

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
MAGNOLIA HEIGHTS PUD HOMEOWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MAGNOLIA HEIGHTS HOMEOWNERS ASSOCIATION (“Declaration”) is made this ____ day of _____, 2020 by McKeever Enterprises, LLC, a Washington limited liability company (the “Declarant”).

Recitals

WHEREAS, the Declarant is the owner, or controls, all that certain real property and improvements thereon located in the City of Washougal, Clark County, State of Washington, also referred to as “The Plat of Magnolia Heights PUD” recorded on _____, 2020, in Book _____, Page _____ (also referred to as the “Property”); and

WHEREAS, Declarant intends to develop the Property as a planned community known as "Magnolia Heights PUD Homeowners Association," which is a plat community as defined in RCW 64.90.010(37) and 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 Areas, within "Magnolia Heights"; and

WHEREAS, to the extent there is a conflict between this Declaration and any mandatory or nonwaivable provision of RCW 64.90, the provisions of RCW 64.90 shall control; however to the extent there is a conflict between this Declaration and a provision of RCW 64.90 that is either not mandatory or that is waivable or alterable, the provisions of this Declaration shall control;

WHEREAS, Declarant is required as a condition of approval to create a Homeowners Association, to which will be delegated and assigned the powers and authority to own, maintain and administer the Association, the Common Areas, 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 for the benefit of each Lot Owner.

Article 1

Definitions

1.1 “**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.

1.2 “**Articles**” shall mean the Articles of Incorporation for the non-profit corporation, Magnolia Heights PUD Homeowners Association, as filed with the Washington Secretary of State, Corporations Division.

1.3 “**Association**” shall mean and refer to "Magnolia Heights PUD Homeowners Association," its successors and assigns.

1.4 “**Board**” or “**Board of Directors**” shall mean the Board of Directors of Magnolia Heights PUD Homeowners Association.

1.5 “**Builder**” or “**Approved Builder**” shall mean a Builder who has purchased one or more Lots from the Declarant, or the Declarant's assignee or successor, and is authorized to construct a Home on said Lot(s). Said Builder shares in the special Declarant rights related to construction and marketing. Once assessments have commenced, any Lot owned by a Builder will pay assessments to the Association from the date the escrow closes between the Declarant and said Builder.

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 Clark County and attached to this Declaration as Exhibit A.

1.8 “**Common Areas**” shall mean and refer to any areas of land shown on the recorded plat of the Property, excluding land within the bounds of residential Lots 1-38, and including private roads, stormwater facilities, and the entryway monument, which areas of land 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.

1.9 “**Declarant**” shall mean and refer to McKeever Enterprises, LLC, 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 Magnolia Heights PUD Homeowners Association.

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 Magnolia Heights PUD.

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 "Magnolia Heights" shall mean the real property described within the Plat of Magnolia Heights PUD and any annexations of additional lands to Magnolia Heights and all Common Areas included within the Plat of Magnolia Heights PUD.

1.17 "Members" shall mean and refer to the Owners of Lots in Magnolia Heights and who are members of the Magnolia Heights PUD Homeowners Association.

1.18 "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.

1.19 "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.

1.20 "Plat" shall mean and refer to the recorded Plat of Magnolia Heights PUD, and any annexation plats.

1.21 "Property" shall mean and refer to all real property described within the Plat of Magnolia Heights PUD, as well as any future annexations of additional property. Property includes the Common Areas 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.

1.22 "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.

1.23 "Turnover Meeting" shall be the meeting called by the Declarant to turn over control of the Association to the Owners as required by RCW 64.90.415.

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 the City of Washougal, Clark County, Washington, in that certain Plat map entitled "Magnolia Heights PUD" filed in the Plat records of Clark County, Washington, more particularly described as consisting of Lots 1 through 38 of the Magnolia Heights PUD and all Common Areas, including the private roads and stormwater facilities, as shown on the Plat.

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 ultimately be a total of approximately 38 Lots in the subdivision, including the Lots on this Plat. Declarant shall have no obligation of any kind to annex any additional land to the Property.

(a) Consent or Joinder Not Required. No consent or joinder of any Owner other party except the Declarant and the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

(b) 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.

(c) 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.

