

195⁰⁰
6⁰⁰
11⁰⁰
5⁰⁰

Washington County, Oregon 2005-114518
000000 2005 12:51:16 PM
Cnt=2 Stn=6 J GREGORY
\$315.00 \$5.00 \$6.00 \$11.00 - Total = \$337.00



00835514200501145180630632

I, Jerry Hanson, Director of Assessment and Taxation
and Ex-Officio County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
writing was received and recorded in the book of
records of said county.

Jerry R. Hanson, Director of Assessment and Taxation,
Ex-Officio County Clerk



**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, AND RESTRICTIONS
ARBOR POINTE**

**After recording return to:
West Hills Development Company
15500 SW Jay Street
Beaverton, OR 97005**



After recording return to:
West Hills Development Company
15500 SW Jay Street
Beaverton, OR 97005

TABLE OF CONTENTS

	PAGE
ARTICLE 1. DEFINITIONS.....	1
ARTICLE 2. PROPERTY SUBJECT TO THIS DECLARATION.....	3
ARTICLE 3. OWNERSHIP AND EASEMENTS	5
ARTICLE 4. LOTS AND HOMES.....	10
ARTICLE 5. COMMON AREA	18
ARTICLE 6. ARCHITECTURAL REVIEW COMMITTEE.....	20
ARTICLE 7. ARBOR POINTE HOMEOWNERS ASSOCIATION	23
ARTICLE 8. DECLARANT CONTROL	24
ARTICLE 9. DECLARANT’S SPECIAL RIGHTS	25
ARTICLE 10. FUNDS AND ASSESSMENTS	26
ARTICLE 11. GENERAL PROVISIONS	33

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR ARBOR POINTE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF Arbor Pointe ("Declaration") is made this ____ day of _____, 2005 by West Hills Development Company, an Oregon corporation, as the Declarant.

RECITALS

WHEREAS, the Declarant is the owner, or controls, all that certain real property and improvements thereon located in the County of Washington, State of Oregon, described as the Plat of "Arbor Pointe", recorded SEPT 20 2005 as Document No. 2005114516; and

WHEREAS, Declarant intends to develop the Property as a Class I planned community, under ORS 94.550 to 94.783, and to establish the planned community project of Arbor Pointe, Declarant desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments and liens on the Property under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within Arbor Pointe; and

WHEREAS, Declarant has deemed it desirable for the preservation of the values and amenities in Arbor Pointe to create a Homeowners Association, to which will be delegated and assigned the powers and authority to own, maintain and administer the Association and the Common Area and facilities, and administer and enforce the covenants, conditions, and restrictions of this Declaration, and collect and disburse the assessments and charges hereinafter created.

NOW THEREFORE, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens, or as noted herein, which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of the Association and of each Lot Owner.

ARTICLE 1

DEFINITIONS

1.1. "Arbor Pointe" shall mean the real property described within the Plat of Arbor Pointe, and any annexations of additional lands to Arbor Pointe, and all Common Area included within the Plat of Arbor Pointe.

1.2. "Architectural Review Committee" or "ARC" shall mean the Declarant until turnover and thereafter shall refer to the Board of Directors unless the Board has appointed a separate body to carry out the functions described in Article 6 in which case "ARC" shall refer to this body.

1.3. "Articles" shall mean the Articles of Incorporation for the non-profit corporation, Arbor Pointe Homeowners Association, or such similar name approved by and filed with the Oregon Corporation Commissioner.

1.4. "Association" shall mean and refer to Arbor Pointe Homeowners Association, its successors and assigns.

1.5. "Board" or "Board of Directors" shall mean the Board of Directors of Arbor Pointe Homeowners Association

1.6. "Building Structure" shall mean a building that is comprised of one or more contiguous Homes constructed and located on Lots, including without limitation, garage structures located on the Lots, whether attached to or detached from the Building Structure.

1.7. "Bylaws" shall mean and refer to the Bylaws of the Association, which shall be properly adopted and recorded in Washington County.

1.8. "Common Area(s)" shall mean and refer to any areas of land shown on the recorded plat of the Property, commonly designated as "Common Area", including any improvements thereon, which are intended to be devoted to the common use and enjoyment of the members of the Association, and areas outlined herein as the maintenance responsibility of the Association, unless provided otherwise in this Declaration. The areas so designated on the Plat as Common Areas include, but are not limited to Tracts B and C (private streets), and Tract A (open space). Said Common Areas may include landscaped areas, water quality detention ponds and/or native areas, which will be the Association's maintenance responsibility as included in the annual budget. Additional areas may be maintained by the Association where provided for in this Declaration, or as may be designated Common Areas through annexation of additional phases to Arbor Pointe.

1.9. "Declarant" shall mean and refer to West Hills Development Company, an Oregon corporation, its successors or assigns, or any successor or assign to any of their interests in the development of the Property. "Declarant" shall not refer to any other subsequent purchaser of a Lot or Home.

1.10. "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration of Covenants, Conditions and Restrictions for Arbor Pointe.

1.11. "General Common Expenses" shall mean those expenditures made or liabilities incurred by the Association, including reserves. Such definition should also apply to the words, "Common Expenses" as used in this Declaration.

1.12. "General Plan of Development" shall mean the Declarant's general plan of development of the Property as approved by appropriate governmental agencies, as may be amended from time to time.

1.13. "Home" shall mean and refer to any portion of a structure situated on a Lot designed and intended for use and occupancy as a residence by a single family or household.

1.14. "Lot" shall mean and refer to any plot of land indicated upon the recorded subdivision map of the Property, including any annexations to Arbor Pointe.

1.15. "Lot Easement Area" shall mean and refer to those portions of any Lot subject to any easement benefiting the Association. The term "Lot Easement Area" shall not refer to any portions of any Lot encumbered by an easement to any other party, including without limitation, any governmental entity.

1.16. "Members" shall mean and refer to the Owners of Lots in Arbor Pointe and who are members of the Arbor Pointe Homeowners Association.

1.17. "Occupant" shall mean and refer to the occupant of a Home who shall be the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.18. "Owner" shall mean and refer to the record Owner, including Declarant, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

1.19. "Plat" shall mean and refer to the recorded Plat of Arbor Pointe, and any annexations in addition to the original plat.

1.20. "Property" shall mean and refer to all real property described within the Plat of Arbor Pointe, and any annexations of additional property, including the Common Area, and all improvements located on the real property, as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

1.21. "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of the Association or the Architectural Review Committee ("ARC"), and as may be from time to time amended by the Board and/or ARC.

1.22. "Turnover Meeting" shall be the meeting called by the Declarant (Class B member) to turn over control of the Association to the Class A members.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Washington County, Oregon, in that certain plat map entitled "Arbor Pointe", filed in the plat records of Washington County, Oregon, more particularly described as consisting of Lots 1 through 44 of Arbor Pointe plat, and the adjoining Common Areas, designated as Tracts A, B and C.

