party to any proceeding because the individual is or was a member of the Board of Directors or an officer or committee member of the Association, the Association shall defend such

individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

**4.13 Compensation.** No director shall receive any compensation from the Association for acting as such.

**4.14 Executive, Covenants and Other Committees.** Subject to any applicable law, the provisions of the Declaration and these Bylaws, the Board of Directors, may appoint an Executive Committee, a Covenants Committee to be responsible for covenant enforcement as provided in Section 4.15, and such other standing or temporary committees as may be necessary from time to time consisting of Owners and at least one member of the Board of Directors and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

**4.15 Enforcement Procedures.** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration, these Bylaws or the Rules and Regulations. To the extent specifically required by the Declaration, the Board of Directors shall comply with the following procedures prior to the imposition of sanctions:

(a) **Notice.** The Board of Directors or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator shall have fourteen (14) days to present a written request for a hearing before the Board of Directors or a Covenants Committee appointed by the Board of Directors, if any; and (iv) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within fourteen (14) days of the notice.

(b) **Response.** The alleged violator shall respond to the notice of the alleged violation in writing within such fourteen (14) day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board of Directors in writing within such fourteen (14) day period the Board of Directors may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions by any person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided, however, that the Board of Directors or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fourteen (14) day period. Any response or request for a hearing shall be delivered to the Association's manager, President or Secretary, or as otherwise specified in the notice of violation.

(c) **Proof of Notice.** Prior to the effectiveness of sanctions imposed pursuant to this section, proof of proper notice shall be placed in the minutes of the Board of Directors or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

(d) **Hearing.** If a hearing is requested within the allotted fourteen (14) day period, the hearing shall be held before the Board of Directors or the Covenants Committee, as applicable. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing (i.e., the decision) and the sanction, if any, to be imposed.

(e) **Appeal.** Following a hearing before the Covenants Committee, if applicable, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President or Secretary within ten (10) days after the hearing date.

(f) **Enforcement Policies.** The Board of Directors, by resolution, may adopt additional policies and procedures governing enforcement of the Declaration, these Bylaws or the Rules and Regulations or modify the policies and procedures set forth herein. Any additional policies and procedures or modifications of existing policies and procedures adopted by the Board of Directors shall be sent to each member of the Association in accordance with the notice provisions contained in Section 8.2 and shall be deemed effective and binding upon the members on the date sent by the Association.

(g) **Collection of Assessments.** The foregoing enforcement policies and procedures shall not apply to the imposition of interest charges or late fees on unpaid Assessments or the exercise of any remedies of the Association for the collection of unpaid Assessments.

## Article 5

### Officers

**5.1 Designation and Qualification.** The officers of the Association shall be the President, the Secretary, the Treasurer, and such Vice Presidents and subordinate officers as the Board of Directors shall from time to time appoint. The President shall be a member of the Board of Directors, but other officers need not be members of the Board of Directors. Any two (2) offices, except the offices of President and Secretary, may be held by the same person.

**5.2 Election and Vacancies.** The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one (1) year and until their respective successors are elected. If any office shall become vacant by reason of death, resignation, removal, disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

### **5.3 Removal and Resignation.**

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever, in their judgment, the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

(b) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect

upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective, provided, however, that the Board of Directors may reject any postdated resignation by notice in writing to the resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.

**5.4 President.** The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have powers of general supervision, direction and control of the business and affairs of the Association. He or she shall preside at all meetings of the members and of the Board of Directors. He or she shall be an ex officio member of all the standing committees, including the executive committee, if any, shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

**5.5 Vice Presidents.** The Vice Presidents, if any, shall perform such duties as the Board of Directors shall prescribe. In the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Senior Vice President as designated by the Board of Directors.

**5.6 Secretary.**

(a) The Secretary shall keep or cause to be kept a book of minutes of all meetings of directors and members showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at directors' meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

(b) The Secretary shall give or cause to be given such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. The Secretary shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) If there are no Vice Presidents, then in the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary.

**5.7 Treasurer.** The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. The Treasurer shall disburse or cause to be disbursed the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of the Treasurer's transactions as Treasurer and of the financial condition of the Association, and shall

have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

**5.8 Compensation of Officers.** No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members. The Board of Directors may fix any compensation to be paid to other officers.

## Article 6

### Assessments, Records And Reports

**6.1 Assessments.** As provided in the Declaration, the Association, through the Board of Directors, shall do the following:

(a) Assess and collect from every Owner Assessments in the manner described in the Declaration.