(d) 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 Association shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Association. Any conveyance of any Lot shall automatically transfer the right to use the Common Areas without the necessity of express reference in the instrument of conveyance. The ownership interests in the Common Areas and Lots described in this Declaration are subject to the easements granted and reserved in this Declaration for maintenance. 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 Magnolia Heights.

3.2 Ownership of Lots. Title to each Lot in Magnolia Heights 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 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 Lots and Common Areas are subject to the easements and rights-of-way shown, or noted, on the Plat of Magnolia Heights PUD.

(b) Easements for Common Areas. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, 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 Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property or other real property owned by Declarant 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, pathways, access roads and drainage facilities necessary for the development of Magnolia Heights. 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 is responsible.

(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.

(f) Easement to Governmental Entities. There is hereby reserved and granted a non-exclusive easement over the Common Areas to all governmental and quasi-government entities,

agencies, utilities, and their agents for the purposes of performing their duties within Magnolia Heights, including, but not limited to, public water and power easements, and public stormwater facility easements as referenced in Section 3.3(i), below.

(g) Landscaping. The Association reserves an easement for any landscape maintenance, upkeep and replacement, as well as utilities pertaining to landscaping or maintenance for any street planter strips, buffer landscaping and any entry monument (even if outside of designated Common Areas Tracts). Further, all Common Areas are subject to landscape maintenance easements over their entirety in favor of the Association. All landscaping on Lots 1-38 is the Owner's sole responsibility.

(h) Private Storm Sewer Easements. Private Storm Sewer Easements exist throughout the Property, as indicated on the Plat.

(i) Stormwater Facilities. In conjunction with the recording of the Final Plat for the subdivision of the Property the Declarant is, or will be, constructing stormwater management facilities. The Association shall maintain any and all stormwater facilities constructed upon the Property, or partially upon the Property, whether constructed prior to the recording of the Final Plat or thereafter. The Association will be responsible for the two-year maintenance inspection and replacement/cleaning of storm filtration cartridges and vaults if needed.

(j) 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 and the Common Areas of the Property necessary or appropriate for the purposes of accomplishing the maintenance, repair, and replacement of improvements, should such maintenance, repair and replacement be deemed necessary in order to maintain the standards of the Association and of the ARC.

(k) 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.

(l) Private Street Maintenance. The private streets including gutters and curbs, catch basins, and the underground stormwater conveyance system that are a part of the Common Areas shall be maintained by the Association. The Association shall conduct an annual review of the condition of the private streets and determine whether any repairs are warranted or necessary. The cost of maintaining such streets shall be assessed to the Owners as special assessment for capital improvement as provided for in Section 5.4. The total cost will be divided evenly among each Lot. Owners with more than one Lot shall pay the special assessment for each Lot. Should any Owner cause damage to any Common Areas; such Owner shall be responsible for the costs associated with the repair of such streets by way of a special assessment. The two-year warranty

inspection will be the responsibility of the Association. Any curb damage shall be the responsibility of the Owner of the Lot fronting damaged curb. Nothing herein shall be construed as creating an obligation on the part of the City or any other public entity to assume ownership or maintenance obligations for the private streets within Magnolia Heights.

(m) **Public Utility Easements.** Public Utility Easements and street light locations are reserved, as defined on the Plat of Magnolia Heights PUD. No building, structure, tree or other obstruction shall be placed or located on or in a Public Utility Easement. A private meter shall be installed for street lighting. The HOA will be responsible for all power and street light maintenance.

(n) **Retaining Walls.** Retaining walls may be constructed within the Property (the "Retaining Walls"). The Retaining Walls are not in all cases located on a Lot 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 a Lot will need prior approval of the 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.

(o) **Building Envelope.** If the Plat of Magnolia Heights sets forth a defined area within which the Home is to be built, the "Building Envelope," any building which will extend beyond the defined limits must be approved by both the City of Washougal and the ARC, or their designated representative for ARC reviews.

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 the following:

(a) **Commercial Activities of Individual Residences.** 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.

(i) Neither the Association, the Board of Directors, nor the management agent shall be held responsible for any loss of wages, income or computer connectivity if telephone, computer or internet service is interrupted by the Association, an Association vendor, or utility, or the management agent.

4.2 Construction. 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 Mobile Homes. Mobile homes will not be permitted on any Lot within the Magnolia Heights community.

