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After Recording Return to:

Edward P. Fitch
Fitch Law Group, PC
210 SW 5th Street, Suite 2
Redmond, OR 97756

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTION FOR WAVERLY**

A "55 AND OVER" COMMUNITY

Previously recorded as Deschutes County Document No. 2007-52475, dated September 28, 2007

Declarants: Bobjudy LLC, an Oregon limited liability company
Waverly Associates LLC, an Oregon limited liability company

Subdivision: Waverly

**CERTIFICATION OF ELECTION RESULTS
TO AMEND THE COVENANTS, CONDITIONS AND RESTRICTIONS**

for the

WAVERLY SUBDIVISION

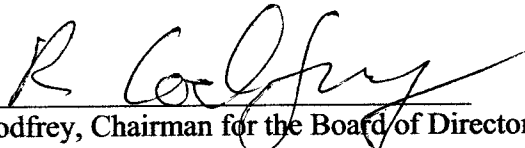
The undersigned, chairman for the Board of Direction for Waverly Subdivision Homeowners Association, hereby notes the following:

1. ELECTION. An election was held for all owners of the subdivision concerning the adoption of the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Waverly Subdivision, a copy of which is attached hereto as Exhibit "A". The lots within the subdivision are described in Exhibit "B" attached hereto.

2. ELECTION RESULTS. Results of the election were 28 votes for and 1 vote against. Under the provisions of section 11.6 of the current Covenants, Conditions, and Restrictions for the Waverly Subdivision, the Amendment is deemed approved.

3. BOARD OF DIRECTORS. The Board of Directors certified the result and directed that this Certification and the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Waverly Subdivision be recorded with the Deschutes County Clerk.

DATED: This 1st day of May, 2014.

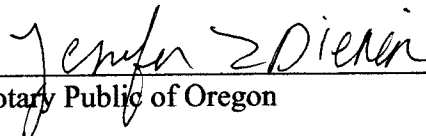


Bob Godfrey, Chairman for the Board of Directors
for the Waverly Homeowners Association

STATE OF OREGON)
) ss.
County of Deschutes)

Personally appeared before me this 1 day of May, 2014, the above-named BOB GODFREY, and acknowledged the foregoing instrument to be his voluntary act and deed.





Notary Public of Oregon

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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAVERLY**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAVERLY (this "**Declaration**"), made effective upon its recording in Deschutes County, Oregon, is made by WAVERLY HOMEOWNERS ASSOCIATION, an Oregon nonprofit corporation (the "**Association**"), with the consent of BOBJUDY LLC, an Oregon limited liability company, and WAVERLY ASSOCIATES LLC, an Oregon limited liability company (Bobjudy LLC and Waverly Associates LLC are sometimes collectively referred to herein as the "**Declarant**").

RECITALS

WHEREAS, Redmond Communities, LLC ("**Original Declarant**") created a Class I planned community under ORS 94.550 et seq. by recording the following: (1) the planned unit development plat of *Waverly* on October 3, 2007 in Book H of Plats, at Page 517, as recorded at 2007-52474, Deschutes County Records (the "**Plat**"); and (2) the Declaration of Covenants, Conditions and Restrictions for Waverly on September 28, 2007 as Document No. 2007-52475, Deschutes County Records (the "**Original Declaration**");

WHEREAS, the Original Declaration subjected the following real property to the terms of the Original Declaration (collectively, the "**Property**");

Lots 1 through 33; Common 1 through Common 5; NW Hemlock Lane; NW Greenwood Court; and the private alley south of Lots 8 through 15, all as shown on the Plat.

WHEREAS, Declarant is the successor to Original Declarant under the Original Declaration;

WHEREAS, Section 11.6 of the Original Declaration provides that the Original 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 the Original Declaration and the consent of the "Declarant" so long as the "Declarant" owns any lot subject to the Original Declaration; and

WHEREAS, by approval of more than seventy-five percent (75%) of total votes for all lots subject to the Original Declaration and the consent of Declarant (as the successor to Original Declarant), the Association desires to amend and restate the Original Declaration to establish *Waverly* as a 55 and over age restricted community, subject to the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions, and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and

intended to benefit and burden each lot and other portions of the Property in order to maintain within the Property a community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1 - DEFINITIONS

1.1 “**Act**” shall mean the Oregon Planned Community Act, being ORS 94.550 et seq., as amended from time to time.

1.2 “**Annual Assessments**” shall mean Base Assessments, Reserve Account Assessments and Specific Assessments which may be levied by the Association in each of its fiscal years pursuant to the terms of Article 4.

1.3 “**ARC**” shall mean the architectural review committee established pursuant to the terms of Section 8.1.

1.4 “**Association**” shall mean the Waverly Homeowners Association, an Oregon nonprofit corporation, established for the purposes set forth herein.

1.5 “**Base Assessments**” shall mean the assessments imposed upon all Lots for services rendered or expenses incurred by the Association pursuant to the terms of Section 4.2.

1.6 “**Board**” shall mean the Board of Directors of the Association.

1.7 “**Builder**” shall mean any individual or company who purchases one or more Lots for the purpose of constructing Units for resale to consumers in the ordinary course of its business.

1.8 “**Bylaws**” shall mean the Amended and Restated Bylaws of Waverly Homeowners Association attached hereto as **Exhibit A**, as amended from time to time.

1.9 “**City**” shall mean the City of Redmond, Oregon.

1.10 “**Common Areas**” shall mean those portions of the Property owned or leased by the Association, and easements granted to the Association, for the common use and benefit of the Owners, including any Improvements thereon. The Common Areas include Common 1, Common 2, Common 3, Common 4, Common 5, NW Hemlock Lane, NW Greenwood Court, and the private alley/access easement south of Lots 8 through 15, all as shown on the Plat. The definition of “Common Areas” specifically excludes Lots.

1.11 “**Common Maintenance Areas**” shall mean the Common Areas, and shall also mean any areas within public rights-of-way or located on adjacent property that the Association is required to maintain pursuant to the terms of this Declaration or which the Board deems

necessary, desirable or appropriate for the Association to maintain for the common benefit of the Owners.

1.12 "Conversion Date" shall be the date upon which Class B membership shall cease and be converted to Class A membership. Such date shall be the date which is the earlier of (i) the date on which all of the Lots within the Subdivision have been conveyed to Class A members; or (ii) upon written election of Declarant.

1.13 "County" shall mean Deschutes County, Oregon.

1.14 "Declarant" shall mean Waverly Associates LLC and Bobjudy LLC, their respective successors or assigns whom are designated as such in an instrument recorded in the Official Records of Deschutes County, Oregon.

1.15 "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Waverly and any amendments and supplements thereto made in accordance with its terms.

1.16 "Design Guidelines" shall mean the design guidelines adopted by the ARC or Declarant pursuant to Section 8.2, as amended or modified from time to time.

1.17 "Directors" shall mean the members of the Board.

1.18 "Fair Housing Law" shall mean and refer to the Fair Housing Act, 42 U.S.C. Sec. 3601, et seq. and the regulations promulgated thereunder, and applicable Oregon fair housing laws and regulations, as such laws and regulations are amended from time to time.

1.19 "Governing Documents" shall mean this Declaration and the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, all as may be amended from time to time.

1.20 "Improvement" shall mean every structure or improvement of any kind, including, but not limited to, a Unit, landscaping, patios, decks, fences and walls (including retaining walls), driveways, sidewalks, fixtures, storage shelters, pools, hot tubs, athletic facilities and other products of construction efforts (including exterior painting, alterations, and reconstruction).

1.21 "Lot" shall mean the plots of land indicated as such on the Plat; provided, however, that (a) Lot 3 include Lot 3 as shown on the Plat plus a portion of Lot 4 as shown on the Plat pursuant to the instrument recorded as Document No. 2013-038640, Deschutes County Records; (b) "Lot 5" includes Lot 5 as shown on the Plat plus a portion of Lot 4 as shown on the Plat pursuant to the instrument recorded as Document No. 2013-038643, Deschutes County Records; (c) "Lot 16" includes Lot 16 as shown on the Plat plus a portion of Lot 17 as shown on the Plat pursuant to the instrument recorded as Document No. 2013-038642, Deschutes County Records; (d) "Lot 18" includes Lot 18 as shown on the Plat plus a portion of Lot 17 as shown on the Plat pursuant to the instrument recorded as Document No. 2013-038641, Deschutes County

Records; and (e) Lots 4 and 17 as shown on the Plat are no longer separate "Lots" under this Declaration. Presently there are 29 Lots within the Subdivision, but the number of Lots within the Subdivision may be reduced as provided below. In the event that a Lot is consolidated with another Lot or portion thereof to create a larger parcel of land upon which a single Unit will be constructed pursuant to Section 12.32, the resulting larger consolidated parcel of land shall automatically be considered a single Lot, and the total number of Lots within the Subdivision and the total number of votes in the Association shall be reduced accordingly. The term "Lot" specifically excludes Common Areas and Common Maintenance Areas.