2.2. At any time during the initial term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 60 Lots in the subdivision, including the Lots on this Plat, and Lots expected to be created in property to be annexed to the subdivision, but this number may be adjusted at the sole discretion of Declarant. Declarant shall have no obligation of any kind to annex any additional land to the Property.

(a). Eligible Property. There is no limitation on the number of Lots, which Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals.

(b). Consent or Joinder Not Required. No consent or joinder of any Class A member as defined in this Declaration or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

(c). Declaration of Annexation. Annexation shall be evidenced by a written Declaration of Annexation executed by the Declarant, or (in the case of an annexation by action of members) by the Board and the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration with respect to any annexed property may:

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

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

(iii). contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

Without limitation of the meaning of the foregoing provisions of this Section, in any Declaration of Annexation the Declarant may, but shall not be obligated to, establish different Types of Lots and have particular rights and obligations pertain to different Types of Lots, establish easements particular to different Lots, establish assessments that pertain only to certain Types of Lots, establish maintenance obligations of the Association or of Owners that vary in accordance with different Types of Lots, establish insurance and casualty provisions that relate to certain Types of Lots and not others, and establish limited common areas that benefit particular Lots to the exclusions of other Lots and provisions particular to such limited common areas.

(d). Voting Rights; Allocation of Assessments. Upon annexation, additional Lots so annexed shall be entitled to voting rights and shall be responsible for payment of assessments as required for that fiscal year. At the beginning of the next fiscal year, assessments for the general common areas shall be apportioned equally based

upon the total number of Lots following such annexation, but assessments that are relative to a specific product type will be spread equally over only the units of that type.

(e). No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto. Declarant is under no obligation to build Homes on any or all of the Lots contained in the original Plat.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1. Non-Severability. The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area, subject to the provisions of Section 3.3. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his/her own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interest in the Common Area and Lots described in this Article are subject to the easements granted and reserved in this Declaration for drainage, needed maintenance support and maintenance of the exterior appearance for the Building Structures. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall forever be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Arbor Pointe.

3.2. Ownership of Lots. Title to each Lot in Arbor Pointe shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such person and/or entities shall constitute one Owner.

3.3. Ownership of Common Areas. Title to the Common Area, if any, shall be conveyed to the Association not later than sixty (60) days after eighty percent (80%) of the Lots have been conveyed to purchasers or seven years from the date this Declaration is recorded, whichever is earlier. The Board of Directors may convey title to

any present or future Common Area Tracts, if any, to a City, County or other Government agency. The Association, with the approval of 60% of the Association membership, may sell, convey or mortgage the Common Area.

3.4. Easements. Individual deeds to Lots may, but shall not be required to set forth the easements specified in this Article.

(a) Easements on Plat. The Common Area and Lots are subject to the easements and rights of way shown on, or noted, on the Plat of Arbor Pointe. These include easements for public pedestrian and bicycle access, sanitary sewer easements, storm drainage access, wall maintenance access easement, and public utility easements.

(b) Easements for Common Area. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot.

(c) Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales activities necessary or convenient for the sale of Lots. In addition, Declarant hereby reserves to itself, and for its successors and assigns, a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of the Lots or other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area 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 in such a way as to not unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his/her family, tenants, guests or invitees.

(d) Additional Easements. Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of Arbor Pointe. No structure, planting or other material shall be placed or permitted to remain within any easement area which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association are responsible. In addition, an easement is specifically reserved to the

Owners of any contiguous Home, and the Association, as their interests may exist, for access to, and right of repair or service to utility and/or drainage lines and facilities which exist on each Lot for common use of Owners in Property.

(e) Association's Easements. There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration, the Bylaws and Articles for the maintenance of the drainage and needed support for the structures, and any exterior maintenance of the Building Structures as described in this Declaration.

(f) Easement to Governmental Entities. There is hereby reserved and granted a non-exclusive easement over the Common Area to all governmental and quasi-governmental entities, agencies, utilities, and their agents for the purposes of performing their duties within Arbor Pointe. However, where applicable, Association may be subject to compensation for the taking or use of such easement rights.

(g) Landscaping. The Association shall pay for any landscape maintenance, upkeep and replacement of the landscaping for Tract A, and an easement over the south 2.50 feet of the East 23.03 feet of Lot 15, as described in the plat map notes. In addition, Lots 2, 3, 6, 7, 11 and 36 through 44 are subject to a 2.50-foot wide street tree maintenance easement abutting 163rd Avenue, for the benefit of the City of Tigard, but maintained by the Association. The Association is responsible for all maintenance of front and street side yards, including street frontage planter strips and street trees, including water for street trees, and all installation, repair and maintenance of the irrigation system. Owners are responsible for all utilities relative to domestic usage and landscaped areas on their Lots that are not the responsibility of the Association.

(h) Tree Preservation Easement. Any tree subject to the tree protection covenant approved by the City of Tigard and recorded in the records of Washington County shall be subject to restrictions. Any such preserved or retained trees over and across any portions of Lots 5-8, 10-11, and 41-44 of the plat of Arbor Pointe, shall be preserved and/or retained and may be removed only if the tree dies or is hazardous according to a certified arborist. Trees may also be removed for any reason the City of Tigard deems necessary or appropriate. This restriction may be removed, or will be considered invalid, upon the death of the respective tree, or if it is removed as hazardous. This covenant shall run with the land and is binding upon the owners, their successors and assigns, of herein named Lots 5-8, 10-11 and 41-44 of the Arbor Pointe plat, recorded in Washington County, Oregon.

(i) Wall and Maintenance Easement. A wall easement exists on Lots 1, 2 and 44, as well as Tract A, for the installation and maintenance of any wall installed by Declarant or Association along S.W. Bull Mountain Road, and any landscaping

installed on the Bull Mountain Road side of said wall. If access to private yards is necessary for maintenance of said wall, no less than 3 calendar days notice shall be given Owners by posting a notice on the front door of the affected Home(s) and mailing said notice by first-class mail, unless such repair is necessitated by an emergency situation per the Association's Board of Directors at their sole discretion.

(j) Motor Vehicle Access Restrictions. There shall be no motor vehicle access from any Lot or Tract in this subdivision onto or from S.W. Bull Mountain Road, unless approved by the governing body having jurisdiction of said road. Lot 1, 2, 4 and Tract A shall have no motor vehicle access to or from S.W. Bull Mountain Road, unless approved by the governing body having jurisdiction of said road. Vehicular driveway access for Lots 2 and 3 shall be from SW Pollard Lane only, and for Lots 33 and 36 from SW 163rd only, or as may be later approved by the appropriate governmental authority.