4.4 Completion of Construction. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within twelve (12) 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. 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 side yards for this purpose. Declarant is not obligated to provide any landscaping in said areas noted in this section. Each Owner shall be responsible for installing and maintaining the landscaping on the Lot in a neat and well-kept condition. An Owner may not remove street trees, change the Front Yard landscaping or install additional Front Yard landscaping without the prior written approval of the Board of Directors of the Association. No weeds, noxious plants, or unmaintained vegetation shall be planted or allowed to grow. No tree over six inches (6") in diameter measured four feet (4') above adjacent grade may be removed without the prior approval of the Architectural Review Committee, and if that removed is a Street Tree it must immediately be replaced with a tree of the same species and size as those Street Trees originally planted.

4.6 Rental of Homes. An Owner shall be entitled to rent or lease his/her residence, subject to the following:

(a) **Written Rental Agreements.** A written rental or lease agreement is required, 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 one-hundred and eighty (180) days;

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

(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 ensuring tenant's compliance with same.

(e) **Board Termination.** If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or rules and regulations, and the Owner is unable to ensure tenant compliance, the Board may require the Owner to terminate such lease or rental agreement.

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 of any rule, regulation or restriction governing pets within the Property.

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

4.9 Firearms and Explosives. The discharge of firearms or other types of explosives, except fireworks, within the Property is prohibited. The term "firearms" includes "BB" guns, pellet guns and other firearms of all types, regardless of size.

4.10 Parking.

(a) Parking on an Owner's Lot is permitted on areas paved by asphalt or concrete only. Parking shall only be in garages or driveways if no portion of the vehicle overhangs the street, sidewalks, or pathways. The parking of vehicles is prohibited within the Property if posted, marked "No Parking," or if curbs are painted to restrict parking. Any car parked illegally will be towed and reclamation will be at the Owner's expense without recourse to the Association or the managing Agent.

(b) Non-commercial passenger vehicles under 10,000 lbs. such as cars, trucks, SUVs, and motorcycles licensed to be ridden on public streets may park in public view as allowed in 4.10(a). Campers, boats, boat trailers, utility trailers, recreational vehicles, watercraft, commercial vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories may be stored or kept within an enclosed garage, or on the side of the Home, provided that it is fully screened from view by a screening structure or fencing approved by the ARC.

(c) Campers, boats, boat trailers, utility trailers, recreational vehicles, watercraft, commercial vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories may be temporarily kept on the private streets within the Property or on a paved driveway located on a Lot for a period not to exceed forty-eight (48) hours and only for the purposes of cleaning, preparation for use and unloading.

4.11 Vehicles in Disrepair. No Owner shall permit any vehicle, which is not currently licensed or is in a state of disrepair to be abandoned or to remain parked upon any Lot for a period in excess of forty-eight (48) hours, nor in the Common Areas for any length of time. A

vehicle shall be deemed in a "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.

4.12 Maintenance or Repair of Vehicles. Any maintenance or repair of vehicles or other machinery or equipment must take place entirely within the enclosed garage of an Owner.

4.13 Signs. Plastic artwork of any kind to be placed in public view must be approved by the Architectural Review Committee. All signs must comply with local applicable sign ordinances. No sign, banner or billboard of any kind may be kept or placed on any Lot or mounted, painted or attached to any Home, fence or other improvement so as to be visible from public view in the subdivision or adjacent public street or carried by any person or by any other means displayed within the subdivision except as provided below:

(a) "For Sale" signs: An Owner may erect one (1) sign not exceeding two (2) feet by three (3) feet in dimension, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale.

(b) "For Rent" signs: An Owner may erect one (1) sign not exceeding three (3) square feet in area advertising the property for rent. Such signs shall be visible from the front of the Home only, and shall be displayed from within the Home. No such sign shall be erected within a lawn or landscape area on any Lot, or attached to the outside of the Home.

(c) Political signs: Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

(d) Flags: The foregoing restrictions shall not be deemed to prohibit the display of the flag of the United States by an Owner or occupant of a Lot if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. § 1 et seq. and RCW 64.90.510.

(e) Declarant Signs: Signs, banners, flags, monuments, and billboards may be erected by the Declarant and are exempt from the provisions of this Section 4.13.

