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I, Richard Hobernicht, 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.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



AFTER RECORDING RETURN TO:  
Jennifer Quinn  
D.R. Horton, Inc. – Portland  
4380 SW Macadam Ave, Suite 100  
Portland, OR 97239

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR ABBEY CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ABBEY CREEK (“Declaration”) is made by D.R. Horton, Inc.-Portland, a Delaware corporation (“Declarant”).

**RECITALS**

Declarant is the owner of all the real property and improvements thereon located in the County of Washington, State of Oregon, described as follows (the “Property”): Lots 1-10, and 12-91, inclusive, and Tracts “A” through “I” of the plat of “Bethany Abbey Heights”, Washington County, Oregon.

Declarant intends to develop Abbey Creek as a Class I planned community. To establish Abbey Creek as a planned community, 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 Lots and Common Area in Abbey Creek.

Declarant has deemed it desirable for the efficient preservation of the values and amenities in Abbey Creek to create a nonprofit corporation, to which will be delegated and assigned the powers and authority to own, maintain and administer the Common Area and facilities, maintain, repair and replace certain portions of the Lots, to administer and enforce the covenants, conditions, and restrictions of this Declaration, and to collect and disburse the assessments and charges hereinafter created.

All of the Lots in Abbey Creek will be improved with residential structures. The Declarant shall convey Tracts “A”, “B”, “C”, “F” and “I” to the Abbey Creek Homeowners’ Association. The Association shall assume the maintenance obligation of such Tracts for the benefit of the Owners and assess all the Owners equally, except that the cost to maintain and repair the private street located on Tract “C” shall be assessed only against the owners of Lots 12-31 in equal shares. Tracts “D”, “E”, “G” and “H” will be retained by Declarant for future

development, with Tract "G" subject to a temporary water quality facility easement. Lot 11 as shown on the Plat is exempt from this Declaration.

NOW THEREFORE, Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the Oregon Planned Community Act as may be amended from time to time (ORS 94.550 to 94.783) and subject to the following covenants, conditions, restrictions, easements, charges and liens, which shall run with the land, which shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, and which shall inure to the benefit of the Association and of each Owner.

## **ARTICLE 1** **DEFINITIONS**

1.1 "Architectural Review Committee" or "ARC" shall refer to that committee constituted and acting pursuant to Article 6 of this Declaration.

1.2 "Articles" shall mean the Articles of Incorporation for the nonprofit corporation, Abbey Creek Homeowners' Association, as filed with the Oregon Secretary of State.

1.3 "Association" shall mean and refer to Abbey Creek Homeowners' Association, its successors and assigns.

1.4 "Abbey Creek" shall mean Lots 1-10, and 12-91, inclusive, and Tracts "A" through "C" of the plat of "Bethany Abbey Heights", Washington County, Oregon.

1.5 "Board" shall mean the Board of Directors of the Association.

1.6 "Bylaws" shall mean and refer to the Bylaws of the Association which shall be recorded in the Washington County, Oregon, deed records.

1.7 "Common Area" shall mean and refer to Tracts "A" through "C" shown on the recorded Plat of Bethany Abbey Heights, including any improvements located thereon, which areas and improvements are intended to be devoted to the common use and enjoyment of the members and which land has been conveyed to the Association. Tracts "A" and "B" "shall be designated as open space tracts and Tract "C" includes a private road which serves Lots 12-31. All Tracts shall be maintained by the Association in good and safe condition and in a matter consistent with that required by the Washington County, Oregon.

1.8 "Commonly Maintained Property" shall mean the sound wall located along both sides of NW Shackelford Road and all associated landscaping, including landscaping within the median of NW Shackelford Road.

1.9 "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration.

1.10 "Declarant" shall mean and refer to D. R. Horton, Inc.-Portland, a Delaware corporation, and its successors or assigns, or any successor or assign to all or the remainder of its interest in the Property.

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

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

1.13 "Lot" shall mean and refer to each and any of Lots 1-10, and 12-91, inclusive, provided, however, that "Lot" shall not include the Tracts.

1.14 "Members" shall mean and refer to the Owners of Lots in Abbey Creek.

1.15 "Mortgage" means a recorded first mortgage, first trust deed, a first contract of sale that creates a first lien against a Lot, and "mortgagee" means the holder, beneficiary or vendor of such mortgage, trust deed or contract of sale, but only when such holder, beneficiary or vendor notifies the Association in writing of the existence of such mortgage and gives the Association a current name and mailing address.

1.16 "Occupant" shall mean and refer to the occupant of a Home, whether such person is an Owner, a lessee or any other person authorized by the Owner to occupy the Home.

1.17 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession of a Lot 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.

1.18 "Plat" shall mean and refer to the Plat of Bethany Abbey Heights recorded in the Plat Records of Washington County, Oregon, at Book ~~\*~~ \_\_\_\_\_, Pages \_\_\_\_\_, on April 2nd, 2015, 2014. \* 2015-023435

1.19 "Private Road" shall mean the roadway within the Plat of Bethany Abbey Heights known as Tract "C" which serves as a means of access to the Lots 12-31.

1.20 "Property" shall have the meaning attributed to such term in the Recitals of this Declaration.

1.21 "Reserve Account(s)" shall mean and refer to an account set up by the Board to hold funds for construction, improvements or maintenance of the Common Area and the Commonly Maintained Property.

1.22 "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board or the Architectural Review Committee, as may be from time to time amended.

1.23 "Tracts" shall mean and refer to Tracts "A", "B", "C", "F" and "I" as shown on the Plat. Tracts "D", "E", "G" and "H" will be retained by Declarant for future development and are not subject to this Declaration.