(k) Storm Drainage Easement. Tract B & C are subject to a storm drainage easement in favor of Clean Water Services over their entirety. Lot 21 is subject to an ingress, egress and utility easement over the south 26.00 feet of the west 35.00 feet for the benefit of Lot 22, and to a storm and surface water easement over the south 26.00 feet of the west 35.00 feet for the benefit of Clean Water Services.

(l) Maintenance Easement. An easement is hereby reserved in favor of the Association and its successors, assigns, contractors, agents and employees over, across, and under each Lot, the exterior portions of the dwelling units on each Lot, the Common Areas, the landscaped areas, the planter strips and any other areas of the Property necessary or appropriate for the purposes of accomplishing the maintenance, repair, and replacement of Improvements, should the Owners not fulfill their obligations stated within this Declaration.

(m) Maintenance Obligations/Owner Restrictions. Except as specifically noted in this document, the Owner, at his/her expense, shall maintain, repair and replace the improvements and utility installations in any Lot Easement Area and shall hold the Association harmless from any such costs.

(n) Private Street Maintenance. Tracts B and C are subject to access easements, public pedestrian sidewalks, public water supply, private storm drainage maintenance over their entirety, and surface and storm water drainage and sanitary sewer easements for the benefit of Clean Water Services, per Plat. Said Tracts shall be maintained by the Association for the benefit of the Owners of Lots 31, 32, 34 and 35 (Tract B), and Lots 21 through 23 (Tract C). Said maintenance will be in accordance with a recorded Maintenance Agreement. The costs of such maintenance and/or reserves shall be the sole responsibility of the Owners of said Lots, and the funds collected for these purposes will be used exclusively for street maintenance in the named Tracts, including any future annexations of private street tracts under similar Maintenance

Agreements on additional Lots. However, the Association will have no financial obligation for said Tracts, other than that stated herein. Tracts B and C, in their entirety are subject to an emergency vehicle access easement. Further, these areas are subject to a reservation for future public access to the City of Tigard or County of Washington. Tract B is also subject to an easement for ingress, egress, public water supply, and public and private utilities for the benefit of that land in title to Marshall Real Estate Development, LLC, its successors or assigns, as recorded in Document No. 2004-102812 for the purpose of future development of said land. All Lots utilizing this easement, created in the development of the land in Document No. 2004-102812, shall equally join in the maintenance of said Tract B, together with Lots 31, 32, 34 and 35.

(o) Public and Private Utility Easements. The frontage of all Lots and Tracts abutting the public and private right of ways are subject to an 8.00-foot wide easement, unless noted otherwise on the plat, for storm and surface water drainage and sanitary sewer for the benefit of Clean Water Services, public sidewalks, public water supply, and other public and private regulated utilities. No building, structure, tree or other obstruction shall be placed or located on or in a Public Utility Easement.

(p) Retaining Walls. Retaining walls may have been constructed within the Property (the "Retaining Walls"). The Retaining Walls are not in all cases located on a Lot or Common Area line. The location of a Retaining Wall (or the construction by an Owner of any improvements on or near the Retaining Wall) shall not constitute evidence of the intended location of a Lot line, or provide grounds for any claim of adverse possession or prescriptive easement. Each Lot upon which any portion of a Retaining Wall is located shall be subject to an easement, for the benefit of all other Lots, for the purposes of support by and natural drainage from such Retaining Wall. Retaining Walls may or may not have been designed by a professional engineer, and no Owner shall take any action to add, construct or place any improvement on the Lot so that it may, in the judgment of the Association: result in disturbance of, weakening of, or damage to the Retaining Walls; increase any engineered load or alter design criteria; or cause damage to the wall and surrounding properties. Any improvements on Lot will need prior approval of Architectural Review Committee. Regardless of such approval, any Lot Owner who takes such action shall be responsible for all resulting costs of repair and restoration of the Retaining Wall. Otherwise, neither the Association nor any other Owner shall have any affirmative obligation to maintain or repair the Retaining Walls. However, should they elect to do so, the Association, any Owner whose Lot is adjacent to a Retaining Wall, and their duly authorized agents and representatives, shall have the right to enter the property upon which any portion of a Retaining Wall is located for the purpose of making any necessary repair to or maintenance of the Retaining Wall.

ARTICLE 4

LOTS AND HOMES

4.1. Residential Use. Lots shall be used for residential purposes only. Except with the consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction of Arbor Pointe, and to use any residence as a sales office or model home for purposes of sales in Arbor Pointe, to maintain on site a temporary construction office or trailer, and (c) the right of the Owner of a Lot to maintain his/her professional or personal library, keep his/her personal business or professional records or accounts, handle his/her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his/her residence, so long as such activity is not observable outside of the residence, does not significantly increase parking or vehicular traffic, or is in violation of applicable local government ordinances. The mere parking on a Lot or in the street, of a vehicle bearing the name of a business shall not, in and of itself, constitute a violation of this provision. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

4.2. Construction. Only designed and site built homes are permitted. Campers, mobile homes, trailers or manufactured homes are prohibited for use as a residence or for use as temporary or permanent living quarters. Except for construction performed by or contracted for by Declarant, no construction, reconstruction or exterior alterations shall occur on any Lot, unless the approval of the ARC is first obtained pursuant to Article 6. Consideration such as siting, shape, size, color, design, height, solar access, or material may be taken into account by the ARC in determining whether or not to consent to any proposed work. Such work includes, but is not limited to Homes, storage shelters, swimming pools, spas, landscaping, greenhouses, patios, fencing, basketball hoops or remodeling. The intent of this covenant is to ensure quality of workmanship and material, harmony of external design with the existing and planned structures as to location and visual compatibility and finish grade elevations. Original construction designs, materials and product specifications by Declarant may vary from any or all specified in this document. All construction performed by or contracted for by Declarant, shall be presumed to have met these minimum requirements or have been granted a variance thereto.

4.3. The following restrictions are minimum standards applicable to all Lots:

(a) Height. No Home shall exceed two (2) stories in height above the ground at street level, not including any daylight, split entry or split level type, which are not counted in the number of stories in the dwelling.

(b) Floor Area. The square footage area of a Home shall not be less than one thousand four hundred (1,400) square feet exclusive of attics, patios, decks, porches, balconies and garages.

(c) Garages. A minimum two (2) car garage must be constructed on each Lot. Garages may be used as a sales office by Declarant, but must be converted to a garage before permanent occupancy. Garages are to be maintained primarily for the storage of automobiles or similar vehicles. No garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door.

(d) Security Doors/Windows and Screen Doors. No security doors and no exterior security bars or devices on windows and doors shall be installed without the prior written approval of the ARC. If the ARC approves any type security door or window security, such approval shall encourage or require a single style for all Homes so they will maintain a uniform and aesthetic appearance.