1.22 "Mortgagee" shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage," as used herein, shall include deeds of trust. "**First Mortgagee**" as used herein, shall mean a holder of a mortgage with priority over other mortgages. As used in this Declaration, the term "Mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term "holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

1.23 "Owner" shall mean Declarant and every other record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.24 "Plat" shall mean the plat of *Waverly*, recorded on October 3, 2007 in Book H of Plats, at Page 517, as recorded at 2007-52474, Deschutes County Records.

1.25 "Property" shall mean Lots 1 through 33; Common 1 through Common 5; NW Hemlock Lane; NW Greenwood Court; and the private alley south of Lots 8 through 15, all as shown on the Plat.

1.26 "Reserve Account Assessments" shall mean assessments established pursuant to the terms of Section 4.3.

1.27 "Rules and Regulations" shall mean the rules and regulations adopted by the Association from time to time in accordance with Article 12 of the Bylaws.

1.28 "Special Assessments" shall mean any special charges established pursuant to the terms of Section 4.5.

1.29 "Specific Assessments" shall mean the charges imposed upon some, but less than, all Lots for services rendered or expenses incurred pursuant to Section 4.4.

1.30 "Subdivision" shall mean *Waverly*, as shown on the Plat.

1.31 "Transitional Advisory Committee" shall mean the committee described in Section 4.2 of the Bylaws.

1.32 "Turnover Meeting" shall mean the meeting of the Owners called to turn over control of the Association to the Class A members, as further described in the Bylaws.

1.33 "Unit" shall mean any residential dwelling, whether attached or detached, situated on a Lot intended for occupancy by a single family.

ARTICLE 2— AGE RESTRICTION

2.1 General. Except as set forth in Section 2.5 below, the Units within the Subdivision are intended for the housing of persons 55 years of age or older, although younger persons are not restricted from occupying a Unit along with a person 55 years of age or older so long as such co-occupancy is in compliance with the terms of this Article. In addition, certain exceptions may be made pursuant to Section 2.2 below. The provisions of this Article are intended to be consistent with, and are set forth in order to comply with, the Fair Housing Laws regarding discrimination based on familial status. Declarant shall have the right, until the Turnover Meeting, to unilaterally amend this Article for the purpose of making this Article consistent with Fair Housing Laws and any judicial decisions arising thereunder or otherwise relating thereto in order to maintain the intent and enforceability of this Article.

2.2 Restrictions on Unit Occupancy.

2.2.1 Except as may otherwise be permitted pursuant to this subsection and subsection 2.2.4 below, each occupied Unit shall at all times have as a permanent occupant at least one person who is 55 years of age or older (the "**Qualifying Occupant**"), except that in the event of (1) the death of a person who was the sole Qualifying Occupant of a Unit; (2) a legal separation or divorce resulting in the Qualifying Occupant of a Unit moving out of the Unit; or (3) the removal by reason of incapacitation (e.g., being placed in a nursing home) of the Qualifying Occupant, the spouse (or former spouse, in the case of a divorce) and any other members of the household occupying the Unit in compliance with this Article prior to the death, legal separation or divorce, or incapacitation of such Qualifying Occupant, may continue to occupy the Unit provided that the requirements of the Fair Housing Laws are not violated by such occupancy. For purposes of this Section 2.2, an occupant shall not be considered a "permanent occupant" unless such occupant considers the Unit to be his or her legal residence and actually resides in the Unit for at least six (6) months during every calendar year or such shorter period as the Unit is actually occupied by any person.

2.2.2 No Unit shall be occupied by any person under the age of 21. For purposes of this subsection, a Unit shall be deemed to be "occupied" by any person who stays overnight in the Unit more than twenty-one (21) days in any sixty (60) day period or more than thirty (30) days in any twelve (12) month period.

2.2.3 Nothing in this Article is intended to restrict the ownership of or transfer of title to any Unit or Lot; however, no Owner may occupy the Unit unless the requirements of this

Article are met, nor shall any Owner permit occupancy of the Unit in violation of this Article. Owners shall be responsible for (1) including a statement that the Units within the Subdivision are intended for the housing of persons 55 years of age or older, as set forth in Section 2.1, in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Unit, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and (2) clearly disclosing such intent to any prospective tenant, purchaser, or other potential occupant of the Unit. Every lease of a Unit shall provide that failure to comply with the requirements and restrictions of this Article shall constitute a default under the lease.

2.2.4 Any Owner, in writing, may request that the Board of Directors make an exception to the requirements of this Article with respect to his or her Unit. The Board of Directors may, but shall not be obligated to, grant exceptions in its sole discretion, provided that the requirements for exemption from Fair Housing Laws would still be met and provided, further, that the Board of Directors shall not grant any exception to the minimum age requirement set forth in Section 2.2.2 above.

2.3 Change in Occupancy; Notification. In the event of any change in occupancy of any Unit as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Unit shall immediately notify the Board of Directors in writing and provide to the Board of Directors the names and ages of all current occupants of the Unit and such other information as the Board of Directors may reasonably require to verify the age of each occupant. In the event that an Owner fails to notify the Board of Directors and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Owner's Unit and Lot for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this Article, in addition to all other remedies available to the Association under this Declaration and applicable law.

2.4 Monitoring Compliance; Appointment of Attorney-in-Fact.

2.4.1 The Association shall maintain age records on all occupants of Units. The Board of Directors shall adopt and publish policies, procedures, and rules to monitor and maintain compliance with this Article, including policies regarding visitors, updating of age records, the granting of exemptions pursuant to Section 2.2.4, and enforcement. The Association shall periodically distribute such policies, procedures, and rules to Owners and make copies available to Owners, their tenants, and Mortgagees upon reasonable request.

2.4.2 The Association shall have the power and authority to enforce this Article in any legal manner available, and the Board of Directors shall take such action as the Board of Directors deems necessary and appropriate to monitor compliance and enforce this Article, in order to preserve its ability to enforce this Article and the Subdivision's eligibility for exemption from the Fair Housing Laws. Such action may include, without limitation, conducting a census of the occupants of the Units, requiring copies of birth certificates or other proof of age for each

occupant of the Unit to be provided to the Board of Directors on a periodic basis, and taking action to evict the occupants of any Unit which is not in compliance with the requirements and restrictions of this Article. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT, OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS ARTICLE. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Unit that, in the judgment of the Board of Directors, are reasonably necessary to monitor compliance with this Article.

2.4.3 Each Owner shall be responsible for ensuring compliance of its Unit with the requirements and restrictions of this Articles and the rules and regulations of the Association adopted hereunder by itself and by its tenants and other occupants of its Unit. EACH OWNER, BY ACCEPTANCE OF TITLE TO A LOT, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION THAT MAY ARISE FROM FAILURE OF SUCH OWNER'S UNIT TO SO COMPLY.

ARTICLE 3—ASSOCIATION

3.1 Membership. The Declarant and every other Owner of a Lot by virtue of ownership of such Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and shall not be separated from ownership of any Lot. Transfer of ownership of a Lot shall automatically transfer membership in the Association. Without any other act or acknowledgment, Owners shall be governed and controlled by the Governing Documents. There shall be two (2) classes of membership in the Association, Class A membership and Class B membership, as described in Section 3.2.

3.2 Voting Rights. The Association shall have two (2) classes of voting membership:

3.2.1 Class A Membership

Class A members shall be all Owners with the exception of Declarant (provided that Declarant shall become Class A members from and after the Turnover Date) and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot. If the co-Owners of a Lot cannot agree upon the vote, then the vote of the Lot shall be disregarded in determining the particular matter at issue.