**ARTICLE 2**  
**PROPERTY SUBJECT TO THIS DECLARATION**

2.1 Initial Development. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Washington County, Oregon, and described in that certain Plat maps entitled "Bethany Abbey Heights", filed in the plat records of Washington County, Oregon. The initial development consists of Lots 1-10, and 12-91, inclusive, and Common Area Tracts "A", "B", "C", "F" and "I". Tracts "D", "E", "G" and "H" are shown on the Plat, but are not subject to this Declaration.

2.2 Annexation of Additional Property. Additional Property may be added by Declarant to Abbey Creek without the approval of any other Owner or the Association. Provided, however, such Additional Property must be residential Lots or Common Area Tracts, must abut to some portion of the Property or would abut except for intervening public streets or other publicly owned real property, and must be annexed by a supplemental declaration not later than twenty (20) years from the date the Declaration is recorded. The annexation of such real property shall be accomplished as follows:

2.2.1 Supplemental Declaration. The Owner or Owners of such real property shall record a supplemental declaration which shall be executed by or bear the approval of Declarant and shall among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

2.2.2 Annexed Property a Part of Abbey Creek. The property included in any such annexation shall thereby become a part of Abbey Creek and the Association shall accept and exercise administration of any supplemental declaration with respect to such property.

2.2.3 Voting Rights of Annexed Lots. Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 7.3 below.

2.2.4 Annexed Lot Owners as Members. After complying with the procedures for annexation and upon conveyance of the first Lot in the annexed property to an Owner, Owners of Lots in the annexed property shall be Members, shall be subject to this Declaration and shall be entitled to the use and enjoyment of all Common Area in Abbey Creek in the manner and for the purpose for which such Common Areas are intended to be used and enjoyed. The Association shall reallocate the regular assessments to assess each Owner of a Lot in Abbey Creek an equal share of the total expenses of the Association. Provided, however, if there are Common Areas subsequently annexed to Abbey Creek which substantially benefit less than all the Lots, the cost to maintain, repair and replace the Common Area and the improvements thereon shall be assessed equally against only the Lots receiving such benefit.

2.3 Deannexation and Amendment. Declarant reserves the right, at its sole option, to (i) amend this Declaration or any supplemental declaration by executing and recording an amendment (provided that the amendment is consistent with this Article), or (ii) remove from the effect of this Declaration any property described in the Declaration or supplemental declaration concerning any Additional Property by executing and recording a rescission of the annexation of specified Lots or Tracts to this Declaration as long as all of the following conditions are satisfied at the time of the execution and recordation of the amendment or rescission: (a) no Lot in the Additional Property has been conveyed to an Owner; and (b) assessments have not commenced for any Lot in the annexed property.

2.4 Amendment. After the conversion of Class B membership to Class A membership, this Article may not be amended without the consent of Declarant as long as the Declarant owns a Lot or has a right to annex Additional Property to Abbey Creek.

2.5 Annexation With Approval of Membership. In addition to the rights of Declarant pursuant to Section 2.2, the Association or Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of holders of at least seventy-five percent (75%) of the Class A voting power of the Association, and the written consent of the Class B Member, if any. Such annexation shall be accomplished by filing a supplemental declaration in the official records of Washington County, Oregon describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such supplemental declaration shall be signed by the President and Secretary of the Association and by the owner of the annexed property. Any such annexation shall be effective upon the filing for record of such supplemental declaration, unless otherwise provided therein.

### **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. 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 such Owner's 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 agrees that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. Ownership interests in the Common Area and Lots are subject to the easements granted and reserved in this Declaration. Each of the easements granted or reserved herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth 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 Abbey Creek.

3.2 Ownership of Lots. Title to each Lot in Abbey Creek 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 persons and/or entities shall constitute one Owner.

3.3 Ownership of Common Area. Title to any Common Area shall be conveyed to the Association not later than the date of the Turnover Meeting.

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

3.4.1 Easements on Plat. The Common Area and Lots are subject to the easements and rights-of-way shown on the Plat.

3.4.2 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.

3.4.3 Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Area in order to carry out sales activities necessary or convenient for the sale of Lots. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, 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 in such a way as not to interfere unreasonably with the occupancy, use, enjoyment or access to an Owner's Lot by such Owner or such Owner's family, tenants, employees, guests or invitees.

3.4.4 Additional Easements; Public Walkway 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 Abbey Creek. No structure, planting or other material that may damage or interfere with the installation or maintenance of utilities, that may change the direction of flow of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easement areas shall be placed or permitted to remain within any easement area. In addition, Tracts "A", "B", "C" and "I" are subject to public utility easements, storm sewer easement and sanitary sewer easements, as shown on the Plat. Tract "C" is also subject to an access easement in favor of Lots 12-31.

3.4.5 Association's Easements. Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and Common Area as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws, and the Articles, as the same may be amended.

3.4.6 Easement to Governmental Entities. Declarant grants a non-exclusive easement over the Common Area to all governmental and quasi-government entities, agencies, utilities, and their agents for the purposes of performing their duties as utility providers.

3.4.7 Perimeter Easement Benefiting Association. Declarant grants to the Association and its duly authorized agents and representatives an easement over that perimeter portion of each Lot that is included within the building setbacks set by applicable ordinances for the purposes of installation, maintenance, repair, and replacement of utilities, communication lines, and drainage. The Board may grant or convey the easements reserved herein to any

governmental body or agency and/or any public or private utility company or provider, upon a two-thirds (2/3) vote of the Board members at a duly called and held Board meeting.

3.4.8 Perimeter Easements Benefiting Owners. Every Lot shall be subject to an easement three (3) feet wide over the Lot's perimeter for purposes of allowing neighboring Owners to maintain and repair their Homes and landscaping.

3.5 Easements for Lot Drainage System. Each Lot shall be subject to an easement for the construction and permanent installation of a drainage system located generally at the rear of each Lot or along adjoining Lot boundaries. The easements shall pertain to the location of the drainage system as constructed in the Lots by Declarant. The easement rights in each Lot shall also allow for the discharge of water from adjoining Lots. Maintenance of the drainage system shall be performed by the Lot Owners, with each Owner maintaining that portion of the drainage system located on his or her Lot.