4.4. Completion of Construction. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within six (6) months from the beginning of the construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the ARC. The Lot and building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage disposal facility located on site during such construction period. If construction has not commenced within three (3) months after the project has been approved by the ARC, the approval shall be deemed revoked unless the Owner has applied for and received an extension of time from the ARC. All provisions of this Article 4 shall exclude any construction by Declarant.

4.5. Landscaping. The Association shall maintain any irrigation systems and landscaping of Tract A, also to including street frontage, planter strips and entryway monuments, if any. The Association reserves an easement on all lots and tracts for the maintenance of front and corner side yard landscaping. Owners may use any enclosed side and rear yard for any purpose not prohibited hereunder, provided such use is not deemed, by the ARC or the Association, to be a nuisance. Maintenance and cost of irrigation water of said enclosed side and rear yard areas is the Owner's sole

responsibility. The cost for irrigation water of front, and street side yards on individual Lots is the obligation of the Association. Owner will not connect any rear or enclosed area irrigation system to irrigation system maintained by Association.

(a). Landscape installation of rear yards or enclosed areas on Lot by Owners is subject to approval by the ARC. Said completed landscaping on Lots shall be installed by Owners no later than 6 months after occupancy. All landscaping maintenance on Lots shall be maintained in a good condition, including watering, weeding, pruning, fertilization, mowing and other forms of maintenance. If Owner fails to maintain said landscaping, Declarant, or Association in their place reserves the rights outlined in Section 4.22 to maintain.

(b). Declarant reserves the right to install and maintain landscape improvements on Lots for sales and marketing purposes, and hereby reserves a landscape easement on the front yards of said Lots and the street sideyards for this purpose. Declarant is not obligated to provide any landscaping in said areas noted in this section.

(c). The cost of the above described Common Area landscape maintenance by the Association shall be a Common Expense paid out of Assessments described in Article 10. 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/her or her family, tenants, guests or invitees, and to the extent such maintenance or repair is not covered by the Association's insurance policy, the costs of such maintenance and repair may, at the discretion of the Board of Directors, be charged to the Owner as an Individual Assessment. The acceptance and submission of any insurance claims for Association insurance is at the sole discretion of the Board of Directors.

4.6 Rental of Homes. An Owner shall be entitled to rent or lease his/her residence, subject to Section 4.11, and 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 Declaration, Bylaws and Rules and Regulations, and (ii) failure to comply with any provision of the Declaration, Bylaws and 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; and

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

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

4.7 Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted within any Lot other than a reasonable number of domestic household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets, including noise, shall be the responsibility of the respective Owners thereof. No dogs shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside a Lot. An Owner may be required to remove a pet from the property upon the receipt of the third notice in writing from the Association Board of Directors of violation any rule, regulation or restriction governing pets within the Property. A "reasonable number of domestic household pets" and the definition of "domestic household pets" shall be subject to rules adopted and approved by the Board in its sole discretion.

4.8 Nuisance. No noxious, harmful or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the enjoyment, or which is a source of annoyance to the other Owners or Occupants.

4.9 Parking. Parking of boats, trailers, commercial vehicles, mobile homes, campers, other recreational vehicles or equipment regardless of weight shall not be allowed on any part of the Lot or Common Area. Parking shall only be in garages, or driveways if no portion of the vehicle overhangs the street, sidewalks or pathways. Garages shall be primarily used for vehicular parking and not solely for storage. The parking of vehicles is prohibited on any public or private street within the Property if posted or marked "No Parking", or curbs are painted to restrict parking. No parking in Common Areas.

4.10 Vehicles in Disrepair. No Owner shall permit any vehicle, which is not currently licensed or is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot for a period neither in excess of forty-eight (48) hours, nor on a Common Area for any length of time. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the Owners and Occupants. Should any Owner fail to remove such vehicle within five (5) days following the date on which the notice is mailed to him/her by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. All oil or grease on roadways or driveways shall be cleaned up immediately by Owner.

4.11 Signs. The temporary display of a "For Sale" sign on a Lot, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be within the front-yard, or inside of a first floor, front, street facing window of a residential Building Structure. "For Rent" and/or "For Lease" signs are prohibited. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant, or construction and marketing related signage by the Declarant or its contractors. No sign of any kind, other than Declarant's marketing signs or any Association signs for the common good of the Community, which have been previously approved by the Board of Directors, will be allowed on Common Areas.

4.12 Rubbish and Trash. No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for timely and proper disposal, out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Areas or any other Lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any Lot, any roadways or Common Area where deposited by him/her within five (5) days following the date on which notice is mailed to him/her by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner. Each Owner is responsible for trash disposal, and shall remove individual trash containers within 12 hours of collection. No trash and/or storage containers shall be visible from any adjacent street or neighboring Lot, and shall not be allowed to emit any odors or attract insects or rodents.

4.13 Fences and Hedges. No fences or boundary hedges shall be installed without prior written approval of the ARC. Any fencing installed on Owner's Lots either by Owner, or by Declarant, will be Owner's maintenance responsibility, except as noted below. Except for fences on the common property, fences shall be constructed only of wood, vinyl, brick or stone and shall not exceed six feet (6 ft) in height. Chain link and metal fencing is prohibited. All side yard fencing shall maintain a five (5) foot setback from the rear most front elevation of the Home. Further no fencing will be allowed in the front yard. All fence materials, designs, and colors subject to prior approval of the ARC. All fences that are Owner's responsibility are to be maintained in condition acceptable to Board and ARC. Any perimeter fencing or walls on the Plat boundaries, adjacent to privately owned property, will be uniform in design and appearance. Any Declarant installed chain link shall be maintained by the Association.

4.14 Service Facilities; Utilities. Service facilities (e.g. garbage containers, clotheslines, air conditioning compressors, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring Home. All utility lines, including those shared in common with Owners of any contiguous Home in the same structure, shall be maintained, repaired and replaced by the Owner of each Lot, or

all Owners individually and/or collectively at their sole expense, as may be determined. The Association's efforts to resolve issues between Owners, for any provisions of the Association documents, is done solely for the Owners' benefit and will in no event create any liability for the Association. The Association will be responsible for the maintenance of any drainage lines and pipes for gutters from the Homes to the point of intersection with the publicly owned storm drain facility. The Association is not responsible for the maintenance of any utility, cable TV, or phone facilities. The ARC must approve in writing, prior to installation, the exterior location of any heating and/or air conditioning compressors or heat pumps. Said locations must take into consideration the noise and view from adjacent Homes, common areas or streets. No window air conditioners will be installed or approved by the ARC.