(f) Approved Builder Signs: An Approved Builder may erect signs and banners on any Lot or Home owned by the Approved Builder if such signs and/or banners are erected for the purpose of marketing and selling Homes constructed by the Builder on

Lots owned by the Builder, subject to rules and restrictions established by Declarant and/or the Association from time to time. An Approved Builder may also erect signs and/or banners on the Common Areas to market and sell Homes constructed by the Approved Builder on Lots owned by the Approved Builder, provided that Declarant authorizes in writing (in Declarant's sole discretion) the erection of each such sign and/or banners on the Common Areas.

4.14 Rubbish and Trash. No Lot or part of the Common Areas 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 Areas 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.

4.15 Fences and Hedges. No fences or boundary hedges shall be installed without prior written approval of the ARC and all fences shall comply with any City of Washougal and/or Clark County ordinances. Fences and hedges may not exceed six (6') feet in height in side and back yards, and 42 inches (42") in front yards. Fences must be well constructed of suitable materials approved by the Architectural Review Committee and may not detract from the appearance of any adjacent Home. No fencing shall be installed on any Common Areas, except by the Declarant or the Association. Any fencing located on the Common Areas will be maintained by the Association. Any fencing installed on Owner's Lots either by Owner, or by a Builder or the Declarant, will be the responsibility of the Owner to maintain, and shall be maintained in a condition acceptable to the Board and the ARC. All fence materials, designs, and colors are subject to approval of the ARC in its sole discretion, and all local setbacks must be obeyed.

4.16 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. The exterior location of any heating and air conditioning compressors or heat pumps shall be approved in advance by the ARC. Said locations must take into consideration the noise and view from adjacent Homes. No window air-conditioning or heating units are allowed. No overhead wire, service drop or other facility for the distribution of electric energy or for telecommunication purposes, nor any pole, tower, or other structure supporting outdoor overhead wires shall be erected, placed or maintained within the Property. All Owners of Lots, their heirs, successors and assigns shall use underground service wires to connect their premises and the structure built thereon to the underground electric,

telephone, utility or cable television facilities provided, except as mandated by local jurisdictions or public utility companies. All utility lines shall be maintained, repaired and replaced by the Owner of each Lot, or all Owners individually and/or collectively at their sole expense. The Association is not responsible for the maintenance of any utility, cable TV, or phone services of facilities.

4.17 Antennas, Satellite Dishes. No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, 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 plane 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.

4.18 Setback, Maximum Height and Minimum Yard Requirements. Each Lot shall be subject to: (1) all the setback and minimum yard requirements shown for such Lot on the recorded Plat of Magnolia Heights PUD; (2) all setback height, and minimum yard requirements established by the City of Washougal or other governmental entities with jurisdiction over such Lot; and (3) any land use review procedure established by the City of Washougal, Clark County or any other governmental entities with jurisdiction over such Lot for review and approval of variance from any such governmental requirements. The Architectural Review Committee, upon application from a Member, may in its discretion waive any violation of this Section, which it finds to have been inadvertent, provided the same would not constitute a violation of local law.

4.19 Solar Energy Panels. Except as otherwise provided by applicable law including, but not limited to, RCW 64.90.510, no Solar Energy Panel (as defined below) may be erected, constructed, or placed on any Lot or Home. With the prior written consent of the ARC, an Owner may install a ground-mounted or roof-mounted Solar Energy Panel on its Lot provided that all of the following conditions are satisfied:

(a) If ground-mounted, then the Solar Energy Panel may only be located in the rear yard of a Lot and must be screened from public view by a fence or landscaping approved by the ARC, unless the screening materially affects the economic installation of the Solar Energy Panel (as determined by the ARC in its reasonable discretion) or degrades the operational performance quality of the Solar Energy Panel by more than ten percent (10%);

(b) If roof-mounted, then (i) no part of the Solar Energy Panel may extend above the roof line of the Home on which it is installed, (ii) no Solar Energy Panel may be

installed on any roof facing a street unless the Solar Energy Panel conforms to the slope of the roof and the top edge of the Solar Energy Panel is parallel to the roof ridge, and (iii) the Solar Energy Panel frame, support brackets and visible piping and wiring are painted to coordinate with the roofing materials; and

(c) The Solar Energy Panel meets applicable health and safety standards and requirements imposed by state and local permitting authorities.