#### **ARTICLE 4** **LOTS AND HOMES**

4.1 Residential Use. Lots shall only be used for residential purposes. Except with the Board's consent no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, and no goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business shall be kept or stored on any Lot. Nothing in this Section 4.1 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, and to use any residence as a sales office or model home for purposes of sales in Abbey Creek, and (c) the right of the Owner of a Lot to maintain such Owner's personal business or professional library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls or confer with business or professional associates, clients or customers in such Owner's residence in conformance with the ordinances of Washington County. The Board shall not approve commercial activities otherwise prohibited by this Section 4.1 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 Landscaping. Each Lot Owner shall be responsible for maintaining the landscaping on his or her all Lot. Each Lot Owner other than Declarant shall obtain the ARC's prior approval of all landscaping plans before commencing installation of any landscaping in the backyards. Landscaping for all portions of the Lot shall be completed within six (6) months after the date Owner purchases a home on a Lot. This Section 4.2 shall apply to Lots with finished Homes being held for sale as well as to other Lots, except that homes owned by Declarant shall be exempt from these requirements. If plantings in the backyards of Lots have died or are dying because the Owner of the Lot neglected to properly care for and irrigate the plants, or if plantings on any Lot have died or are dying because of other harm to the plants caused by such Owner, the Association shall replace the plantings and may assess the Owner for the cost as a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

4.3 Maintenance of Lots and Homes. Each Owner shall maintain such Owner's Lot, Home and all improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the ARC. Each Owner shall repair damage caused to such Owner's Lot or improvements located thereon by fire, flood, storm, earthquake, riot, vandalism, or other causes within a reasonable period. Insurance purchased by the Association may be used to affect such repairs, subject to the Association's Board of Directors' right to adjust the losses with the Association's insurance carrier.

4.4 Rental of Homes. An Owner may rent or lease such Owner's Home or a portion thereof, provided that the following conditions are met:

4.4.1 Written Rental Agreements Required. The Owner and the tenant enter into 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) a failure to comply with any provision of the Declaration, Bylaws and Rules and Regulations shall constitute a default under the rental or lease agreement;

4.4.2 Minimum Rental Period. The period of the rental or lease is not less than thirty (30) days;

4.4.3 Tenant Must be Given Documents. The Owner gives each tenant a copy of the Declaration, Bylaws and Rules and Regulations.

4.5 Animals. No animals, livestock or poultry of any kind, other than a reasonable number of household domestic pets (dogs and cats) are permitted within any Lot. Birds, fish, small reptiles and small animals which are kept in cages or tanks which are permanently kept within the interior of a Home are also permitted. No animals may be kept, bred or raised for commercial purposes. All pets shall be reasonably controlled so as not to be a nuisance. Any Lot owner who maintains a pet upon any portion of the Property is deemed to have indemnified and held the Association, each of its members and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet. All pet owners must abide by all governmental sanitary laws and regulations, leash and other local and state laws relating to pets and rules or regulations of the Association created by the Board of Directors. The Board of Directors shall have the right to order the removal of any pet from the Property upon the delivery of the third notice in writing of a violation of any rule, regulation or restriction governing pets within the Property.

4.6 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 that interferes with or jeopardizes the enjoyment of, or that is a source of annoyance to, the Owner or other Occupants. No outside burning of leaves, debris, trash, garbage or household refuse shall be permitted.

4.7 Parking. All Owners and occupants shall park their vehicles in the garage on their respective Lot or in the Lot's driveway. All Owners, occupants and guests must abide by all governmental parking regulations or regulations of the Association created by the Board of



Directors. Boats, trailers, commercial vehicles, mobile homes, campers, and other recreational vehicles or equipment, regardless of weight, shall not be parked on any part of the Common Area, or on any streets on or adjacent to the Property at any time or for any reason, including loading or unloading, and may not be parked on any Lot for more than twenty-four (24) hours or such other period as may be permitted by the Association Rules and Regulations. The garage on each Lot shall be used to park the occupant's primary passenger vehicle, and for no other purpose. The Board may adopt such reasonable rules and regulations as it deems necessary, consistent with this Section 4.7.

4.8 Garages. Garages shall be used primarily for the parking of vehicles. No Owner or occupant shall be permitted to store items in their garage which would prevent the parking of a vehicle in the garage.

4.9 Vehicles in Disrepair. No Owner shall permit any vehicle that is in a state of disrepair to be abandoned or to remain parked upon the Common Area or on any street on or adjacent to the Property at any time and may not permit them on a Lot for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in a "state of disrepair" if it is inoperable or not currently licensed. If an Owner fails to remove such vehicle within five (5) days following the date on which the Association mails or delivers to such Owner a notice directing such removal, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner as a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

4.10 Traffic Rules and Regulations. The Board of Directors may adopt speed limits, use restrictions and other traffic-related rules and regulations for the private street, and shall have the right and authority to enforce such rules and regulations, and the right to levy fines and other sanctions for violations.

4.11 Signs. No signs shall be erected or maintained on any Lot except that not more than one (1) "For Sale" or "For Rent" sign placed by the Owner or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot. The restrictions contained in this Section 4.9 shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant. Provided, however, political signs shall be removed within three (3) days after the election day pertaining to the subject of the sign. Real estate signs shall be removed within three (3) days after the sale closing date.