4.15 Antennas, Satellite Dishes and Solar Collectors. No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot without the prior written consent of the ARC. Placement shall be restricted to building surfaces not considered part of the front of the residence. No installations shall be lower than the first level ceiling height. The preferred location shall be the barge rafter or gabled ends of any living unit. Exterior satellite dishes with a surface diameter of eighteen (18) inches or less may be placed on any Lot so long as they are not visible from the street and are screened from all neighboring Homes. Approved installation locations shall in no way violate current FCC rules or regulations concerning said installation locations. The authority of the ARC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

4.16 Exterior Lighting or Noisemaking Devices. Except with the consent of the ARC, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than security and fire alarms. However, false alarms of security and fire systems will not be allowed to repeatedly occur. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if installed and removed within thirty (30) days before and after the celebrated holiday.

4.17 Recreational Equipment. No playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, shall be permitted, installed or utilized on any Lot in view from any public street, sidewalk or Common Area within the Property.

4.18 Grades, Slopes, and Drainage. There shall be no interference with the established drainage patterns or systems over or through any Lot within the Property so as to affect any other Lot or Common Area or any areas outside the Property unless adequate alternative provisions are made for proper drainage and are approved by the

ARC. The term “established drainage” shall mean any wall, drainage swales, conduits, inlets and outlets designed and constructed on the Property.

4.19 Damage or Destruction to Home and/or Lot. If all, or any portion of a Lot or Home, is damaged by fire or other casualty the Owner shall restore the damaged improvements subject to the provisions of any applicable insurance policies. Restoration must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage, subject to current governmental regulations, building codes, and provisions of Article 6 of this Declaration. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within six (6) months thereafter.

4.20 Detached Buildings. No permanent or removable detached accessory buildings, including, but not limited to, storage buildings, greenhouses, children’s playhouses and similar structures, shall be built without the prior written consent of the ARC. No detached buildings shall be used as additional living space and none shall contain any plumbing. Outbuildings shall be of a one (1) story design and the outside walls shall not exceed eight (8) feet in height, nor shall the overall height exceed twelve (12) feet, measured from the existing Lot grade, or have total floor area in excess of ten (10) percent of the first floor area of the main dwelling (excluding the area of the garage and any porches). They shall be constructed of wood and the roofing, siding color, style and finish shall match that of the exterior material of the house. Metal sheds are prohibited. Heavy duty rubber or unbreakable plastic or composite storage sheds that are portable and temporary in nature, MAY be approved providing that they are: 1) screened or hidden from the view of neighboring Lots and Common Areas, and 2) aesthetically harmonious with the home in terms of color and texture/finish (e.g. pebbled/muted/dull).

4.21 Owner’s Maintenance Obligations. All improvements upon any Lot, not maintained by the Association, shall at all times be maintained by the Owner in a clean and attractive condition, painted and in good repair, and in such a fashion as not to create a hazard of any kind. Owners are responsible for maintenance, replacement, painting, repair and general upkeep of all Building Structures. All work on such items is subject to ARC review and approval prior to commencement of work.

4.22 Right of Maintenance and Entry by Association. If an Owner fails to perform maintenance and/or repair which he/she is obligated to perform pursuant to this Declaration for buildings or landscaping, and if the Board determines, after notice and a hearing (given pursuant to the provisions of the Bylaws), that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Arbor Pointe, the Board may cause such maintenance and/or repair in connection therewith to be performed and may enter any such Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to

undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than forty-eight (48) hours, except in emergency situations. Such right of maintenance shall include, but not be limited to, buildings, street trees and front and street-side yard landscape.

4.23 Association Rules and Regulations. The Board of Directors, from time to time, may adopt, modify or revoke Rules and Regulations governing the conduct of persons and the operation or use of Lots and Common Areas, as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. / A copy of any Rules and Regulations, upon adoption, amendment, modification or revocation thereof, shall be delivered by the Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Lots upon the date of delivery or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws of the Association.

4.24 County Ordinances and Regulations. The standards and restrictions of Article 4 shall be the minimum required. To the extent the ordinances and regulations of Washington County, or the State of Oregon are more restrictive, or provide for a higher or different standard, the ordinances and regulations of Washington County, or the State of Oregon, and any jurisdiction Property may be annexed into, shall prevail.

4.25 Violation. The Association may impose a fine, charge or penalty for any violation of this Declaration, the Bylaws and Rules and Regulations after reasonable notice of the violation and a reasonable opportunity for a hearing. Additionally, the Association may seek injunctions or other equitable relief or may file an action for money damages owing from such violations.

4.26 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 or measures 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 and Homes resulting from acts of third parties and releases such parties from any liability therefore.

4.27 Retaining Walls. See Article 3, Section 3.4 (p).

4.28 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 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, Common Area or adjacent property. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks.

ARTICLE 5

COMMON AREA

5.1 Use of Common Areas. Use of Common Areas is subject to the provisions of the Declaration, Bylaws, Articles and Rules and Regulations promulgated by the Board of Directors. There shall be no use of the Common Area except by Owners and their invitees. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior written consent of the Board of Directors. No alterations or additions to the Common Area shall be permitted without the prior written approval by the Board of Directors. Any work so authorized by the Association's Board of Directors shall be considered a temporary easement over the Common Area. Nothing shall be stored or kept in the Homes or Common Area, which will increase the rate of insurance on the Common Area, or other Association insurance, without the prior written consent of the Board. At the Owner's sole expense, written approval from the Association's insurance carrier for such work in the Common Area must be obtained. If there are any insurance settlement claims or condemnation awards paid to the Association, a portion of the entire proceeds may be directed to the Lot Owner for said improvements.

5.2 Maintenance of Common Area. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area, including, but not by way of limitation, all drainage systems, landscaping, irrigation systems, fencing, any pathways and any other Improvements that may be included in Common Area. The Association shall keep the Common Area and improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be

necessary or proper to assure the maintenance of the Common Area in first class condition.

5.3 Alterations to Common Area. Only the Association shall construct, reconstruct, or alter any improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws and the Declaration.

5.4 Funding. Expenditures for alterations, maintenance or repairs to an existing capital improvement for which a reserve has been collected shall be made from the reserve account. As provided in Section 10.6, the Board may levy a special assessment to fund any construction, alteration, repair or maintenance of an improvement (or any other portions of the Common Area) for which no reserve has been collected or for which the reserve account is insufficient to cover the cost of the proposed improvement.

5.5 Landscaping. All landscaping on any Lot or portion of the Common Area shall be maintained and cared for in a manner consistent with the standard of design and quality as originally established by Declarant or the ARC. The Association shall be responsible for all landscaping located in any Common Area properties, as provided in Section 3.4 (g). Any Owner maintained areas shall be kept free of weeds and diseased or dead lawn, tree, ground cover or shrubs shall be promptly removed and replaced. All lawn areas shall be fertilized and neatly mowed, and trees and shrubs shall be fertilized and neatly trimmed on a regular basis.

5.6 Condemnation of Common Area. If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be received by and expended by the Board of Directors in a manner which in their discretion is in the best interest of the Association. The Association shall represent the interest of all Owners in any negotiations, suit or action or settlement in connection with such matters.