The ARC may adopt additional rules and regulations governing the installation, safety, placement, and screening of a Solar Energy Panel, provided that such rules and regulations do not conflict with RCW 64.90.510 or other applicable laws. For purposes of this Section, "Solar Energy Panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in: (a) the heating or cooling of a structure or building; (b) the heating or pumping of water; (c) industrial, commercial, or agricultural processes; or (d) the generation of electricity.

4.20 Window Treatments. Aluminum foil, reflective film, newspapers or similar treatments shall not be placed on windows or glass doors. All Homes must have interior window coverings installed within 90-days of close of escrow.

4.21 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 no more than forty-five (45) days before the celebrated holiday, and removed within thirty (30) days after the celebrated holiday

4.22 Fire Sprinkler Systems. All Lots shall be required to have fire sprinkler systems installed, and approved, as per the provisions of the plans or Plat for Magnolia Heights PUD. Each Owner shall be responsible for testing and maintaining the sprinkler system within their Home.

4.23 Mailboxes and Other Delivery Boxes. Mailboxes shall be installed only in groups of boxes in accordance with the requirements of the United States Postal Service and applicable governmental authorities. Individual mailboxes are prohibited. Newspaper boxes and any other delivery boxes may not be installed unless first approved as to location and design by the Architectural Review Committee.

4.24 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 Areas 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.

4.25 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. Following receipt of proceeds from an insurance claim for damages, the Owner must commence such work within thirty (30) days after the damage occurs and must complete the work within six (6) months thereafter.

4.26 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. 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). No such buildings shall be used as additional living space and none shall contain any plumbing.

4.27 Owner's Maintenance Obligations. Each Owner shall maintain the Owner's Lot and improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create an unsightly appearance or a fire or other hazard. Such maintenance shall include, without limitation, exterior painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights, fences and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the Architectural Review Committee. In addition, each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Lot and the adjacent public grass and street tree strip maintained and neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time approved by the Board.

4.28 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 Magnolia Heights, 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 street trees, front, rear and side yards, and the exterior of buildings. All maintenance performed on behalf of Lot Owners shall be at the Owners expense

4.29 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, attached hereto as Exhibit A.

4.30 Ordinances and Regulations. The standards and restrictions of this Article 4 shall be the minimum required. To the extent the ordinances and regulations of the City of Washougal are more restrictive, or provide for a higher or different standard, the ordinances and regulations of the City of Washougal or Clark County shall prevail.

4.31 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.

4.32 Security. The Association is not responsible for security of the neighborhood any Homes. The Owners are exclusively responsible for security of their Home and Property. **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.**

Article 5 Common Areas

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 Areas except by Owners and their invitees. There shall be no obstruction of any part of the Common Areas. Nothing shall be stored or kept in the Common Areas without the prior written consent of the Board of Directors. No alterations or additions to the Common Areas 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 Areas. Nothing shall be stored or kept in the Homes or Common Areas, which will increase the rate of insurance on the Common Areas, or other Association insurance, without the prior written consent of the Board. No motorized vehicles, tents, parking or fires are allowed on the Common Areas.

5.2 Maintenance of Common Areas. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Areas, including, but not by way of limitation, all drainage systems, landscaping, irrigation systems, benches, Common Area lighting, fencing, pathways, private roads, and any other improvements that may be included in Common Areas, or as set forth on the Plat of Magnolia Heights PUD. Street lighting will be maintained by the HOA as set forth herein. The Association shall keep the Common Areas 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 Areas in neat condition.

5.3 Alterations to Common Areas. Only the Association may construct, reconstruct, or alter any improvement situated upon the Common Areas. 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 this 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. Pursuant to Section 10.7 below, 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 Areas) 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. The Association shall be responsible for all landscaping located in any Common Areas properties, as provided in Section 3.4 (g). All landscaping on any portion of the Common Areas 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.

5.6 Condemnation of Common Areas. If all or any portion of the Common Areas 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 Areas. In the event any Common Areas 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 RCW Chapter 64.90, 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. 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.

6.2 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.

6.3 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.

6.4 Applications and Proposals. All plans and specifications for approval by the Architectural Review Committee must be submitted at least thirty (30) working days prior to the proposed construction starting date.

6.5 Applications and Proposals. All plans and specifications for approval by the Architectural Review Committee must be submitted at least thirty (30) working days prior to the proposed construction starting date.