3.2.2 Class B Membership

The Class B member shall be Declarant, who is entitled to three (3) votes for each Lot owned. The Class B membership shall terminate and become converted to Class A membership on the Conversion Date.

3.3 Suspension. All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to Article 4 or is otherwise in default under the Governing Documents. The Board may also suspend an Owner's rights to use the Common Areas during such period of default.

ARTICLE 4— ASSOCIATION FINANCES

4.1 Budgeting.

4.1.1 At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated operating expenses and Reserve Account Assessments of the Association for the coming fiscal year. The budget may, at the discretion of the Board, include an operating expense reserve. The budget shall also reflect the sources and estimated amounts of funds to cover such operating expenses and Reserve Account Assessments, which may include any surplus from prior years, any income expected from sources other than assessments levied against the Lots, and the amount estimated to be generated through the levy of assessments against the Lots. Finally, the budget shall differentiate between expenses applicable to all Lots versus expenses applicable to some, but not all, Lots (expenses applicable to some, but not all, Lots shall only be assessed against those Lots as provided below).

Estimated operating expenses and Reserve Account Assessments shall be allocated equally among all Lots.

4.1.2 The Board shall send a copy of the final budget, together with notice of the amount of the Annual Assessments that will be levied against the Lots pursuant to the budget, to each Owner within thirty (30) days after the adopting the budget. The budget shall automatically become effective unless disapproved by the vote of a majority of the Class A members.

The Association has no obligation to call a meeting for purposes of considering the budget, but the Owners may call a special meeting for such purpose as provided in the Bylaws. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

4.1.3 The Board may revise the budget and adjust the assessments levied pursuant thereto from time to time during the year, subject to the same notice and right to disapprove the revised budget as set forth above.

4.2 Base Assessments. Upon determining the total amount of operating expenses (including an operating reserve, if desired by the Board) for the coming fiscal year, the Association shall allocate such amount equally among all Lots subject to assessment (as determined by Section 4.7 below). The amount allocated to each Lot shall then be levied as a Base Assessment.

Declarant may, but is not obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future

assessments due from Declarant (if any), or a loan, as determined by Declarant in its sole discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

4.3 Replacement Reserve Assessments.

4.3.1 As a part of any Annual Assessment the Board shall obtain from Owners contributions for a reserve account (the “**Reserve Account**”) established for all Improvements and other items included within the Common Maintenance Areas which will normally require major maintenance, repair or replacement, in whole or in part, in more than one (1) and less than thirty (30) years, for exterior painting (if the Common Maintenance Areas includes exterior painted surfaces), and for other items, whether are not included within the definition of Common Maintenance Areas if the Association has responsibility to maintain; provided, however, that the Reserve Account need not include funds to maintain, repair or replace Improvements or other items that can reasonably be funded from Base Assessments or Specific Assessments or other funds or accounts of the Association, or funds for Improvements or other items for which the Owners (and not the Association) are responsible for maintenance, repair and replacement under the terms of the Governing Documents.

4.3.2 The Declarant shall conduct an initial reserve study (a “**Reserve Study**”) and an initial maintenance plan (a “**Maintenance Plan**”) to determine the Reserve Account requirements. The Reserve Study shall include: (a) identification of all items for which reserves are or will be established; (b) include the estimated remaining useful life of each item as of the date of the Reserve Study; and (c) include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of the item’s useful life. The Maintenance Plan shall: (i) describe the maintenance, repair and replacement to be conducted; (ii) include a schedule for the maintenance, repair and replacement; (iii) be appropriate to the size and complexity of maintenance, repair and replacement responsibility; and (iv) address issues that include, but are not limited to, warranties and the useful life of the items for which the Association has maintenance, repair and replacement responsibility. The Board shall thereafter conduct an annual Reserve Study or review and update an existing Reserve Study to determine the Reserve Account requirements. The Board shall also review and update the Maintenance Plan as necessary.

4.3.3 Contributions to the Reserve Account (such assessments, “**Reserve Account Assessments**”) shall be in an amount (i) initially determined by Declarant based upon the results of the initial Reserve Study or other reliable information and (ii) thereafter by the Board from time to time based on the results of the annual Reserve Study (or review and update of an existing Reserve Study). Reserve Account Assessments for Improvements or other items applicable to all Lots shall be allocated equally among all Lots, while Reserve Account Assessments for Improvements or other items applicable to some, but not all Lots, shall only be allocated among the affected Lots.

Reserve Account Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. The Reserve Account must be a separate account holding only Reserve Account Assessments and other funds intended to be used for the same purpose maintained a federally insured bank or other depository institution with branches in Oregon, and any funds in the Reserve Account may be expended only for the purposes for which the Reserve Account was established as described above.

4.3.4 After the Turnover Meeting, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet unexpected increases in expenses if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of such 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 of time.

4.3.5 At any time after the second (2nd) year after the Turnover Meeting, future replacement reserve assessments for the Reserve Account may be increased or reduced by the vote of Owners of Lots representing seventy-five (75%) of the Owners.

4.3.6 Nothing in this Section 4.3 prohibits the prudent investment of Reserve Account funds, subject to any constraints imposed by the Board or the Governing Documents.

4.4 Specific Assessments. The Association shall have the authority to levy assessments to satisfy the expenses of undertaking a particular project or effort that benefit some, but less than all, of the Lots (such assessments, "**Specific Assessments**"). Specific Assessments shall be allocated equally against only the Owners of those Lots that benefit from the project, effort or other specific undertaking by the Association, unless the Association, in its reasonable discretion determines another method of apportionment more accurately reflects the benefit received by such Owners.

4.5 Special Assessments. The Board may levy "**Special Assessments**" against an Owner or all Owners in the following manner for the following purposes:

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

(b) To collect additional amounts necessary to make repairs or renovations to the Common Areas or Common Maintenance Areas if sufficient funds are not available from the operating budget or Reserve Account, by vote of a majority of the Board; and

(c) To make capital acquisitions, additions or improvements, by vote of Owners holding at least seventy-five percent (75%) of the votes of the Association.

Special Assessments for expenses applicable to all Lots shall be allocated equally among all Lots, while Special for expenses applicable to some, but not all Lots, shall only be allocated among the affected Lots.

4.6 Reimbursement Assessments. The Association shall have the authority to levy a reimbursement assessment (each, a "**Reimbursement Assessment**") against any Owner and such Owner's Lot if (a) a failure to comply with this Declaration or the other Governing Documents has necessitated an expenditure of monies by the Association to effect compliance or resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot; or (b) corrective action of the Association has necessitated an expenditure of monies by the Association as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees. A Reimbursement Assessment, together with interest, costs, and reasonable attorney's fees, shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least ten (10) days' prior written notice to the Owner being assessed. If, within said ten (10) day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct the hearing not less than ten (10) nor more than thirty (30) days after the request by the Owner, and shall make its decision within thirty (30) days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

4.7 Commencement of Assessments.

4.7.1 Base Assessments and Specific Assessments. Declarant shall pay all operating expenses of the Association until Declarant elects to assess the Lots for Base Assessments and Specific Assessments as provided herein. The date of commencement of Base Assessments and Specific Assessments on the Lots (excluding any Lots owned by Declarant or a Builder, which shall be exempt as provided below) shall be determined by Declarant; however, in no event shall it commence later than the Turnover Meeting or if no Turnover Meeting is held, the date on which administration of the Association is turned over to the Class A members.

Any Lot owned by Declarant or a Builder is exempt from the payment of Base Assessments and Specific Assessments. Base Assessments and Specific Assessments shall commence as to a Lot owned by Declarant or a Builder on the date the Lot is conveyed to an Owner other than Declarant or a Builder.

4.7.2 Reserve Account Assessments. Reserve Account Assessments commence as to a Lot as of the date Declarant or a Builder conveys the Lot to an Owner other than Declarant or a Builder. Declarant and a Builder are exempt from the payment of Reserve Account Assessments.

4.7.3 All Other Assessments. Special Assessments and Reimbursement Assessments shall commence as to a Lot as of the date Declarant or a Builder conveys the Lot to an Owner other than Declarant or a Builder. Declarant and a Builder are exempt from the payment of Special Assessments and Reimbursement Assessments.