5.7 Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by an Owner or any of his/her Occupants, guests, tenants, licensees, agents or members of his/her family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constituted or as may be modified or altered subsequently by the Association in the discretion of the Board of Directors. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is responsible for such damage.

ARTICLE 6

ARCHITECTURAL REVIEW COMMITTEE

6.1. Architectural Review. No improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. The ARC will only have authority to make decisions related to the Lots and not the Common Area Tracts. Any architectural or design considerations on the Common Area Tracts will be solely within the power of the Board of Directors. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of exterior design with the existing improvements and landscaping. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Lot Owners. The procedure and specific requirements for review and approval of construction may be set forth in design guidelines adopted from time to time by the ARC. Construction by the Declarant is presumed to have been approved and is thereby exempt from this review. In all cases, which the ARC consent is required by this Declaration, the provision of this Article shall apply. The ARC and the Board of Directors are hereby granted an easement over the Lots to enable the ARC to carry out its designated functions.

6.2. Architectural Review Committee - Appointment and Removal. The ARC shall consist of no fewer than three (3) members and no more than five (5) members, as the Board may appoint from time to time. The Declarant reserves the right to appoint all members of the ARC and all replacements thereto until turnover. The Declarant may appoint a single person to serve as the ARC. After turnover, the Declarant shall delegate the right to appoint and remove members of the ARC to the Board of Directors. The terms of office for each member of the ARC shall be for one (1) year unless lengthened by the Board at the time of appointment or unless the Board serves as the ARC in which event the terms of the ARC members shall be the same as their terms as Board members. The Board may appoint any or all of its members for the ARC and there should be no requirement for non-Board members on the ARC. The Board may appoint one or more members to the ARC who are not Owners, but who have special expertise regarding the matters, which come before the ARC. In the sole discretion of the Board, such non-Owner members of the ARC may be paid and that cost paid by applicants or the Association.

6.3. Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining

member of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

6.4. Duties. The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used within the Property; provided, however that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

6.5. ARC Decision. The ARC shall render its approval or denial decision with respect to the construction proposal within twenty (20) working days after it has received all material required by it with respect to the application. All decisions shall be in writing. In the event the ARC fails to render its decision of approval or denial in writing within sixty (60) days of receiving all material required by it with respect to the proposal, the application shall be deemed approved. Approval by the ARC does not imply government approval, which is solely the responsibility of the Owner.

6.6. ARC Discretion. The ARC may, at its sole discretion, withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Arbor Pointe. Consideration such as siting, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots or the Common Area, and any other factors which the ARC reasonably believe to be relevant, may be taken into consideration by the ARC in determining whether or not to consent to any proposed work.

6.7. Non-waiver. Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing the ARC's right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.8. Appeal. At any time after Declarant has delegated appointment of the members of the ARC to the Board of Directors pursuant to Section 6.2, any Owner adversely impacted by action of the ARC may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board is already acting as the ARC, the appeal shall be treated as a request for a rehearing, but in such case the Board must actually meet and receive evidence and argument. A final, conclusive decision shall be made by the Board of Directors within

fifteen (15) days after receipt of such notification. The determination of the Board shall be final.

6.9. Effective Period of Consent. The ARC's consent to any proposed work shall automatically be revoked three (3) months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the ARC.

6.10. Determination of Compliance. The ARC shall inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of any noncompliance and shall require the Owner to take the necessary action to bring the work into compliance with the approved project.

6.11. Non-compliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications on which approval is based, and if the Owner fails to diligently commence to remedy such non-compliance in accordance with the provisions of the notice of noncompliance, then at the expiration of the third (3rd) day from the date of such notification, the ARC shall provide a notice of a hearing to consider the Owner's continuing non-compliance. The hearing shall be set not more than thirty (30) days from the date of the notice of non-compliance. At the hearing, if the ARC finds that there is no valid reason for the continuing non-compliance, the ARC shall determine the estimated costs of correcting it. The ARC shall then require the Owner to remedy or remove the same within a period of not more than ten (10) days from the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or within any extension of such period as the ARC, at its discretion, may grant, the Association may (a) remove the non-complying improvement, (b) remedy the non-compliance, or (c) file suit to compel compliance. The costs of such action shall be assessed against the Owner and his/her Lot, including all attorneys' fees and other costs expended and incurred to enforce compliance, before suit or action is filed. and at trial or on any appeal or review thereof.

6.12. Liability. Neither the ARC, the Board, their agents, nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss or prejudice suffered or claimed or claimed to be suffered arising from any action by the ARC or a member thereof or failure of the ARC or a member thereof, provided only that the member has acted in good faith in accordance with the actual knowledge possessed by him.

6.13. Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairman of the ARC, and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof either (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration or any Rules and Regulations either promulgated by the Board or the ARC, or (b) such improvements do not so comply, in which event, the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such noncompliance. The Owner, his/her heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Declarant, the ARC, the Association and all Owners, and all such persons deriving an interest through any of them.

ARTICLE 7

ARBOR POINTE HOMEOWNERS ASSOCIATION

7.1. Members. Each Owner shall be a mandatory member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Without any other act or acknowledgement, Occupants and Owners shall be governed and controlled by this Declaration the Articles, Bylaws, and Rules and Regulations and any amendments thereof.

7.2. Proxy. Each Owner may cast his/her vote in person, pursuant to a proxy executed by the Owner, or by written ballot, as provided by ORS 94.647. An Owner may not revoke a proxy given pursuant to this section except by actual notice or revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.

7.3. Procedure. All meetings of the Association, the Board of Directors, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board of Directors. Notwithstanding which rule of order is adopted, the chairman shall be entitled to vote on all matters, not merely to break a tie vote. A tie vote does not constitute a majority or approval of any motion or resolution.

7.4. Contracts Entered Into by Declarant or Board Before Turnover Meeting. Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than three (3) years. In addition, any such contract 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' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

ARTICLE 8

DECLARANT CONTROL

8.1. Transitional Advisory Committee. Declarant or the Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the orderly transition from administrative responsibility by Declarant for the Property to administrative responsibility by the elected Owners in the Association, in accordance with the provisions in the Bylaws.

8.2. Interim Board; Turnover Meeting. Declarant shall have the right to appoint an interim board of one (1) to three (3) 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 9.2 below. 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.

8.3. Turnover Meeting. The Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the Class A members within ninety (90) days of the earlier of:

- (a) Upon Sale of Lots. When all of the Lots in Property have been sold and conveyed to Owners other than a successor Declarant or a builder for development; or

- (b) Declarant's Earlier Election. At such earlier time as Declarant may elect in writing to terminate Class B membership.

The Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If the Declarant does not call the meeting required under this Section, any Owner may do so.