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 proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Area or any other Lots. If an Owner fails to remove any trash, rubbish, garbage, yard rakings or any similar materials from any Lot, any streets or the Common Area where deposited by such Owner or the Occupants of such Owner's Lot after notice has been given by the Board to the Owner, the Association may have such materials removed and charge the expense of such removal to the Owner. Such charge shall constitute a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

4.13 Fences and Hedges. No fences or boundary hedges shall be installed or replaced without prior written approval of the ARC. All such fences and hedges shall have convenient access ways to allow the Association to carry out its exterior maintenance and landscaping responsibilities. Fences shall remain unstained or be stained with Olympic Clear Tone or Olympic #716 Cedar Natural, or an equivalent color. Subject to ARC approval, powder coated chainlink fences may be allowed in water quality facilities or abutting open space areas. The Board may adopt a resolution to modify the fence stain and style specifications of this section as it deems necessary.

4.14 Service Facilities. Service facilities (garbage containers, clotheslines, etc.) shall be screened such that such facilities are not visible at any time from the street or a neighboring property. All telephone, electrical, cable television and other utility installations shall be placed underground in conformance with applicable law and subject to approval by the ARC. No on-site storage of gasoline, heating or other fuels or any flammable liquids or gases shall be permitted on any part of a Lot or the Property, including any Home, except that up to five (5) gallons of fuel may be stored in each Home for emergency purposes and for the operation of lawn mowers and similar tools or equipment.

4.15 Antennas and Satellite Dishes. Except as otherwise provided by law or this section, no exterior antennas, satellite dishes, microwave, aerial, tower or other devices for the transmission or reception of television, radio or other forms of sound or electromagnetic radiation shall be erected, constructed or placed on any Common Area or Lot. Exterior satellite dishes with a surface diameter of one (1) meter or less and antennas designed to receive television broadcast signals or multi-channel multi-point distribution (wireless cable), may be placed on an Owner's Lot. They shall be screened from neighboring Lots to the extent possible. The Board or ARC may adopt reasonable rules and regulations governing the installation, safety, placement and screening of antennas, satellite dishes and other similar devices. This section and any rules adopted hereunder shall not unreasonably delay or increase the cost of installation, maintenance or use, or preclude reception of a signal of acceptable quality.

4.16 Exterior Lighting or Noise-making Devices. Except with the consent of the ARC, no exterior lighting or noise-making devices, other than security and fire alarms, shall be installed or maintained on any Lot.

4.17 Basketball Hoops. No Owner may install a permanent basketball hoop on any Lot without the ARC's prior approval. The ARC may, in its discretion, prohibit such basketball hoops. Basketball hoops shall be prohibited in the Common Area and on any Lot if the area of play is intended to be the street or any Common Area.

4.18 Grades, Slopes and Drainage. There shall be no interference with the established drainage patterns or systems over or through any Lot within Abbey Creek so as to affect any other Lot or Common Area or any real property outside Abbey Creek unless adequate alternative provision is made for proper drainage and is approved by the ARC. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets designed and constructed for Abbey Creek.

4.19 Tree Cutting Restrictions. No tree the diameter of which is six (6) inches or more may be removed from any Lot without the prior approval of the ARC, unless it is diseased, poses an immediate danger to persons or property, or is within ten (10) feet of an existing or permitted building or five (5) feet of a paved surface. Provided, however, the ARC shall have unfettered authority, but not the obligation, to cause the Association to trim or top trees, shrubs or hedges located on any Lot that is creating a nuisance, is damaging or is a threat to Commonly Maintained Property or which increases the cost of insurance for the Association.

4.20 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 either (i) restore the damaged improvements or (ii) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (i) above must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article 5 are complied with by the Owner. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within six (6) months thereafter. The Association and Owners whose Homes are in the same building shall cooperate in respect to repair and reconstruction and application of available insurance proceeds.

4.21 Right of Maintenance and Entry by Association. If an Owner fails to perform maintenance and/or repair that such Owner is obligated to perform pursuant to this Declaration, and if the Board determines, after notice, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Abbey Creek the Board may cause such maintenance and/or repair to be performed and may enter any such Lot whenever entry is necessary in connection with the performance thereof. An Owner may request, and the Board shall conduct, a hearing on the matter. The Owner's request shall be in writing delivered within five (5) days after receipt of the notice, and the hearing shall be conducted within not less than five (5) days nor more than twenty (20) days after the request for a hearing is received. 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. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot as a Reimbursement Assessment, which may be collected and enforced as any other assessments authorized hereunder.

4.22 Association Rules and Regulations. The Board from time to time may adopt, modify or revoke such Rules and Regulations governing the conduct of persons and the operation and use of Lots and the Common Area as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property and the administration and operation of the Association. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board 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. Subject to approval or consent by the Board, the ARC may adopt rules and regulations pertinent to its functions.

4.23 Ordinances and Regulations. The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that local governmental ordinances

and regulations are more restrictive or provide for a higher or different standard, such local governmental ordinances and regulations shall prevail.

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

4.25 Declarant Exemptions. The Declarant shall be exempt from the application of Section 4.11.

## **ARTICLE 5** **COMMON AREA**

5.1 Use of Common Areas. Use of the Common Area is subject to the provisions of the Declaration, Bylaws, Articles and the Rules and Regulations adopted by the Board. 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. No alterations or additions to the Common Area shall be permitted without the prior written consent of the Board. The Common Area owned by the Association consists solely of Tracts "A" through "C."

There shall be no parking, loading, unloading or "standing" of any kind or of any type of vehicle on the Common Area for any length of time. The Association shall post "No Parking" signs on the Common Area.

5.2 Maintenance of Common Area. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area and Commonly Maintained Property except where such maintenance is provided by the Washington County, a government agency or utility company at the equal expense of the Owners of the Lots. The Association shall keep the Common Area 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.

5.3 Alterations to Common Area. Only the Association shall construct, reconstruct, or alter any improvement located on the Common Area. A proposal for any construction of or alteration, maintenance or repair to any such improvement may be made at any Board meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws, this Declaration; provided, however, no improvements may be made to the Common Area except the construction, repair and reconstruction of the private streets, utility installations, landscaping, curbs and sidewalks.