(b) Keep all funds received by the Association as Assessments, other than reserves described in the Declaration, in the Operations Fund and keep all reserves collected pursuant to the Declaration in the Reserve Fund and use such funds only for the purposes described in the Declaration. All Assessments shall be deposited in the name of the Association in a separate federally insured account at a financial institution as defined in ORS 706.008, other than an extranational institution. Funds of the Association maintained in accounts established pursuant to this section may be used to purchase obligations of the United States government. All expenses of the Association shall be paid from the Association's bank account.

(c) From time to time, and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred with adequate allowance for reserves based upon the reserve study required by the Declaration, and determine whether the Annual Assessment should be increased or decreased. Within thirty (30) days after adopting a proposed annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt a budget, the last adopted annual budget shall continue in effect.

(d) Fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of any Assessment shall be sent to every Owner subject thereto and to any first Mortgagee requesting such notice. The due dates shall be established by the Board of Directors, which may fix a regular flat Assessment payable on a monthly, quarterly, semiannual or annual basis. The Board of Directors shall cause to be prepared a roster of the Lots showing Assessments applicable to each Lot. The roster shall be kept in the Association office and shall be subject to inspection by any Owner or Mortgagee during regular business hours.

(e) When Additional Property is annexed, the Board of Directors shall assess any Lots included therein in accordance with Section 8.9 of the Declaration.

(f) Enforce the Assessments in the manner provided in the Declaration.

(g) Keep records of the receipts and expenditures affecting the Operations Fund and Reserve Fund and make the same available for examination by the members and their Mortgagees at convenient hours.

**6.2 Records.** The Association shall keep within the State of Oregon correct and complete financial records sufficiently detailed for proper accounting purposes, keep minutes of the proceedings of its members, the Board of Directors and committees having any of the authority of the Board of Directors, and retain all documents, information and records turned over to the Association by Declarant. All documents, information and records delivered to the Association by Declarant pursuant to ORS 94.616 and other records of the Association shall be kept within the State of Oregon for the time periods specified in ORS 94.670.

**6.3 Statement of Assessments Due.** The Association shall provide, within ten (10) business days after receipt of a written request from an Owner, a written statement that provides: (a) the amount of assessments due from the Owner and unpaid at the time the request was received, including regular and special assessments, fines and other charges, accrued interest, and late-payment charges; (b) the percentage rate at which interest accrues on assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed-rate charge for late payment. The Association is not required to comply with this section if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

**6.4 Inspection of Books and Records.** Except as otherwise provided in ORS 94.670, during normal business hours or under other reasonable circumstances, the Association shall make reasonably available for examination and, upon written request, available for duplication, by Owners, lenders, and holders of any Mortgage of a Lot that make the request in good faith for a proper purpose, current copies of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, amendments or supplements to such documents and the books, records, financial statements and current operating budget of the Association. The Association shall maintain a copy, suitable for purposes of duplication, of each of the following: (a) the Declaration, these Bylaws, the Rules and Regulations, the recorded plat for the Property and any amendments or supplements to them, (b) the most recent financial statement of the Association, (c) the current operating budget of the Association, and (d) the architectural standards and guidelines, if any. The Association, within ten (10) business days after receipt of a written request by an Owner, shall furnish copies of such documents to the requesting Owner. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Board of Directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs for furnishing the documents, information or records.

**6.5 Payment of Vouchers.** The Treasurer or managing agent shall pay all vouchers for all budgeted items and for any non-budgeted items up to \$1,000 signed by the President, managing agent, manager or other person authorized by the Board of Directors. Any voucher for non-budgeted items in excess of \$1,000 shall require the authorization of the President or a resolution of the Board of Directors.

**6.6 Execution of Documents.** The Board of Directors may, except as otherwise provided in the Declaration, Articles of Incorporation or these Bylaws, authorize any officer or agent to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement, to pledge its credit, or to render it liable for any purpose or for any amount.

**6.7 Reports and Audits.** An annual financial statement consisting of a balance sheet and an income and expense statement for the preceding year shall be rendered by the Board of Directors to all Owners and to all Mortgagees who have requested the same within ninety (90) days after the end of each fiscal year. If the Annual Assessments exceed \$75,000 for the year, then the Board of Directors shall cause such financial statements to be reviewed within one hundred eighty (180) days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or if the Annual Assessments are \$75,000 or less, shall cause such review within one hundred eighty (180) days after receipt of a petition requesting such review signed by at least a majority of Owners. The Board of Directors need not cause such a review to be performed if so directed by an affirmative vote of at least sixty percent (60%) of the Owners, not including votes of Declarant with respect to Lots owned by Declarant. From time to time, the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the members. At any time any Owner or Mortgagee may, at their own expense, cause an audit or inspection to be made of the books and records of the Association.