ARTICLE 9

DECLARANT'S SPECIAL RIGHTS

9.1 General. Declarant is undertaking the work of developing Lots and other improvements within Arbor Pointe. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. Until the Homes on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Areas and each Lot on the Property, the Declarant shall have the special rights set for in this Article 9.

9.2 Voting Rights. The Association shall have two (2) classes of voting members.

(a) Class A. Class A members shall be all Owners of Lots other than the Declarant, and each Class A member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

(b) Class B. The Class B member shall be Declarant, their successors and assigns. The Class B member shall have three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of:

(i). When all of the Lots have been sold and conveyed to Owners other than Declarant ("Termination Date"); or

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

Thereafter, each Owner, including the Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots.

When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum. The total number of votes as of the Termination Date and thereafter shall be equal to the total number of Lots.

9.3 Marketing Rights. Declarant shall have the right to maintain a sales office and model on one or more of the Lots which the Declarant may or may not own, to be staffed by the employees of the Declarant or any licensed real estate sales agents. The 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. The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations of the Property, including, without limitation, the Common Area.

9.4 Declarant's Easements. The Declarant has reserved easements over the Property as more fully described in Article 3.4, Sections (c) and (d) hereof.

9.5 Appearance and Design of Arbor Pointe. Declarant shall not be prevented from changing the exterior appearance of the Common Area, including the landscaping or any other matter directly or indirectly connected with project in any manner deemed desirable by Declarant, provided that the Declarant obtain governmental consents required by law. The construction and material standards of Article 4 notwithstanding, Declarant may change exterior and/or interior designs from initial plans and provisions in this document, without notice. This may include designs, colors, and type of materials, provided Declarant obtains any necessary governmental consent.

9.6 Construction by Declarant. All construction by Declarant establishes the standards for the ARC and meets any Design Guidelines of the Association.

ARTICLE 10

FUNDS AND ASSESSMENTS

10.1. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants, and for the improvement, operation and maintenance of the Common Area, including maintenance and administrative costs, a community high-speed internet access if a "server/vendor" should be granted a contract for the entire Property, and insurance for Association.

(a) Common Expense Designations. Common Expenses of the nature described in Section 10.1 which are to be, or are, incurred by the Association for the benefit of all of the Owners of Lots within the Property shall be separately budgeted for allocation among all such Owners and shall be designated "General Common Expenses".

(b) Insurance By the Association. The Board shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability insurance with respect to all the Common Area in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons, and property damage, whether caused by the negligence of the Association or otherwise; provided, however, that such policy(ies) shall not be for an amount of less than \$1,000,000.00 per person, per occurrence, and that such policy(ies) shall provide that the coverage there under cannot be canceled or substantially modified without at least 10 days written notice to the Association. The Association shall also carry any appropriate casualty insurance on Association owned property and a Master Fidelity Bond covering the Association Funds, whether held by the Board of Directors or a duly authorized Agent. All such Association insurance shall be at the sole expense of the Association. All Owners are solely responsible for obtaining fire and casualty insurance coverage for their Building Structures. The Association may obtain such other and further policies of insurance, at its sole expense, as it deems advisable. The named insured on the policy may read Arbor Pointe Homeowners Association. Insurance to be obtained by the Association pursuant to this paragraph 10.1(b) shall include the following terms, if the Board determines they are reasonably available:

i) A waiver of subrogation by the insurer as to any claims against the Board, any Owner, or any guest of an Owner;

ii) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;

iii) A provision that no policy may be canceled, invalidated, or suspended because of the action of an Owner;

iv) A provision that no policy may be canceled, invalidated, or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association correct the defect and allows the Association a reasonable time to make the correction; and

v) A provision that any "other insurance" clause in any policy shall exclude from its coverage all owners' policies.

At the discretion of the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Corporation, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the Articles of Incorporation of the Corporation.

(c) Insurance by Lot Owners. The insurance described in paragraph 10.1 (b) above absolutely does not provide any coverage for the Owner's Home for fire, casualty or personal liability coverage for the Owners, nor fire or extended coverage casualty insurance for the Owners' personal property, the inside surfaces of the Building Structure, and all other improvements on the Lots. The responsibility for obtaining insurance that covers at least these items rests solely with the individual Owners.

10.2. Covenants to Pay. Declarant, on behalf of each and every subsequent Owner of any Lot, covenants and agrees that each Lot will pay the Association the assessments and any additional charges levied pursuant to this Article 10.

(a) Funds Held. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of Arbor Pointe as provided by this Declaration. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner, and is not refundable.

10.3. Basis of Assessments and Commencement of Assessments. Assessments are to be levied against all Lots, including those owned by the Declarant, whether or not such Lots have been improved with a substantially completed Home, as of the date of the close of the first Lot in the Plat to an Owner other than the Declarant.

10.4. Annual Assessments. Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Annual assessments shall be levied on a fiscal year basis. The fiscal year shall begin June 1st of each calendar year, unless another year is adopted by vote of the Board members. Unless otherwise specified by the Board, annual assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration.

(a) Budget. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing; (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies; (iii) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common

Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs and repair, replacement or additions to major components of the Common Area. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the fiscal year. The assessments in the budget to be collected at intervals as determined by the Board of Directors may include both operating and maintenance costs and the reserve assessments, all as defined in the Association documents.

(b) Allocation of Assessments. The total amount in the budget shall be charged equally against all sold Lots as annual assessments. Declarant may offset operating assessment payments due under this Declaration through the payment of maintenance or utility costs described in herein, subject to submittal of paid invoices to the Association.

(c) Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new annual assessment is fixed. The provisions of this section are subject to the provisions of the Oregon Planned Community Act.

10.5. Reserve Funds

(a) Reserve Fund for Replacing Common Elements. Declarant shall establish a reserve fund in the name of the Association for replacement, in whole or in part, of any completed improvements located in, on, or under the Common Area or Lots for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years, for any exterior painting to the extent the Common Area improvements include exterior painted surfaces, for other items, whether or not involving the Common Area, if the Association has responsibility to maintain the items, and for other items for which reserves are required by the Declaration or Bylaws ("Reserve Fund"). The Reserve Fund need not include those items that could reasonably be funded from the maintenance fund or operating assessments, or for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws. For purposes of funding the Reserve Fund, the Declarant initially, and thereafter the Association, shall impose an assessment to be called the "Reserve Fund Assessment" equally against each Lot. The Reserve Fund Assessment shall be based on the reserve study, and updates thereof, described in Section 10.5 (b), or other sources of reliable information. Nothing herein shall limit the authority of Declarant or the Association to establish other separate and unrelated reserve funds that are funded by assessments for reserves that are in

addition to the Reserve Fund or that relate only to a particular type or category of Lot. The Reserve Fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section, although the Board may borrow funds with a specified repayment program, in accordance with the Oregon Planned Community Act.