4.8 Obligation for Assessments. Each Owner, by accepting a deed for his, her or their Lot, is deemed to covenant and agree to pay all assessments authorized in this Declaration

or other Governing Documents. All assessments, together with interest, fines and late charges as determined by Board resolution, and collection costs (including reasonable attorneys' fees), shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. The Association may sue any person liable for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Annual Assessments on the basis of the last year for which an assessment was made, if any, until a new budget becomes effective and a new assessment is levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

No Owner may exempt himself from liability for assessments by non-use of the Common Areas, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

4.9 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, fines and late charges as determined by Board resolution, and collection costs (including reasonable attorneys' fees). Such lien shall be superior to all other liens, except (a) liens for real estate taxes and assessments and other levies which by law would be superior; and (b) the lien of any recorded first Mortgage made in good faith and for value. Such lien, when delinquent, may be foreclosed as provided in ORS 94.709 after the Association records a notice of lien containing the information required by and otherwise complying with the requirements of ORS 94.709 (2) and (3) in the deed records for Deschutes County, Oregon.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessments shall be levied on it; and (c) each other Lot shall be charged, in addition to usual assessments, its pro rata share of the assessments that would have been charged to such Lot had it not been acquired by the Association.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof for the benefit of any First Mortgagee shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability as to any

assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing, no sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof for the benefit of any First Mortgagee shall be deemed to extinguish any mortgage or lien which the Association has itself placed upon any property owned by the Association.

4.10 Interest; Late Fees; Fines. The Board, in its reasonable discretion, may from time to time adopt resolutions to set the rate of interest and to impose late fees and fines on delinquent assessments or for violations of the provisions of this Declaration or other Governing Documents as permitted by and subject to the requirements of ORS 94.630(1)(n). The adoption of such impositions by the Board shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the address of the Owners as contained in the records of the Association. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines (but not interest or late fees) for violation of this Declaration or other Governing Documents may not be imposed against an Owner or such Owner's Lot until the Owner is given an opportunity for a hearing as required by ORS 94.630(1)(n).

4.11 Acceleration of Assessments. If an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, on 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.

4.12 Certificate of Payment. The Association shall provide, within ten (10) business days of receipt of a written request from an Owner, a certificate signed by an officer of the Association setting forth (i) the amount of assessments due from the Owner and unpaid at the time the request is received, including Annual Assessments and all other assessments authorized in this Declaration, late fees, interest, fines and other charges, (ii) the percentage rate at which interest accrues on assessments that are not paid when due, and (iii) the percentage rate used to calculate the charges for late payments; provided, however, that the Association is not required to comply with the foregoing if the Association has commenced litigation by filing a complaint against an Owner and the litigation is pending when the certificate would otherwise be due. A properly executed certificate of the Association shall be binding upon the Association as of the date of its issuance as to the status of assessments on a Lot.

4.13 No Reimbursement to Declarant. The proceeds of any assessments shall not be used to reimburse Declarant for any capital expenditures incurred in construction or other improvements of Common Areas or Common Maintenance Areas, nor for the operation or maintenance of such facilities incurred before conveyance of such common facilities to the Association.

ARTICLE 5 -- EASEMENTS AND RIGHTS OF ENTRY

5.1 Plat Easements. The Property shall be subject to all easements delineated on the Plat.

5.2 Owners' Easements in Common Areas. Declarant grants to each Owner a perpetual, nonexclusive right and easement of use, access and enjoyment in and to the Common Areas, subject to the restrictions and limitations set forth in this Article and elsewhere in this Declaration.

5.3 Easement of Encroachment. Declarant grants reciprocal appurtenant easements of encroachments, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Areas and between adjacent Lots due to unintentional placement or settling or shifting of improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more the three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. In no event, however, shall an easement for encroachment exist if such encroachment occurred due willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

5.4 Easements for Utilities, Etc.

5.4.1 Declarant reserves for itself and the Association, for the benefit of the Property and any Additional Property, perpetual, nonexclusive blanket easements upon, across, over and under the Property and Additional Property for purposes of ingress, egress, installation, maintenance, repair and replacement of utilities and infrastructure; cable and other systems for sending and receiving data and/or other electronic signals; security and similar systems; walkways, pathways and trails; stormwater drainage systems; irrigation systems; sanitary sewer systems; street lights; signage; and entry features; provided, however, that the exercise of these easements does not unreasonably interfere with the use of any Lot. Declarant further reserves for itself and the Association the right to grant the benefit of any such easements to the City and other utility service providers.

5.4.2 Declarant also reserves for itself and the Association the nonexclusive right and power to grant and record such specific easements over the Property and Additional Property as may be necessary, in the sole discretion of Declarant or the Association, to exercise the rights and easements granted by the preceding subsection. The Owner of any Lot to be burdened by any easement granted pursuant to this Section 5.4 shall be given advance written notice of the grant, and the location of the easement on such Lot shall be subject to the written approval of the Owner (which shall not be unreasonably withheld, delayed or conditioned); provided, however, that an Owner shall be deemed to have consented to the location of an easement on his or her Lot if the Owner has not responded to a written request within thirty (30) days after such request was mailed to the Owner's address on record with the Association.

5.4.3 All work associated with the exercise of the easements described in this Section 5.4 shall be performed in such a manner as to minimize interference with the use and

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enjoyment of the property burdened by the easement. Upon completion of the work, the person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to commencement of the work, except for any improvements placed within utility easements in violation of the terms of this Declaration. The exercise of these easements shall not extend to permitting entry into any Unit without the Owner's consent, nor shall it unreasonably interfere with the use of any Lot by the Owner thereof. Except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

5.5 Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, successors and assigns a perpetual, nonexclusive easement over the Common Areas for purposes of enjoyment, use, access and development of any property now or hereafter owned by Declarant adjacent to or near the Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction and use of roads, sidewalks and walking paths, and for connecting and installing any and all utilities on such property.

Declarant agrees that it and its duly authorized agents, successors and assigns shall be responsible for any damage caused to the Common Areas as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway, sidewalk or walkway providing access to such property.

5.6 Easements for Maintenance, Emergency and Enforcement. Declarant grants to the Association easements over the Property and Additional Property as necessary to enable the Association to fulfill its maintenance responsibilities under this Declaration. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the terms of this Declaration and the other Governing Documents. Any such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in performance of their duties. Except in an emergency situation, entry onto a Lot shall only be during reasonable hours and after notice to the Owner.

5.7 Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign and correct any structure, improvement or condition (including, but not limited to, drainage issues) which may exist on any portion of the Property and Additional Property, and a perpetual, nonexclusive easement of access throughout the Property and Additional Property to the extent reasonably necessary to exercise such right. Except in an emergency situation, entry onto a Lot shall only be during reasonable hours and after notice to the Owner; provided, however, that no entry into a Unit is permitted without the consent of the Owner. The person exercising these easements shall promptly repair any resulting damage.

5.8 Perimeter Fence Easement. An easement is hereby declared for the benefit of the Declarant and the Association for the construction, maintenance, repair and replacement of fencing along the perimeter of the Property, whether or not such fencing is located on the Common Areas or Lots. Declarant, however, is under no obligation to construct any perimeter fencing. Any perimeter fencing constructed by Declarant shall be maintained by the Association as a Common Maintenance Area.

5.9 Retaining Wall Easement. Retaining walls may have been constructed by Declarant 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 the Association and 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 a Retaining Wall; increase any engineered load or alter design criteria; or cause damage to the Retaining Wall or surrounding properties. Any Lot Owner who takes such action, or who otherwise damages a Retaining Wall, shall be responsible for all resulting costs of repair and restoration of the Retaining Wall. This Section 5.9 shall not apply to retaining walls constructed by an Owner on its own Lot.

5.10 Special Declarant Easements. Declarant reserves for itself and its duly authorized agents, successors and assigns, perpetual, nonexclusive easements on, over and across the Common Areas for purposes of (a) the right to grant a walking trail easement on Common 2 to the City to satisfy a condition of project approval; (b) constructing and maintaining such facilities and activities as Declarant, in its sole discretion, deems necessary or convenient to the sale of Lots and Units, including, but not limited to, business offices, signs, model units and sales offices; (c) constructing and maintaining Common Areas, including any structures thereon; and (d) storing materials and making such other use thereof as Declarant, in its sole discretion, deems necessary or convenient to the construction of Units and other structures on the Property or Additional Property (provided that no such storage or other use shall unreasonably interfere with access to, or the use, occupancy and enjoyment of, any Lot). Declarant shall also have easements for access to and use of the Common Areas for such facilities at no charge.