5.4 Funding. Expenditures for alterations, maintenance or repairs to an existing improvement for which a reserve has been collected shall be made from the Reserve Account. As provided in Section 10.5, 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 on the Common Area shall be maintained and cared for in a manner that is consistent with Declarant's or the ARC's original approval of such landscaping. Weeds and diseased or dead lawn, tree, ground cover or shrubs shall be removed and replaced. Lawns shall be neatly mowed and trees and shrubs shall be neatly trimmed. The Association shall maintain all front yards and planter strips of the Lots. The Owners shall maintain all other portions of the landscaping on their Lots. All landscaping shall be irrigated in a horticulturally proper manner, subject to water use restrictions or moratoria by government bodies or agencies.

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 in a manner that, in the Board's discretion, is in the best interest of the Association and the Owners. The Association shall represent the interest of all Owners in any negotiations, suit, action or settlement in connection with such matters.

5.7 Damage or Destruction of Common Area. If all or any portion of the Common Area is damaged or destroyed by an Owner or any of Owner's guests, Occupants, tenants, licensees, agents or members of Owner's family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner hereby authorizes the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constructed or as may be modified or altered subsequently by the Association in the discretion of the Board. Reasonable costs incurred in connection with affecting such repairs shall become a special assessment upon the Lot and against the Owner who caused or is responsible for such damage.

5.8 Power of Association to Sell, Convey or Grant Security Interest in Common Area. The Association may sell, convey or subject to a security interest any portion of the Common Area pursuant to the processes and limitations set forth in ORS 94.665.

5.9 Public Use of Lands. ORS 105.672 through 105.700 exculpate owners of lands who allow the general public upon their lands for purposes of recreation, and the liability of the Declarant and the Association and its members shall be limited as provided thereby.

## 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. This Article's purpose is to assure quality of workmanship and materials and harmony between exterior design and the existing improvements and landscaping and as to location with respect to topography and finished grade elevations. The ARC shall not be responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the applicant's responsibility. The procedure and specific requirements for review and approval of construction shall be set

forth in design guidelines and standards adopted from time to time by the ARC. The provisions of this Article shall apply in all instances in which this Declaration requires the ARC's consent.

6.2 Architectural Review Committee, Appointment and Removal. Declarant reserves the right to appoint all members of the ARC and all replacements thereto until Abbey Creek is one hundred percent (100%) built out. The ARC shall consist of no fewer than three (3) members and no more than five (5) members. Each ARC member shall serve for one (1) year. After build out, Declarant shall assign to the Board the right to appoint and remove members of the ARC. Board members and persons who are not Owners but who have special expertise regarding the matters that come before the ARC may serve as all or some of the ARC's members. In the Board's sole discretion, non-Owner members of the ARC may be paid. The Board may appoint itself as the ARC or any of its members to the ARC. If an ARC has not been appointed, the Board shall serve as the ARC.

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 or members 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 that may be used in Abbey Creek; 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 written decision approving or denying each application submitted to it within thirty (30) calendar days after its receipt of all materials required with respect to such application. If the ARC fails to render such written decision within thirty (30) days of its receipt of all required materials or request an extension, the application shall be deemed approved. The ARC shall be entitled to request one or more extensions of time, not to exceed forty-five (45) days. In the event of such extension requests, if the ARC does not render a written decision within fifteen (15) days after the expiration of the extension(s), the application shall be deemed approved. Provided, however, the applicant may agree to further extensions to allow the applicant to complete or supplement the application.

6.6 ARC Discretion. The ARC, at its sole discretion, may 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 Abbey Creek. The ARC may consider 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 that it reasonably believes to be relevant in determining whether or not to consent to any proposed work.

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

6.8 Appeal. After Declarant has assigned the right to appoint ARC members to the Board, pursuant to Section 8.2, any Owner adversely impacted by action of the ARC may appeal such action to the Board. Such appealing Owner shall submit to the Board a written notice of appeal, setting forth specific objections or mitigating circumstances justifying the appeal, to the Board within ten (10) days after the ARC's action. The Board shall issue a final, conclusive decision within forty-five (45) days after receipt of such notice, and such decision shall be final and binding upon the appealing Owner and the ARC. Provided, however, the Board shall make reasonable efforts to reach a decision within twenty (20) days. If the Board is serving as the ARC, then such appeal shall be deemed a request for reconsideration.

6.9 Effective Period of Consent. The ARC's consent to any proposed work shall automatically expire three (3) months after issuance unless construction of the project 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 may 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 noncompliance and shall require the Owner to remedy the noncompliance.

6.11 Noncompliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an ARC approval or has constructed an improvement without obtaining ARC approval, sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5 p.m. on the third (3rd) day after issuance of such notice, the ARC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than thirty (30) days from the date on which the notice of noncompliance was issued. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of achieving compliance and may issue a fine against the noncomplying Owner for such amount. The ARC also shall require the Owner to remedy such noncompliance within ten (10) days after the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or any extension thereof granted by the ARC, at its sole discretion, the ARC may remove the noncomplying improvement, remedy the noncompliance, and/or record a notice of noncompliance in the county deed records. The costs of any such action shall be assessed against the Owner as a Reimbursement Assessment either before or after any remedial action is taken.

6.12 Liability. Neither the ARC nor any member thereof shall be liable to any person or entity for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the ARC or the member has, in accordance with its or his actual knowledge, acted in good faith.

6.13 Estoppel Certificate. Within fifteen (15) working days after the ARC's receipt of a written request from an Owner and the ARC's receipt of payment of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairperson or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that, as of the date thereof either (a) all improvements made or done upon such Lot comply with this Declaration, or (b) such improvements do not so comply, in which event, the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner and such Owner's heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as among Declarant, the ARC, the Association, all Owners, and all persons deriving any interest through any of them.