## **Article 7**

### **Insurance**

**7.1 Types of Insurance.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

(a) **Property Damage Insurance.**

(1) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

(2) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of any improvements on the Neighborhood Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible as determined by the Board of Directors not to exceed the greater of: (a) the maximum deductible acceptable to the Federal National Mortgage Association or (b) \$10,000.



(3) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Neighborhood Common Areas and all personal property and supplies belonging to the Association.

(4) Such policy or policies shall name the Association, for the use and benefit of the individual Owners, as insured, and shall provide for loss payable in favor of the Association, as a trustee for each Owner and each such Owner's Mortgagee, as their interests may appear. The policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) which is commonly accepted by institutional mortgage investors in Oregon.

(b) **Liability Insurance.**

(1) The Association shall maintain comprehensive general liability insurance coverage insuring Declarant, the Association, the Board of Directors, and the managing agent, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Property, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omissions of such Owner and liability incident to the ownership and/or use of the part of the Property as to which such Owner has the exclusive use or occupancy.

(2) Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single-limit basis.

(3) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Insurance.**

(1) The Board of Directors may cause the Association to maintain blanket fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. In the event that the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association.

(2) The total amount of fidelity coverage required shall be based upon the best business judgment of the Board of Directors.

(3) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the issuers of the insurance of all defenses based upon the exclusion of

persons serving without compensation from the definition of “employees” or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days’ prior written notice to the Association.

**7.2 Insurance by Unit Owners.** Each Owner shall be responsible for obtaining, at his or her own expense, homeowner’s insurance covering the Improvements on the Owner’s Lot and liability resulting from use or ownership of the Lot, unless the Association agrees otherwise. Such insurance must also provide coverage for, without limitation, the negligent acts of the Owner and tenant and their guests or other occupants of the Lot for damage to the Neighborhood Common Area. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained under this section by the Owners.

**7.3 Planned Community Act Requirements.** The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780.

## Article 8

### General Provisions

**8.1 Seal.** The Board of Directors may, by resolution, adopt a corporate seal.

**8.2 Notice.** All notices to the Association or to the Board of Directors shall be sent care of the manager of the Association, or if there is no manager, to the principal office of the Association or to such other address as the Board of Directors may designate from time to time. All notices to any Owner shall be sent to such address as may have as may have been designated by such Owner from time to time, in writing, to the Board of Directors, or, if no address has been designated, then to the Owner’s Lot. All notices shall be sent by: (i) messenger service (or hand delivery); (ii) overnight courier service; or (iii) regular U.S. Mail. Notwithstanding the foregoing, in the discretion of the Board of Directors, any notice, information or other written material required to be given to an Owner or director under the Declaration or these Bylaws or pursuant to the Oregon Planned Community Act, may be given by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, provided that electronic mail, facsimile or other form of electronic communication may not be used to notify an Owner of: (i) the failure to pay an Assessment; (ii) the foreclosure of an Association lien under ORS 94.709; or (iii) an action the Association may take against the Owner. Additionally, an Owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the Board of Directors in writing to provide notice in any other manner permitted under these Bylaws or the Oregon Planned Community Act. Notices shall be deemed given on the date the notices are sent in accordance with the procedures outlined herein.

**8.3 Waiver of Notice.** Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, a waiver of notice in writing signed at any time by the person entitled to notice shall be equivalent to the giving of the notice.

**8.4 Conflicts.** These Bylaws are intended to comply with the Oregon Planned Community Act, the Oregon Nonprofit Corporation Act, the Declaration and the Articles of

Incorporation. In case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

## Article 9

### Amendments To Bylaws

**9.1 How Proposed.** Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or by members holding at least thirty percent (30%) of the voting rights entitled to be cast for such amendment. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or be attached to any request for consent to the amendment.

**9.2 Adoption.**

(a) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members and must be approved by the membership at a meeting called for such purpose, or by written consent of the members. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by the members holding a majority of the voting rights of the Association, voting in person, by proxy or by ballot, at a meeting or ballot meeting of the Association at which a quorum is represented, together with the written consent of the Class B member, if any. Amendment or repeal of any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration.

(b) Notwithstanding the provisions of the preceding paragraph, until the Turnover Meeting has occurred, Declarant shall have the right to amend these Bylaws in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association, voting in person, by proxy or by ballot, at a meeting or ballot meeting of the Association at which a quorum is represented.

**9.3 Execution and Recording.** An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws and ORS 94.625, acknowledged and recorded in the Official Records of Deschutes County, Oregon.

IN WITNESS WHEREOF, Declarant has adopted these Bylaws on behalf of the Association as of \_\_\_\_\_, 20\_\_.

TARTAN DRUIM, LLC, an Oregon limited liability company

By: John P. Lietz  
Its: MANAGER