ARTICLE 6 -- COMMON AREAS

6.1 Use of Common Areas. Every Owner shall have a right to use and enjoy the Common Areas, subject to:

(a) The terms of this Declaration as it may be amended from time to time and any restrictions or limitations contained in any deed conveying the Common Areas to the Association;

(b) The Board's Right to:

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(i) adopt, promulgate, enforce and amend from time to time the Rules and Regulations pertaining to the use and enjoyment of the Common Areas, including rules and regulations limiting the number of guests of Owners who may use the Common Areas at any one time;

(ii) suspend the right of an Owner, after notice and an opportunity for a hearing, to use all or any portion of the Common Areas (A) for any period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation of this Declaration or the Bylaws or Rules and Regulations; and (B) for any period during which any assessments or any other charges for such Owner's Lot remains delinquent;

(iii) grant easements and dedicate or transfer all or any part of the Common Areas pursuant to Sections 5.4 and 6.2;

(iv) mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 6.2;

(v) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Areas that is not open or available to the general public; and

(vi) permit use of any recreational facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(c) All easements granted or reserved by Declarant in this Declaration, and all easements subsequently granted or reserved by Declarant pursuant to a right granted or reserved in this Declaration.

An Owner who resides in a Unit may extend his or her right to use and enjoyment of the Common Areas to the other members of his or her household and to guests, subject to the terms of this Declaration and the Rules and Regulations. If an Owner does not reside at his or her Unit, then the Owner shall be deemed to have assigned all of the Owner's rights to use and enjoyment of the Common Areas to residents or occupants of such Unit, subject to the terms of this Declaration and the Bylaws and Rules and Regulations.

No Owner shall make any change to any Improvement or landscaping upon the Common Areas, or decorate, alter or repair any part of the Common Areas (except for maintenance of those parts of the Common Areas which the Owner has the duty to maintain, if any), without the prior written consent of the Association.

6.2 Alienation of Common Areas. As provided in ORS 94.665, the Association may sell, dedicate, transfer, grant a security interest in, or grant an easement for installation or maintenance of utilities or for similar purposes with respect to any portion of the Common

Areas. Except for grants of easements for utility-related purposes under Section 5.4 above and the grant of a walking trail easement on Common 2 under Section 5.10, no such sale, dedication, transfer or grant of a security interest shall be effective unless approved by eighty percent (80%) of the votes of both Class A and Class B members, or eighty percent (80%) of the votes of Class A members once Declarant has relinquished its Class B membership interests. Any sale of portions of the Common Area that include public trails or walking paths shall be made subject to reserved easements in favor of the public over such trails and walking paths.

6.3 Conversion of Lots to Common Areas. Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by amending this Declaration. Such amendment to this Declaration shall be executed by Declarant and bear a certificate of the President or Secretary of the Association reciting that the holders of a majority of the voting rights in the Association have approved such conversion to Common Areas.

6.4 No Partition. There shall be no judicial partition of the Common Areas. Each Owner, whether by deed, gift, devise, or operation of law, for such Owner's benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests, and causes of action for judicial partition of any interest in the Common Areas and agrees that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment.

6.5 Title to Common Areas. Declarant shall cause fee simple title to the Common Areas to be conveyed to the Association, free and clear of monetary liens, no later than the date of the Turnover Meeting, and the Association shall unconditionally accept fee title to the Common Areas from Declarant on such date.

6.6 Damage or Destruction By Owner. If damage to any Common Areas or Common Maintenance Areas is directly attributable to an Owner or the family members, invitees, licensee, or guest of an Owner, then that Owner shall repair such damage or destruction as soon as reasonably practicable, but in no event later than fifteen (15) days after the date the damage occurred, at his or her sole expense and without a right of reimbursement. If an Owner fails to repair such damage timely, the Association shall have all rights of enforcement and remedies set forth under this Declaration.

ARTICLE 7 -- MAINTENANCE

7.1 Maintenance by Association.

7.1.1 The Association shall maintain and keep the Common Maintenance Areas and other areas identified below in a clean and attractive condition and in good repair, such maintenance to be funded by Annual Assessments as provided in this Declaration. This maintenance shall include, but need not be limited to, maintenance, repair and replacement (subject to any insurance then in effect) of the following:

(a) The private alley south of Lots 8 through 15, all as shown on the Plat;

(b) all landscape plantings, trees and lawn areas (including irrigation thereof) located on the Common Areas, which shall include, but is not limited to, removal and replacement of dead or dying trees and other landscaping to ensure compliance with the approved landscaping plan (but subject to the terms of Section 12.2);

(c) all sidewalks, trails, walking paths and pedestrian/bicycle paths located on the Common Areas;

(d) all monument entry signs and features for the Subdivision within or adjacent to the Property;

(e) the stormwater conveyance and detention systems serving the Subdivision, except for any drainage swales located on Lots or those facilities maintained by the City or County;

(f) any perimeter fencing constructed by Declarant (although Declarant has no obligation to construct any perimeter fencing);

(g) all other structures and Improvements situated in or on the Common Areas, unless maintenance thereof is delegated to the Owners under the terms of this Declaration or handled by the City, County or other municipal or quasi-municipal authority; and

(h) upon notice from the Association to all Owners pursuant to Section 7.1.2 below, mow and edge the front lawns on all Lots.

The Association may also maintain other property which it does not own and is not required to maintain if the Board determines, in its discretion, that such maintenance is necessary or desirable. Such areas shall become part of the Common Maintenance Areas upon approval by the Board.

7.1.2 The Association shall offer Owners the right to have their front lawns maintained by the landscape company hired by the Association from time to time to maintain the Common Areas at the same rates offered to the Association. If an Owner desires to utilize this program, the Owner will notify the Association in writing and enter into a separate agreement with the landscape company covering his or her Lot, but with pricing similar to that offered to the Association. Notwithstanding the foregoing to the contrary, the Association may elect at any time to assume responsibility for mowing and edging the front lawns on all Lots by providing at least thirty (30) days prior written notice to all Owners, in which event the cost of such mowing and edging shall become part of Annual Assessments.

7.2 Maintenance by Owner.

7.2.1 Each Owner shall at all times keep his or her Lot and Unit (including all Improvements and all landscape plantings, trees and lawn area located on his or her Lot) in a clean and attractive condition, in good repair, and in compliance with all applicable covenants and municipal ordinances, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to Section 7.1 above or any other provisions of this Declaration. Notwithstanding the foregoing to the contrary, the Association may elect at any time to assume responsibility for mowing and edging the front lawns on all Lots by providing at least thirty (30) days prior written notice to all Owners, in which event the Association will have responsibility for mowing and edging the front lawns on all Lots and the cost thereof shall become part of Annual Assessments.

Responsibility for maintenance of landscape plantings, trees and lawn areas as required by the preceding paragraphs shall include responsibility for watering the same as needed to maintain them in a healthy condition, free from weeds and other noxious plant materials, and not permitting grasses to exceed four inches (4") in height. It shall also include responsibility for removal and replacement of diseased or dead trees, shrubs and other landscaping, subject to obtaining any required tree removal permit from the City or County.

If any Owner fails to properly perform his or her maintenance responsibility, the Association may, but is not obligated to, perform such maintenance responsibilities on behalf of such Owner and assess the Owner for a Reimbursement Assessment in accordance with Section 4.6 of this Declaration; provided, however, that except when entry is required due to an emergency situation, the Association shall provide the Owner with reasonable notice and an opportunity to cure the problem prior to entry.

7.3 Maintenance During Construction. During construction it shall be the responsibility of each Owner (including a Builder) to insure that his or her Lot and adjacent areas are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot or the Common Areas. This Section 7.3 shall not be applicable to Declarant or its employees, agents or contractors.

ARTICLE 8 - ARCHITECTURAL REVIEW

8.1 Architectural Review Committee. A committee to be known as the Architectural Review Committee (the "ARC") shall be established consisting of the not less than three (3) members or more than five (5) members, except that the ARC may, at the option of Declarant, consist of only one (1) member (which may be Declarant) for so long as Declarant owns any Lot within the Subdivision. Each member of the ARC shall serve for a one (1) year term, except that the member of the ARC appointed by Declarant may serve until Declarant no longer owns any Lot within the Subdivision.