Required Reserve Fund Assessments for completed improvements shall begin accruing from the date the first Lot assessed is conveyed. Declarant may elect to defer payment of the Reserve Fund Assessments due on Lots it owns until the date of the conveyance of the Lot to an Owner. However, the Declarant may not defer such payment beyond the date of the Turnover Meeting. The book and records of the Association shall reflect the amount owing from the Declarant for all Reserve Fund Assessments.

After the Turnover Meeting, the Board may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other unexpected increases in expenses. Such funds borrowed from the Reserve Fund shall be repaid from regular annual or special assessments against the Lots, if the Board 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 shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

The Board may adjust the amount of the Reserve Fund Assessments as indicated by any reserve study or update, and provide for other reserve items that the Board, in its discretion, may deem appropriate. In addition, after the second anniversary of the turnover meeting, the Association may elect to reduce or increase future Reserve Fund Assessments by a 75% vote of the Owners.

Any funds established for any of the purposes mentioned in this Section shall be deemed to be within the Reserve Fund notwithstanding that it may not be so designated by the Board of Directors. The amount of the Reserve Fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner.

(b) Reserve Study. The Board of Directors shall annually conduct a reserve study, or review and update an existing study, of the Common Area components to determine the requirements of the reserve fund described in Section 10.5(a) above. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

10.6 Special Assessments. The Board of Directors shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

(a) Deficits in Operating Budget. To correct a deficit in the operating budget, by vote of a majority of the Board;

(b) Breach of Documents. To collect amounts due to the Association from an Owner for breach of the Owner's obligations under the Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board. All provisions of this Section 10.6 (b) shall be interpreted by the provisions of the Oregon Planned Community Act relative to the imposition of fines and penalties.

(c) Repairs. To make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or replacement reserve accounts by vote of a majority of the Board; or

(d) Capital Additions. To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

(e) Fund Ownership. Any special assessments shall be owned solely by the Association regardless of their purpose and the individual Owners so assessed shall have no rights or interests in said funds.

10.7 Accounts.

(a) Types of Accounts. Assessments collected by the Association will be deposited into at least two (2) separate accounts with a bank, which accounts shall be designated as (i) the Current Operating Account and (ii) the Reserve Account. Those portions of the assessments collected for current maintenance and operation levied under Section 10.4 (b) will be in the Current Operating Account and those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Special Assessments shall be deposited into one of the two accounts, whichever is deemed by the Board to be appropriate. Withdrawal of funds for the Association's Reserve Account shall require the signatures of two (2) Directors, or Board approval in the written minutes of the Association.

(b) Reserve Account. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital improvements for which reserves have been collected and held. After the individual Lot Owners have assumed responsibility for administration of the planned community, the Board of Directors may borrow funds from the reserve account to meet

high seasonal demands on the regular operating funds or to meet unexpected increases in expenses. Funds borrowed must be authorized by a resolution passed by the Board of Directors, which also outlines the manner of repayment from later assessments. Such resolution 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 shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

(c) Current Operating Account. All ordinary maintenance and operating expenses shall be paid from the Current Operating Account.

10.8 Default in Payment of Assessments, Enforcement of Liens.

(a) Personal Obligation. All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligation of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (that is, one other than through foreclosure or a deed in lieu of foreclosure) the grantees shall be jointly and severally liable with the grantor(s) for all Association assessments imposed through the recording date of the instrument affecting the conveyance. Said provisions shall be in accordance with the provisions of the Oregon Planned Community Act. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.

(b) Association Lien. At any time any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any management agent, may file a notice of lien in the deed records of Washington County, Oregon against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorneys' fees (whether or not suitor action is instituted) and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, any first mortgage, deed of trust or land sale contract recorded previously to the Association's notice of lien and any mortgage or deed of trust granted to an institutional lender which is recorded previously to the Association's notice of lien.

(c) Interest; Fines; Late Fees; Penalties. The Board in its reasonable discretion may from time to time adopt resolutions to set the rate of interest, and to impose late fees, fines and penalties on delinquent assessments or for violations of the

provisions of this Declaration, the Bylaws, any Rules and Regulations, and any rules and regulations adopted by the ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the assessment billing addresses of such Owners. Such impositions shall be considered assessments which are lienable and collectible in the same manner as any other assessments. Provided, however, no fine or penalty for violation of this Declaration, the Bylaws or any Rules and Regulations (other than late fees, fines or interest arising from an Owner's failure to pay regular or special assessments) may be imposed against an Owner or his/her Lot until such Owner is given an opportunity for a hearing as provided in Section 4.25.

(d) Acceleration of Assessments. In the event an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, upon not less than ten (10) days written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

(e) Association's Right to Rents/Receiver. In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his/her Lot or shall be entitled to the appointment of a Receiver. Any default by the Owner in any provisions of the Declaration or Bylaws shall be deemed to be a default by the Owner of any mortgage to which the Owner is party or to which the Lot is subject.

ARTICLE 11

GENERAL PROVISIONS

11.1. Records. The Board of Directors shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for labor and materials relative to providing copies. Owners can obtain copies of this information within 10-days of receipt of a written request.

11.2. Indemnification of Directors, Officers, Employees and Agents. The Association shall indemnify any Director, officer, employee or agent who was or is a

party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he/she is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he/she reasonably believed to be in, or not opposed to, the best interest of the Association, and with respect to any criminal action or proceedings, had reasonable cause to believe his/her conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association to reimbursement of such payment from such person, should it be proven at a later time that such person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefited from the acts which created said liability.

11.3. Enforcement; Attorneys' Fees. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may pertain specifically to such parties or owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter.

11.4. Severability. Invalidity of any one of these covenants, conditions or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

11.5 Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees. Provided

however, amendments, which do not constitute rescission of the planned development, may be adopted as provided in Section 11.6 below. Additionally, any such rescission that affects the Common Area shall require the prior written consent of the County of Washington, Oregon.

11.6 Amendment. Except as otherwise provided in Sections 11.5, 11.9, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes for all Lots subject to this Declaration, of each class of members that are eligible to vote. Any amendment must be executed, recorded and certified as provided by law. Provided, however, that no amendment of this Declaration shall affect an amendment of the Bylaws or Articles without compliance with the provisions of such documents, and the Oregon Non-Profit Corporation Act. Provided further, so long as the Declarant own any Lot, no amendment affecting the general plan and development or any other right of the Declarant herein contained may be affected without the express written consent of the Declarant or its successors and assigns.

11.7 Release of Right of Control. The Declarant may give up their right of control in writing at any time by notice to the Association, subject to the provisions of the Oregon Non-Profit statutes and the Oregon Planned Community Act.

11.8 Personal Pronouns. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall apply to the plural and vice versa.

11.9 Unilateral Amendment by Declarant. The Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing 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 other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots. Prior to the Turnover Meeting, no such Declarant amendment shall require notice to or approval by any Class A member.

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

- 36