6.14 Fees. The ARC may charge applicants a reasonable application fee and additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers and other consultants to advise the ARC concerning any aspect of the applications and/or compliance with any appropriate architectural criteria or standards, including, without limitation, those pertinent to house siting and height. Such fees shall be collectible as assessments pursuant to Article 10.

6.15 Declarant and Successor Exempt From ARC. The Declarant or a successor to all of the unsold Lots shall be exempt from the requirement to submit and have plans approved by the ARC. However, the Declarant and its successor shall not be exempt from the provisions of Article 4 of the Declaration, except as set forth in Section 4.25.

## ARTICLE 7

### MEMBERSHIP IN THE ASSOCIATION; MANAGEMENT

7.1 Members. Each Owner shall be a 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 shall transfer automatically membership in the Association. Without any other act or acknowledgment, Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and the Rules and Regulations of the Association and any amendments thereof.

7.2 Proxy. Each Owner may cast such Owner's vote in person, by written ballot or pursuant to a proxy executed by such Owner. An Owner may not revoke a proxy given pursuant to this Section 7.2 except by actual notice of 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 Voting Rights. The Association shall have two (2) classes of voting members:

7.3.1 Class A. Class A members shall be all Owners of Lots other than 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.



7.3.2 Class B. The Class B member shall be Declarant, its 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 the following dates (the "Termination Date"):

(a) The date on which all of the Lots in Abbey Creek have been sold and conveyed to Owners other than Declarant; and

(b) The date on which Declarant elects in writing to terminate Class B membership.

After the Termination Date, each Owner, including 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 subject to this Declaration, initially or through annexation.

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 shall fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum.

7.4 Procedure. All meetings of the Association, the Board, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board. Notwithstanding which rule of order is adopted, the President 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.

7.5 Professional Management. The Board shall employ a professional manager to manage the affairs of the Association. Without the prior approval of holders of first Mortgages that represent at least fifty-one percent (51%) of the votes of mortgaged Lots, the Association may not terminate professional management and assume self-management. In addition, such decision to establish self-management shall require prior approval of the Owners of Lots to which sixty-seven percent (67%) of the votes in the Association are allocated. Any agreement for professional management shall provide that the management contract may be terminated for cause on thirty (30) days' written notice.

8.6 Sub-associations. Nothing in this Declaration shall be construed as prohibiting the formation of sub-associations within the Property. The Board of Directors of the Association shall assist the sub-associations in the performance of their duties and obligations under their respective covenants, conditions and restrictions, if any, and the Association shall cooperate with each sub-association so that each of those entities can most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time either the Association or a sub-association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased assessment by the Association for the particular development or by an item in the sub-association's budget which shall be collected through sub-association assessments and remitted to the Association. If a sub-association fails or is unable to perform a

duty or obligation required by its covenants, conditions, and restrictions, then the Association at its option may, after reasonable notice and an opportunity to cure given to the sub-association, perform such duties or obligations until such time as the sub-association is able to resume such functions, and the Association may assess the sub-association or the Owners within the development a reasonable fee for the performance of such functions.

## **ARTICLE 8**

### **DECLARANT CONTROL**

8.1 Interim Board and Officers. Declarant hereby reserves administrative control of the Association. Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim board (the "Interim Board"), which shall manage the affairs of the Association and be invested with all powers and rights of the Board until the Turnover Meeting (as hereinafter defined). The Interim Board shall consist of from one (1) to three (3) members. Notwithstanding the provision of this Section 8.1, at the Turnover Meeting, at least one (1) Director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all three (3) Directors.

8.2 Turnover Meeting. Declarant shall call a meeting for the purposes of turning over administrative control of the Association from Declarant to the Class A members within sixty (60) days of the earlier of the following dates:

8.2.1 Earliest Date. The date on which all Lots in Abbey Creek have been sold and conveyed to persons other than Declarant;

8.2.2 Optional Turnover. The date on which Declarant has elected in writing to terminate Class B membership.

Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. If Declarant does not call the Turnover Meeting required under this Section, the transitional advisory committee or 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 Abbey Creek. 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 Area and each Lot on the Property, Declarant shall have the special rights set forth in this Article 9.

9.2 Marketing Rights. Declarant shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Area.

9.3 Declarant Easements. Declarant reserves easements over the Property as more fully described in Sections 3.4 and 3.5 hereof.

9.4 Additional Improvements. Declarant does not agree to build any improvements not described in this Declaration.

## **ARTICLE 10**

### **FUNDS AND ASSESSMENTS**

10.1 Purpose of Assessments; Expenses. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, aesthetics and welfare of the Owners and Occupants of Abbey Creek, for the improvement, operation and maintenance of the Common Area and the Commonly Maintained Property, for the administration and operation of the Association, and for property and liability insurance.

10.2 Covenants to Pay. Each Owner covenants and agrees to pay the Association the assessments and any additional charges levied pursuant to this Declaration or the Bylaws. All assessments for operating expenses, major maintenance, repairs and replacement and reserves shall be allocated among the Lots and their Owners as set forth in Section 10.4.2.

10.2.1 Funds Held in Trust. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely as set forth in Section 10.1. Upon the sale or transfer of any Lot, the Owner's interest in such funds shall be deemed automatically transferred to the successor in interest to such Owner.

10.2.2 Offsets. No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

10.2.3 Right to Profits. Association profits, if any, shall be the property of the Association and shall be contributed to the Current Operating Account.

10.3 Basis of Assessment/Commencement of Assessments. The Declarant shall pay all common expenses of the Association until the Lots are assessed for common expenses. The amount of the initial annual assessment to Owners other than the Declarant shall be determined by the Declarant. Assessments are to be levied against all Lots whether or not such Lots have been improved with a completed Home; provided, however, the Declarant shall be exempt from paying the operating portion of the assessments on all Lots owned by it, as more specifically set forth in Section 10.3.1 below.