8.1.1 The members of the ARC shall be appointed, terminated and/or replaced by Declarant for so long as Declarant owns any Lot within the Subdivision. Thereafter, the Board shall appoint the members of the ARC. Members of the ARC may be terminated and/or replaced by the Board, with or without cause, except that the Board may not terminate any member of the ARC appointed by Declarant so long as Declarant owns any Lot within the Subdivision.

8.1.2 Declarant shall have the right to voluntarily relinquish control of the ARC to the Board during the period in which Declarant owns any Lot within the Subdivision, in which event Declarant's right to appoint, terminate and replace members of the ARC shall terminate.

8.1.3 The purpose of the ARC is to enforce the architectural standards of the community and to approve or disapprove plans for improvements proposed on the Lots.

8.1.4 The ARC shall act by simple majority vote, and shall have the authority to delegate its duties and to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

8.2 Design Guidelines. The ARC may, with the approval of the Board, adopt, amend, modify or revise Design Guidelines; provided, however, that Declarant may adopt, amend, modify and revise the Design Guidelines without the consent of anyone so long as Declarant owns any Lot within the Subdivision. Neither Declarant nor the ARC, however, shall have an obligation to adopt Design Guidelines. No amendments, modifications, or revisions to the Design Guidelines shall affect any prior ARC approval.

8.3 Scope of Review. No Improvements may be undertaken, constructed, altered, added onto or replaced upon any portion of the Property without the prior written consent of the ARC.

8.4 Submission of Plans. Before the initiation of construction of any Improvement upon any Lot, the Owner thereof shall first submit to the ARC a complete set of plans and specifications for the proposed improvements. Plans shall include elevation drawings, design plans, specifications of materials and exterior colors, and any other information deemed necessary by the ARC for the performance of its function pursuant to the procedure outlined in the Design Guidelines (if any). In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. In the event an Owner submits plans or specifications to the ARC that are not adequate to permit the ARC to make an informed determination under this Article, the Board shall have the authority to require the Owner submitting the inadequate plans or specifications to retain, at the Owner's expense, the services of a professional engineer, architect, designer, inspector or other person to assist in the preparation of a sufficient submittal to the ARC.

8.5 Plan Review. Upon receipt by the ARC of all of the information required by this Article, it shall have thirty (30) business days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ARC: (a) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (b) the improvements will not violate any restrictive covenant or encroach upon any easement or

cross building set back lines; (c) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (d) the individual or company intended to perform the work is acceptable to the ARC; and (e) the improvements will be substantially completed, including all cleanup, within three (3) months of the date of commencement (six (6) months for the construction of a complete Unit). If the ARC fails to issue its written approval or rejection within thirty (30) business days of its receipt of the last of the materials or documents required to complete the Owner's submission, then the ARC's approval shall be deemed to have been granted without further action. The ARC's approval of plans and specifications shall be valid for a period of six (6) months from the date of issuance, during which time the Owner must commence construction of the approved Improvements and thereafter diligently proceed to completion; otherwise the approval is void.

8.6 Non-conforming Structures. If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article to the same extent as if erected without prior approval of the ARC. The ARC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

8.7 Immunity of ARC Members. No individual member of the ARC shall have any personal liability to any Owner or any other person for the acts or omissions of the ARC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ARC or any member thereof arising from acts or omissions of the ARC committed in good faith and without malice.

8.8 Limited Review. Any review and approval made by the ARC is limited to compliance with the intent of the architectural standards of the neighborhood as may from time to time be established by the Board and/or the Design Guidelines. The review and approval made by the ARC is not to be construed as superseding, replacing, or modifying any review, approval, or permit required by any local, state or federal jurisdictional agencies. It is the applicant's responsibility to obtain and comply with any permits that may be required by any local, state, or federal jurisdictional agency.

8.9 Address for Notice. Requests for ARC approval or correspondence with the ARC shall be addressed to Waverly Homeowners Association, Architectural Review Committee, 2529 NW Canyon Drive, Redmond, Oregon 97756, or such other address as may be designated from time to time by the ARC. No correspondence or request for approval shall be deemed to have been received until actually received by the ARC in a form satisfactory to the ARC.

8.10 Appearance and Design of Subdivision. The Declarant shall not be prevented from changing the appearance of the Common Areas, including the landscaping and any other aspects directly or indirectly connected with its development of the Subdivision so long as Declarant obtains all applicable governmental approvals and consents. The construction and material standards of this Declaration and/or plans and drawings notwithstanding, Declarant may change exterior and/or interior designs of Units from initial plans. This may include designs,

colors, and type of materials, provided Declarant obtains all applicable governmental approvals and consents.

8.11 Declarant Exempt; Construction by Declarant. Declarant is exempt from the requirements of this Article 8. All construction by Declarant establishes the standards for the ARC and is deemed to meet any Design Guidelines of the Association and is deemed to be approved by the ARC.

8.12 Approval of Builder Plans. Declarant shall have the right, in its sole discretion, to approve the plans and specifications for all Improvements that will be constructed by a Builder, and all construction by a Builder pursuant to the plans and specifications approved by Declarant is deemed to satisfy the requirements of this Article 8.

ARTICLE 9 – INSURANCE AND INDEMNIFICATION

9.1 Association Insurance Coverage. The Association shall obtain and maintain at all times the insurance required by the Act and such additional insurance as the Board deems advisable, which will include, but is not be limited to, the following:

9.1.1 Property Insurance. The Association shall obtain and maintain at all times a policy of property insurance covering all insurable improvements within the Common Areas against loss or damage resulting from fire and other hazards covered under special form coverage (“all risk”), including vandalism, malicious mischief, sprinkler leakage, debris removal, cost of demolition, windstorm, flood and water damage endorsements. Coverage shall be for the full insurable replacement cost (without deduction for depreciation) of such improvements, exclusive of land, foundation, excavation and other items normally excluded from coverage, and shall be subject to a commercially reasonable deductible. Such policy of insurance shall cover the interests of the Association and the Owners and First Mortgagees as their interests may appear and, if available at reasonable cost, the following terms:

(a) A waiver of subrogation by the insurer as to any claims against the Association and its Board and property manager (if any), and against any Owner or guest of any Owner;

(b) A standard mortgagee clause, except that the loss payment provision shall be subject to the terms of Article 10 of this Declaration;

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

(d) 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;

(e) A provision that the policy is primary in the event an Owner has other insurance covering the same loss;

(f) A provision that the policy cannot be canceled or substantially modified without at least ten (10) days' prior written notice to all insureds; and

(g) A provision that any adjustment of the loss will be made by the Association, and that all proceeds thereof shall be paid to either the Association or an insurance trustee, as provided in Article 10 of this Declaration.

The Board may by resolution determine the amount of deductible for such insurance policy, based on availability and costs. Owners shall be responsible for the deductible to the extent that it is determined they, their tenants or guests are responsible for the damage caused to the Common Maintenance Areas or other properties that the Association insures.

9.1.2 Liability Insurance. The Association shall at all times maintain commercial general liability insurance covering the Common Maintenance Areas with limits of loss of not less than \$1,000,000 combined single limit for personal injury or property damage (such policy limits to be reviewed at least annually by the Board and increased in its discretion), insuring the Association, all Owners, and any managing agent against liability to the public or to individual Owners, subject to a commercially reasonable deductible.

9.1.3 Workers and Employers Insurance. The Association shall obtain and maintain at all times worker's compensation and employer's liability insurance to the extent required by applicable laws.

9.1.4 Fidelity Bonds. The Board shall obtain and maintain at all times fidelity bonds naming the Board and all other officers, directors and employees of the Association handling or responsible for funds of or administered by the Association. If a management agent has the responsibility for handling or administering funds of the Association, the management agent will be required to maintain fidelity bond coverage for its officers, employees and agents responsible for such funds. In no event may the aggregate amount of such bonds be less than a sum equal to three (3) months Annual Assessments. The bonds must contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

9.1.5 Insurance Against Loss of Association's Personal Property. The Association shall obtain and maintain at all times insurance against loss of personal property of the Association by fire, theft, and other losses, with deductible provisions as the Board deems advisable.