6.6 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

6.7 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 intended for Magnolia Heights. Consideration such as siting, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots, 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 approve of any proposed work.

6.8 ARC Decision. The ARC shall render its approval or denial decision, with respect to the construction proposal, within thirty (30) 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, as addressed in Section 6.15 below.

6.9 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.

6.10 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

6.11 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.

6.12 Notice of Non-compliance. 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.

6.13 Non-Compliance Hearing. After receiving notice, should the Owner fail to diligently commence to remedy such non-compliance, in accordance with the provisions of the notice of non-compliance referenced in Section 6.12 above, 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 remove the noncomplying improvement; remedy the non-compliance; or 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 therefrom.

6.14 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.

6.15 ARC Limitations.

(a) Common Areas Considerations. The ARC will only have authority to make decisions related to the Lots and not the Common Areas. Any architectural or design considerations on the Common Areas will be solely within the power of the Board of Directors. Construction by the Declarant is presumed to have been approved and is thereby exempt from this review. In all cases where 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.

(b) Municipal Regulations. 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.

(c) Defect Liability. PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING, STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ARC, THE BOARD OF DIRECTORS, THE MEMBERS, THE MANAGING AGENT, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY FOR THESE MATTERS, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. OWNER IS SOLELY RESPONSIBLE FOR ALL IMPROVEMENTS, PERMITS AND COSTS OF SAID WORK.

(d) General 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.

Article 7

Magnolia Heights PUD Homeowners Association

7.1 Association Powers. The Association shall be a non-profit, mutual benefit corporation established under the Washington Statutes and have all the powers granted to it by said Statutes, including RCW 64.90.405.

7.2 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 Bylaws, the Articles of Incorporation, and any Rules, Regulations or amendments thereof

7.3 Proxy. Each Owner may cast his/her vote in person, pursuant to a proxy executed by the Owner, or by written ballot. 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.

7.4 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.

7.5 Contracts Entered Into by Declarant or 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's Rights

8.1 Interim Board and Officers. The Declarant hereby reserves administrative control of the Association. The Declarant, in its sole discretion, shall have the right to appoint and remove members of the Interim or "first" Board of Directors, which shall manage the affairs of the Association, and which shall be vested with all powers and rights of the Board of Directors. The Interim Board shall consist of one to three members.

8.2 Turnover Meeting. Pursuant to RCW 64.90.415, the Declarant control shall terminate and Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the Owners:

(a) As required by RCW 64.90.415. Within the timelines and in compliance with all provisions of RCW 64.90.415; or

(b) Declarant's Earlier Election. At such earlier time as Declarant may elect in writing.

The Declarant shall give notice of the meeting to each Owner as required by RCW 64.90.415 and RCW 64.90.445(1)(c). If the Declarant does not call the meeting required under this Section, any Owner may do so. At the transition meeting, the board elected by the Lot Owners

must be elected in accordance with RCW 64.90.410(2). There is no quorum requirement for the turnover meeting.

8.3 Board of Directors. At and following Turnover Meeting, the Board of Directors of the Association shall be comprised of three (3) directors. The Directors elected at the Turnover Meeting shall serve for terms as specified herein. Terms of office shall be staggered such that one (1) Director shall serve for a term of three-years, one (1) Director for a term of two-years, and one (1) Director for a term of one-year. At all subsequent Annual Meetings, the term of office for elected Directors will be 3 years. Said terms of office will be chosen by the elected Directors subsequent to the election, but no later than at their first Board of Directors meeting following their election. The Turnover Meeting may serve as the annual meeting of the corporation for the year in which it is held. The Directors will be elected by a plurality of the total membership of the Magnolia Heights PUD Homeowners Association. In the event of a vacancy occurring on the Board, the position of such director(s) shall be filled in accordance with the terms and provisions of the Bylaws, attached hereto as Exhibit A, through appointment by the Board of Directors. The officers of the Board of Directors shall be chosen by the Directors no later than their first meeting subsequent to the Turnover Meeting, or thereafter subsequent to each Annual Meeting, and shall be for a term of one-year as specified in the Bylaws.