10.3.1 Commencement of Operating Assessments. The date of commencement of the operating portion of the assessment shall be determined by the Declarant; however, in no event shall it commence later than the turnover meeting; provided, however, the Declarant shall be exempt from paying the operating portion of the assessment on all Lots owned by it.

10.3.2 Commencement of Reserves. The reserve portion of the assessment shall commence from date of first conveyance of Lot from the Declarant to a third party. The Declarant may defer payment of accrued reserve assessments for a Lot until the Lot is conveyed

to a third person. However, the Declarant may not defer payment of accrued reserve assessments beyond the date of the turnover meeting.

10.4 Annual Assessments. Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. The initial annual assessment shall be determined by Declarant and shall be prorated on a monthly basis at the time of the closing of the first sale from Declarant. For proration purposes, any portion of a month shall count as a full month. Annual assessments shall be payable on a periodic basis, not more frequently than monthly, as determined by the Board. The fiscal year shall be the calendar year unless another year is adopted by vote of the Association members.

10.4.1 Budgeting. Each year the Board shall prepare, approve and make available to each member of the Association 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 Commonly Maintained Property 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 such improvements as provided in Section 10.6.2; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area and the Commonly Maintained Property. Notwithstanding that budgeting shall be done on an accrual basis, the Association's books shall be kept on a cash basis and the Association shall be a cash basis taxpayer, unless applicable governmental regulations require otherwise. 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 or summary thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, within thirty (30) days after adoption of such budget.

10.4.2 Allocation of Assessments. The total amount in the budget shall be charged equally against all Lots subject to assessment, except that assessments relating to the maintenance of the Private Road shall be allocated equally among only Lots 12-31. Reserve assessments relating to the Private Road shall be segregated into separate accounts or line items and such funds shall be used exclusively for these purposes.

10.4.3 Nonwaiver 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.

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

10.5.1 Correct Deficit. To correct a deficit in the operating budget, by vote of a majority of the Board;

10.5.2 Special Obligations of an Owner. To collect amounts due to the Association from an Owner for breach of the Owner's obligations under this Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

10.5.3 Repairs. To collect additional amounts necessary to make repairs or renovations to the Common Area or Commonly Maintained Property if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board; or

10.5.4 Capital Improvements. To make capital acquisitions, additions or improvements, by vote of at least eighty percent (80%) of all votes allocated to the Lots. Capital Improvements relating to the Private Road shall require approval vote of at least eighty percent (80%) of the Lots which are assessed for such elements.

10.5.5 Reimbursement Assessments. The Association shall levy a reimbursement assessment against any Owner and such Owner's Lot if a failure to comply with this Declaration, Bylaws, Architectural Standards or any Rules and Regulations has (i) necessitated an expenditure of monies by the Association to effect compliance or (ii) resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot (a "Reimbursement Assessment"). A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except upon at least ten (10) days' written notice to the Owner being assessed. If, within said ten (10) day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. Upon request for a hearing, the Board shall conduct it not less than ten (10) nor more than thirty (30) days after the request by the Owner, and shall make its decision within not more than thirty (30) days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required prior to levying the Reimbursement Assessment.

10.5.6 Employment of Agents, Advisers and Contractors. The Association, through its Board of Directors, may employ the services of any person or corporation as manager; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur attorney's fees in excess of \$10,000 for any specific matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to attorney's fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them or attorney's fees incurred in collection of assessments. The limitation set forth in this paragraph shall increase by \$1,000 on each fifth anniversary of the recording of this Declaration

10.5.7 Working Capital Contribution. On the initial sale of each Lot, the purchaser of the Lot shall pay a working capital contribution to the Association in the amount equal to one-quarter (1/4) of the annual assessment. The working capital contribution is not a payment towards the Association's regular assessments, but instead a contribution to the working capital of the Association. The Declarant may not use the working capital contributions to defray any Association or Declarant costs during the period of Declarant control of the Association.

## 10.6 Accounts.

10.6.1 Types of Accounts. Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank, which accounts shall be clearly designated as (i) the Current Operating Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for major maintenance, repair, and replacement and deferred maintenance of capital improvements into the Reserve Account. Withdrawal of funds for the Association's Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and an officer of the Association who is not a Director. In its books and records, the Association shall account separately for operating expenses relating to the Common Area/Commonly Maintained Property and operating expenses relating to all other matters, as well as for necessary reserves relating to the Common Area/Commonly Maintained Property and necessary reserves relating to all other matters.

10.6.2 Reserve Account. Declarant shall establish a Reserve Account, in the name of the Association, which shall be kept separate from all other funds held by the Association. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of Common Area property and Commonly Maintained Property that normally requires major maintenance, repair or replacement, in whole or in part, within one (1) to thirty (30) years and not for regular or periodic maintenance and expenses. No funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

10.6.2.1 General Operating Reserve. The Board of Directors shall create and maintain a general operating reserve account by allocation and payment thereto monthly of an amount determined by the Board of Directors. This account shall be used to pay expenses which exceed budgeted amounts. The initial working capital required by the Bylaws shall be deposited into such operating reserve account.

10.6.2.2 Special Reserves. Other special reserve funds may be set up by the Board of Directors by special assessments of the Lot owners who benefit thereby as may be required by the Declaration or otherwise determined by the Association to be appropriate.

10.6.2.3 Calculation of Reserve Assessment; Reserve Study. The Board of Directors of the Association annually shall conduct a reserve study which includes a maintenance plan for the Commonly Maintained Property, or review and update an existing study, of the Common Area and Commonly Maintained Property to determine the reserve account requirements. A reserve account shall be established for those items of the Common

Area and Commonly Maintained Property all or part of which will normally require replacement in more than one (1) and less than thirty (30) years, and for the maintenance, repair or replacement of other items as may be required under the Declaration or Bylaws or that the Board of Directors, in its discretion, may deem appropriate. The reserve account need not include items that could reasonably be funded from operating assessments. 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 for maintenance, repair and replacement of Common Area and Commonly Maintained Property with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

The Board of Directors shall, within thirty (30) days after conducting the reserve study, provide to every owner a written summary of the reserve study and of any revisions to the thirty (30)-year plan adopted by the Board of Directors or the Declarant as a result of the reserve study. The reserve account assessment shall be allocated pursuant to Section 10.4.2.