9.1.6 Other Insurance. Such other insurance as the Board deems advisable; provided, however, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such property, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned community projects established by the Federal National Mortgage Association, Government National Mortgage

Association, Federal Home Loan Mortgage Corporation, or other governmental or quasi-governmental agency involved in the secondary mortgage market, so long as such agency is a Mortgagee, an insurer or guarantor of a Mortgage, or Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by such agency.

9.2 Owners' Insurance Coverage. It is acknowledged that the foregoing provisions specify only the insurance required to be obtained and maintained by the Association and that the following insurance must be obtained and maintained by each Owner (as applicable):

9.2.1 Property Insurance. Each Owner shall obtain and maintain property insurance covering its Unit and all other insurable improvements located on its Lot. Such insurance must be maintained for the full insurable value thereof (exclusive of excavation and foundations and without deduction for depreciation) and with a deductible not to exceed \$5,000 (subject to adjustment by the Board from time to time as provided below).

9.2.2 Liability Insurance. Public liability insurance in the amount reasonably set by the Association no more often than every three (3) years, but not less than \$100,000, covering any liability of any Owner to the extent not covered by any public liability and property damage insurance obtained and maintained by the Association.

9.2.3 Additional requirements. Each insurance policy required to be maintained by an Owner, as provided above, shall contain the following:

(a) A waiver of subrogation against the Association and its Board and property manager and against the other Owners and guests of the other Owners (property insurance only);

(b) A waiver of any defense based on acts of the insured;

(c) A provision that any adjustment of loss will be made by the Owner (but only with the prior written approval of the Association (which shall not be unreasonably withheld) and that all proceeds thereof shall be paid to either the Association or the insurance trustee pursuant to Article 10 below; and

(d) A provision that such policies cannot be canceled or substantially modified without at least ten (10) days' prior written notice to all insureds, including the Association.

9.2.4 Board's Right to Modify Requirements. The Association may, over time, adjust the above required types and amounts of insurance or require additional insurance, so long as such changes or additional requirements are commercially reasonable.

9.3 Builders' Insurance Coverage. Each Builder shall maintain the following insurance coverages:

9.3.1 **Liability Insurance.** Commercial general liability insurance with limits of loss of not less than \$1,000,000 combined single limit for personal injury or property damage, subject to a commercially reasonable deductible.

9.3.2 **Automobile Insurance.** Automobile liability insurance covering owned, hired, and non-owned vehicles in an amount of not less than \$500,000 per occurrence.

9.3.3 **Workers and Employers Insurance.** Worker's compensation and employer's liability insurance to the extent required by applicable laws.

9.3.4 **Additional requirements.** Each insurance policy required to be maintained by a Builder under Sections 9.3.1 and 9.3.2 above shall name Declarant and the Association as additional insureds and shall be endorsed (if necessary) to insure the Builder's indemnification obligation under Section 9.4 below. Each Builder shall provide a certificate of insurance evidencing compliance with this Section to Declarant and the Association prior to commencing any preparatory or construction activities on any Lot, upon request, and upon renewal or issuance of new policies.

9.4 Builders' Indemnification. Each Builder agrees to indemnify, defend and hold Declarant and the Association harmless from and against any claims, demands, actions, suits, judgments, losses, damages, penalties, fines, costs, or expenses, including attorneys' fees (collectively, "**Claims**") arising from or relating to (a) the activities of the Builder and its employees, agents, consultants, contractors and suppliers within the Subdivision; or (b) the Builder's failure to comply with the terms and conditions of this Declaration, except to the extent of any Claims caused by the gross negligence or intentional acts of party claiming protection under this indemnification.

ARTICLE 10—DAMAGE OR DESTRUCTION

10.1 Common Areas. If any improvements within the Common Areas are damaged or destroyed by fire or casualty, the repair, restoration or ultimate disposition of any insurance proceeds shall be in accordance with the following:

(a) If the insurance proceeds derived from such loss amount to \$75,000 or less, then the Board shall contract with any licensed contractor or contractors to rebuild or repair such damage or destroyed improvements in conformance with the original plans and specifications, or if adherence to such original plans and specifications is impracticable in the Board's opinion, then in conformance with revised plans and specifications provided such repairs or rebuilding shall be of a quality and kind substantially equivalent to the original construction. The Board shall accept bids only in specific amounts and shall not enter into any cost-plus or other sliding scale arrangement for compensation to the contractor.

(b) If the insurance proceeds derived from such loss exceed \$75,000, all such insurance proceeds shall be paid directly to an insurance trustee as may be designated by the Board, as trustee for all affected Owners and their respective First Mortgagees, as their interests

may appear. The insurance trustee shall disburse the insurance proceeds periodically as construction progresses, subject to satisfaction of the following conditions:

(i) Upon notification of the receipt of insurance proceeds by the insurance trustee, the Board shall enter into a contract for a specific dollar amount with a licensed contractor or contractor for the repair or rebuilding of all of the damaged or destroyed improvements, as nearly as practicable to the original plans and specifications thereof and in accordance with all applicable building codes.

(ii) The Board shall enter into said contract with a licensed contractor or contractors which shall have provisions for periodic disbursements of funds by the insurance trustee. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board, along with customary lien waivers.

(iii) The Board shall employ a licensed architect to supervise the repair and rebuilding to insure that such work, services and supplies are of proper quality and that construction is contemplated in a workmanlike manner and according to plans and specifications.

(c) If the proceeds of insurance maintained by the Association are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for payment of the costs thereof are insufficient, assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs. The foregoing provisions of this subsection are applicable to the repairs and reconstruction to be undertaken by the Association.

(d) If the amount of available insurance proceeds exceed the cost of any such reconstruction or repair, the excess shall be paid to the Association and applied by it to reduce the common expenses of the Association.

10.2 Units. If all or any portion of a Unit or any other Improvements located on an Owner's Lot is/are damaged by fire or other casualty, the Owner thereof shall either (a) restore the damaged Improvements or (b) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (a) above must be performed so that the Improvements are in substantially the same condition in which they existed before the damage or destruction, unless the owner complies with the provisions of Article 8. The Owner must commence such work within sixty (60) days after the damage or destruction occurs and must complete the work within six (6) months thereafter.

ARTICLE 11-CONDEMNATION

Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on its behalf or on the written direction of all Owners subject to the taking, if any,) by any authority having the power of condemnation or

eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as trustee for all Owners and First Mortgagees, as their interests may appear, to be disbursed as follows:

(a) If the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the Class A members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefore, in accordance with plans approved by the Board of the Association. If such improvements are to be repaired or restored, the provisions in Section 10.1 regarding disbursement of insurance proceeds in respect to casualty damage or destruction shall apply.

(b) If the taking does not involve any improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net funds shall be paid to the Association and applied by it to reduce the common expenses.

ARTICLE 12- USE RESTRICTIONS

12.1 Residential Use. Lots shall only be used for residential purposes. No trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, and no goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business shall be kept or stored on any Lot. Nothing in this Section 12.1 shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder (including a Builder) to construct Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Unit as a sales office or model home for purposes of sales in the Subdivision, (c) the right of the Owner of a Lot to maintain such Owner's personal business or professional library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls, or confer with business or professional associates, clients, or customers in such Owner's residence, (d) residential day care facilities, or (e) garage sales, provided that garage sales may only occur in the months of May and October, no Owner may conduct more than one (1) garage sale in each of these months, and no individual garage sale may exceed two (2) days in length.

12.2 No Tree Removal. No trees identified for preservation on the approved tree removal permit or landscaping plan for the Subdivision, nor any newly planted trees used to meet the conditions of approval for the Subdivision, may be removed without the prior written approval of the City. Any Owner desiring to remove a tree from his or her Lot is required to confirm with the City that such tree is not required to be maintained pursuant to the approved tree removal permit or landscape plan for the Subdivision, as the same may be amended or modified from time to time.

12.3 No Improvements or Fill Material. No Owner may place or construct any Improvements over the utility easements located on his or her Lot (as shown on the Plat or any separate easement agreement or dedication now existing or hereafter granted pursuant to the terms of this Declaration), or fill or alter the drainage swales or any other stormwater facilities located on his or her Lot.