Article 9 Declarant's Special Rights

9.1 General. Declarant is undertaking the work of developing Lots and other improvements within Magnolia Heights. 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 any Common Areas and each Lot on the Property, the Declarant shall have the special rights set forth in this Article 9.

9.2 Marketing Rights. Declarant or assignees 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 Areas.

9.3 Declarant's Easements. The Declarant has reserved easements over the Property as more fully described in Article 3.3, Sections (c) and (d) hereof.

9.4 Appearance and Design of Magnolia Heights. Declarant shall not be prevented from changing the exterior appearance of any Common Areas, including the landscaping, entryway monument, or any other matter directly or indirectly connected with the Property in any manner deemed desirable by Declarant, provided that the Declarant obtains governmental consents as required by law. Declarant or its Approved Builders may change the exterior designs of Homes and Lots from initial plans and provisions in this document, without notice. This may include designs, colors, and type of materials, provided Declarant or its Approved Builders obtain any necessary governmental consent.

9.5 Construction by Declarant or Approved Builders. All construction by Declarant or Approved Builders is presumed to have been approved by the ARC and to meet 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 Areas owned by the Association, including maintenance and administrative costs 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."

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 Magnolia Heights 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. Upon the conveyance of the first Lot to an Owner other than Declarant, a successor Declarant or an Approved Builder, assessments are to be levied against all Lots, in accordance with their allocated interests for common expense liabilities. Assessments for common expenses and those specially allocated expenses that are subject to inclusion in a budget must be made at least annually based on a budget adopted at least annually by the association in the manner provided in RCW 64.90.525.

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 be the calendar year. 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.

10.5 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: (a) the projected income to the association by category; (b) the projected common expenses and those specially allocated expenses that are subject to being budgeted, both by category; (c) the amount of the assessments per Lot and the date the assessments are due; (d) the current amount of regular assessments budgeted for contribution to the reserve account; (e) a statement of whether the association has a reserve study that meets the requirements of RCW 64.90.550 and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; and (f) the current deficiency or surplus in reserve funding expressed on a per Lot basis.

The Board shall annually distribute a copy of the budget to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, pursuant to the Bylaws, within thirty days after adoption of any proposed budget, and at such time the board shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than fourteen (14) nor more than fifty (50) days after providing the budget. Whether or not a quorum is present, the budget and the assessments against the Lots included in the budget shall be ratified, unless the budget is rejected by the Lot Owners of Lots to which a majority of the votes in the association are allocated or any larger percentage specified in the Declaration. If the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Lot Owners continues until the Lot Owners ratify a subsequent budget proposed by the board. The assessments in the budget are to be collected at intervals, as determined by the Board of Directors, and may include both operating

(a) **Allocation of Assessments.** The total amount in the budget shall be charged against all sold Lots as annual assessments. All lots will share equally in the Common Expenses of the Association.

(b) **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, pursuant to the terms of the Bylaws.

10.6 Reserve Funds.

(a) Reserve Fund for Replacing Common Elements. The Declarant and the Association shall at all times comply with the provisions of RCW 64.90.535, RCW 64.90.540, RCW 64.90.545, RCW 64.90.550, RCW 64.90.555 and RCW 64.90.560 with respect to reserve accounts and reserve funds. 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 Areas, 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 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 thereto. 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 the Property. 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.

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 and Maintenance Plan. So long as required by Washington law, the Board of Directors shall conduct a reserve study no less than every three (3) years, and shall annually review and update the existing study upon any Association owned Common Areas to determine the requirements of the reserve fund described 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. Annually, in concurrence with the reserve study review, the Board shall also review and update, as necessary, an Association Maintenance Plan to reflect, at a minimum, recent maintenance that has taken place, changes in the physical status of a reserve component, or the addition of a physical component that has come to the Board's attention

10.7 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 shall be interpreted by any applicable provisions of RCW Chapter 64.90, relative to the imposition of fines and penalties.

(c) Repairs. To make repairs or renovations to the Common Areas 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. 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.

10.8 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 shall be held in the Current Operating Account and those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements shall be held in 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 from 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.

10.9 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 obligations 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 RCW Chapter 64.90. 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) Application. All payments shall be applied first to delinquent assessments, then to collection costs, then to late charges, and then to interest.

(c) 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 Clark County, Washington, 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 RCW Chapter 64.90, 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 RCW Chapter 64.90. 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.