10.6.2.4 Loan From Reserve Account. After the Turnover Meeting described in Section 8.2, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet unexpected increases in expenses. Funds borrowed must be repaid later from assessments 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 within the calendar year.

10.6.2.5 Increase, Reduction, or Elimination of Reserve Account Assessment. At any time after the second year after the Turnover Meeting, future assessments for the Reserve Account may be increased or reduced by the vote of Owners of Lots representing seventy-five percent (75%) of the votes computed in accordance with Section 7.3; provided, however, this authority of the Owners shall not limit the authority of the Board of Directors to increase or decrease future assessments for the Reserve Account based on reserve studies or updates to any reserve studies.

10.6.2.6 Investment of Reserve Account. Nothing in this Section 10.6 prohibits the prudent investment of Reserve Account funds, subject to any constraints imposed by the Board, the Bylaws or the Rules and Regulations.

10.6.2.7 Refunds of Assessments. Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots.

10.6.3 Current Operating Account. All costs other than those to be paid from the Reserve Account pursuant to Section 10.6.2 may be paid from the Current Operating Account.

10.7 Default in Payment of Assessments, Enforcement of Liens.

10.7.1 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 grantors for all Association assessments imposed through the recording date of the instrument effecting the conveyance. 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.

10.7.2 Association Lien. The Association shall have a lien against each Lot for any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent. Such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorneys' fees (whether or not suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Recording of the Declaration constitutes record notice and perfection of the lien. Said lien may be foreclosed at any time pursuant to the Planned Community Act. The Association shall record a notice of a claim of lien for assessments and other charges in the deed records of Washington County, Oregon, before any suit to foreclose may be filed. 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 before the Association's notice of lien and any mortgage or deed of trust granted to an institutional lender that is recorded before the Association's notice of lien.

10.7.3 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, Architectural Standards and the Rules and Regulations adopted by the Board or 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 address of such Owners. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violation of this Declaration, the Bylaws or any rule and regulation, other than late fees, fines or interest arising from an Owner's failure to pay regular, special or reimbursement assessments may not be imposed against an Owner or such Owner's Lot until such Owner is given an opportunity for a hearing as elsewhere provided herein.

10.7.4 Acceleration of Assessments. If 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.



10.7.5 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 such Owner's Lot or shall be entitled to the appointment of a receiver.

## **ARTICLE 11**

### **GENERAL PROVISIONS**

11.1 Records. The Board shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board also shall 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 Board committees, and the Association's financial records shall be maintained in the state of Oregon and reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

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 such person 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 such person acted in good faith and in a manner that such person 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 that such person's 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 such person 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 that such person's 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 and any mortgagee holding an interest on a 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 appertain 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. In the event suit or action is commenced to enforce the terms and provisions of this Declaration (including without limitations, for the collection of assessments), the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event which is the subject of the suit or action, attorneys' fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorneys' fees and costs incurred in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed.

11.4 Construction Defect Claim Procedure. No litigation shall be commenced against the Declarant, contractor or builder of the Home or any Owner of a Lot in respect to any alleged defect in a Home or on any Common Area except in compliance with the process set forth in Oregon Revised Statutes 701.560 to 701.595 and ORS 701.605.

11.5 Severability. Invalidation 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.

11.6 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, that amendments that do not constitute rescission of the planned community may be adopted as provided in Section 11.7.

11.7 Amendment. Except as otherwise provided in Section 11.6 or ORS 94.590, 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 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 effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents, and the Oregon Nonprofit Corporation Act and that no amendment affecting the general plan of development or any other right of Declarant herein contained may be effected without the express written consent of Declarant or its successors and assigns, including, without limitation, amendment of this Section 11.7.

11.8 Release of Right of Control. Declarant may give up its right of control in writing at any time by notice to the Association.

11.9 Unilateral Amendment by Declarant. In addition to all other special rights of Declarant provided in this Declaration, Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the

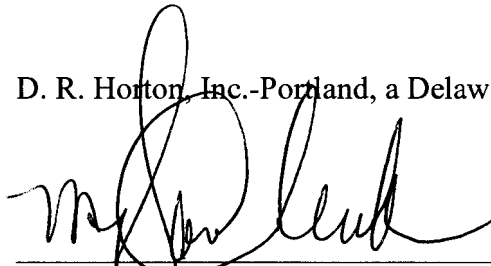
Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation 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 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 Abbey Creek, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration;
2. Articles;
3. Bylaws;
4. Rules and Regulations.

IN WITNESS WHEREOF, Declarant has executed this instrument this 10<sup>TH</sup> day of FEBRUARY, 2015.

D. R. Horton, Inc.-Portland, a Delaware corporation

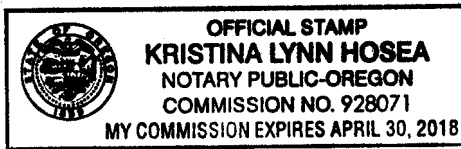


By: M. Scott Clark  
Its: Division President

STATE OF OREGON                    )  
  ) ss.  
County of MULTNOMAH )

FEBRUARY 10, 2015

Personally appeared before me the above-named M. Scott Clark who, being duly sworn, did say that he is the Division President of D. R. Horton, Inc.-Portland, a Delaware corporation, and that said instrument was signed in behalf of said company by authority of its Board of Directors; and they acknowledged said instrument to be its voluntary act and deed.



Kristina L. Hosea  
NOTARY PUBLIC FOR OREGON