(d) 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 herein in Article 4.

(e) 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.

(f) 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 **Insurance**

11.1 Types of Insurance. For the benefit of the Association and the Owners, the Board of Directors shall obtain, maintain at all times, and pay for out of the Operations Fund, the types of insurance described herein. Such policies shall be issued by reputable insurance companies, authorized to do business in the State of Washington. Such policies shall provide that the coverage thereunder cannot be canceled or substantially modified without at least 10 days written notice to the Association. The named insured on the policy shall read Magnolia Heights PUD Homeowners Association.

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

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

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

11.3 Property Damage Insurance. The Association shall obtain, and maintain in effect, fire and extended coverage casualty insurance (including coverage for damage resulting from vandalism and malicious mischief) with respect to the Common Areas (including any insurable improvements in the Common Areas) in an amount equal to 100% of the replacement cost thereof.

(a) The casualty coverage may be obtained on a "blanket" basis.

(b) The casualty insurance 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.

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

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

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

(b) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the insurance issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

11.6 Insurance by Lot Owners. Each Owner shall be responsible for obtaining, at his or her own expense, homeowner's insurance covering the improvements on the Owner's Lot and liability resulting from use or ownership of the Lot. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained under this section by the Owners.

11.7 Planned Community Requirements. The insurance maintained by the Association shall comply with the requirements of Washington state law including but not limited to RCW 64.90.

Article 12

General Provisions

12.1 Records. The Board of Directors shall preserve and maintain all records required by RCW 64.90.495(1), including but not limited to, the 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 or Agent for providing copies.

(a) Inspection by Members and Mortgagees. Subject to RCW 64.90.495(2) - (4), this Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board of Directors and committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board of Directors shall prescribe.

(b) Rules for Inspection. The Board of Directors shall establish reasonable rules with respect to:

- Notice to be given to the custodian of the records;
- Hours and days of the week when such an inspection may be made; and
- Payment of the cost of reproducing copies of documents

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

12.2 Indemnification of Directors, Officers, Employees and Agents. To the fullest extent allowed by applicable Washington law, 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 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 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.

12.3 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. If action is brought to enforce any provision of this Declaration, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs of the action, including the cost of depositions and expert witness fees, at arbitration and/or trial and on appeal.

12.4 Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development and/or sale in the Property) all agreements and determinations, including settlement agreements regarding litigation involving the Association, all fully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property

12.5 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably implied by the existence of any right or privilege given to it therein, or reasonably necessary to effectuate any such right or privilege.

12.6 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors, or its designee, shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Property

12.7 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.

12.8 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. However, amendments, which do not constitute rescission of the planned development, may be adopted as provided in Section 12.9 below. Additionally, any such rescission that affects the Common Areas shall require the prior written consent of the City of Washougal and/or Clark County.

12.9 Amendment. Except as otherwise provided in 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. Any amendment must be executed, recorded and certified as provided by law, and a copy provided to all Owners of record within 30-days prior to the effective date of the amendment. 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 RCW Chapter 64.90. Provided further, so long as the Declarant owns 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.

12.10 Release of Right of Control. The Declarant may give up their right of control in writing at any time by giving notice to the Association, subject to any applicable County Ordinance or State Law, and following the Turnover provisions as set forth herein.

12.11 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.

12.12 Unilateral Amendment by Declarant. Upon thirty-days' advance notice to all Lot Owners, the Declarant may, without a vote of the Lot Owners or approval by the Board, unilaterally adopt, execute, and record a corrective amendment or supplement to the governing documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarify an

ambiguity in the governing documents with respect to an objectively verifiable fact including, without limitation, recalculating the undivided interest in the common elements, the liability for Common Expenses, or the number of votes in the Association appertaining to a Lot, within five years after the recordation or adoption of the governing document containing or creating the mistake, inconsistency, error, or ambiguity. Any such amendment or supplement may not materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred.

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

1. Plat;
2. Declaration of Covenants, Conditions and Restrictions;
3. Articles of Incorporation;
4. Bylaws; then
5. Rules and Regulations.

- **SIGNATURE FOLLOWS ON PAGE 37** -

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has executed this instrument this ____ day of _____, 2020.

McKever Enterprises, LLC
a Washington Limited Liability Company

By: Robert S. Rondeau