12.4 Leasing Restrictions.

12.4.1 Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

12.4.2 Leasing Limited. In order (i) to protect the equity of Owners of Units; and (ii) to carry out the purpose for which the Property was formed by preserving the character of the Property as a homogenous residential development of predominantly owner-occupied homes and by preventing the Property from assuming the character of an apartment (i.e., a renter occupied complex), no more than six (6) Units may be leased at any time, except in the case of Declarant or a Mortgagee for a term not to exceed three (3) years from the date of substantial completion of the Unit; however, should Declarant or the Mortgagee sell, transfer or convey the Unit to any other Owner, the right to lease the Unit shall terminate ninety (90) days after the sale, transfer or conveyance of the Unit to such Owner, unless the lease of the Unit is permitted as one (1) of the six (6) leases of Units authorized by this Section 12.4. Once the maximum number of leased Units has been reached, no Owner may lease his or her Unit, or sell his or her Unit to an Owner unless the purchasing Owner will occupy the Unit. Owners shall, however, be allowed to lease their Units as openings become available under the maximum on a first come, first served basis as logged on the Association's waiting list. Notwithstanding the foregoing to the contrary, the Association may, in its sole discretion, permit a Unit to be leased for up to one (1) year even if such lease would exceed the above ceiling to alleviate undue hardship caused by the death of an Owner, relocation at least fifty (50) miles away from the Subdivision due to a job change and the inability to sell the Unit at then current market prices after listing the Unit for four (4) months on the local multiple listing service, temporary relocation at least fifty (50) miles away from the Subdivision, financial distress affecting all Owners of a Lot, or other adverse situation not caused by the Owner or Owners requesting relief under this provision.

12.4.3 Additional Requirements.

(a) A written rental or lease agreement is required, specifying that: (i) the tenant shall be subject to all provisions of the Declaration and other Governing Documents (including, but not limited to, the age restriction), and (ii) failure to comply with any provision of the Declaration and other Governing Documents shall constitute a default under the rental agreement.

(b) The period of the rental or lease shall not be less than twelve (12) months;

(c) The Owner of the Unit must give each tenant a copy of the Declaration and other Governing Documents; and

(d) The Owner of the Unit shall not permit any person who has been convicted of a felony to occupy the Unit. The Owner is responsible for obtaining a criminal background check regarding each tenant and occupant to verify compliance with this subsection.

12.4.4 Owner Responsible. The Owner of a leased Unit shall be responsible for any violations by tenants and shall be solely responsible for either correcting or eliminating such violations, or getting tenant to do the same.

12.5 Air Conditioning Units. No Owner shall install, or permit to be installed or maintained, air conditioning units through exterior modifications of its Unit or through window openings. The only air conditioning units that will be permitted are those air conditioning units which are considered central in nature and installed on a slab in the rear or side yard of a Lot outside of and adjacent to the Unit; or those that are mounted on wheels, located within the Unit and intended to be used to cool individual rooms, and which have no more than two hoses appearing in a window opening (provided such hoses are removed during winter months).

12.6 Nuisances. No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

12.7 Temporary Structures. No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, car canopies, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant or a Builder to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

12.8 Signs. No sign, banner or billboard of any kind may be kept or placed on any Lot or mounted, painted or attached to any Unit, fence or other improvement so as to be visible from public view in the Subdivision or adjacent street or carried by any person or by any other means displayed within the Subdivision except as provided below:

12.8.1 "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.

12.8.2 "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 Unit only, and

shall be displayed from within the Unit. No such sign shall be erected within a lawn or landscape area on any Lot, or attached to the outside of the Unit.

12.8.3 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.

12.8.4 Subdivision Identification Signs

Signs may be erected by the Declarant to identify the Subdivision, with approval from the local jurisdictional authority, if applicable.

12.8.5 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.

12.8.6 Declarant's Signs

Signs, banners and billboards may be erected by the Declarant and are exempt from the provisions of this Section 12.8.

12.8.7 Builder Signs

A Builder may erect signs and banners on any Lot or Unit owned by the Builder if such signs and/or banners are erected for the purpose of marketing and selling Units constructed by the Builder on Lots owned by the Builder, subject to rules and restrictions established by Declarant from time to time. A Builder may also erect signs and/or banners on the Common Areas to market and sell Units constructed by the Builder on Lots owned by the Builder, provided that Declarant authorizes in writing (in Declarant's sole discretion) the erection of such signs and/or banners on the Common Areas.

12.9 Parking. No Owner (Tenant) is allowed to park any vehicle or other item prohibited by Section 12.10 on any public or private street or alley in or adjacent to the Subdivision, provided that this restriction does not apply to visitors of an Owner (Tenant) so long as such visitors do not park on the street for more than seven days in any one month period without prior approval of the Association Board. The Owner (Tenant) of each Living Unit shall maintain off-street parking on their Lot (inclusive of the garage and driveway) able to accommodate all of their autos, with at least one (1) parking space being maintained in the garage at all times.

12.10 Campers, Boats, Recreational Vehicles and other Non-Passenger Vehicles. Campers, boats, boat trailers, recreational vehicles, commercial vehicles, or other types of non-

passenger vehicles, equipment, implements, trailers or accessories may not be kept or stored on any street (whether public or private) within the Subdivision or on any Lot, except as provided below:

12.10.1 Campers, boats, boat trailers, recreational vehicles, recreational trailers, utility trailers and other non-passenger vehicles, equipment, implements, trailers or accessories may be stored or kept within an enclosed garage, or on the side of the Unit, provided that it is fully screened from view by a screening structure or fencing approved by the ARC.

12.10.2 Campers, boats, boat trailers, recreational vehicles, recreational trailers, utility trailers and other non-passenger vehicles, equipment, implements, trailers or accessories may be temporarily kept on the streets within the Subdivision or on a paved driveway located on a Lot so long as the sidewalk is not blocked for a period not to exceed twelve (12) hours and only for purposes of preparation for use and unloading.

12.11 Commercial Vehicles. No vehicles bearing commercial insignia or names may be parked on the streets (whether public or private) within the Subdivision or on any Lot, except for commercial vehicles that are temporarily parked on such areas for the sole purpose of serving an Owner, or those that are parked within an enclosed garage. The Board, however, shall have the absolute authority to grant approval for storing or keeping a commercial vehicle on the driveway of a Lot. Notwithstanding the foregoing, the Board shall not unreasonably withhold consent to keep a commercial vehicle bearing insignia or names where such vehicle is driven by an Owner pursuant to Owner's primary job. Any Owner wishing to keep a commercial vehicle on the driveway of any Lot shall apply for approval to the Board, and shall provide such information as the Board, in their sole authority, may require. The Board may from time to time in their sole discretion review the approval to keep a commercial vehicle on the driveway of any Lot to determine if the vehicle complies with the intent of the original approval. Upon an adverse determination by the Board, any commercial vehicle shall be removed and/or otherwise brought into compliance with the requirements of this Section 12.11.

12.12 Disabled Vehicles or Vehicles in Disrepair. No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on any street within the Subdivision or on any Lot for a period in excess of twenty-four (24) hours.

12.13 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.

12.14 Pets, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, than no more than two (2) adult animals may be kept on a single Lot and no animal may exceed thirty five (35) pounds in weight, except for AKC "good citizen" certified animals. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws). Owners shall be responsible for cleaning up after their pets' waste. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas for pets which must be clean, sanitary, and reasonably free of refuse,

insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the ARC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Subdivision.

12.15 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, or disposed of, on any Lot except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, debris, or recyclable materials shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage, rubbish, or recyclable materials, and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day.

12.16 Detached Buildings. No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior written approval of the ARC. Every outbuilding, inclusive of such structures as detached garages, storage buildings, greenhouses, doghouses, or children's playhouses, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition.

12.17 Fences and Hedges. Fences or walls may be erected or maintained on any Lot subject to local laws regarding height and setback and approval by the ARC. No fencing shall be constructed in the front yard of any Lot, unless the front yard faces and is contiguous with a Common Area. Fences may be erected along the property line in the side and rear yards of a Lot, provided said fencing is not located closer to the street than the front of the Unit, does not exceed six feet (6') in height and is a so-called good neighbor fence. No chain-link, metal cloth or agricultural fences may be built or maintained on any Lot, except for a chain-link fence along Common 2 and as required by governmental authority; provided however, that chain link fences may be installed for domestic pet runs with the prior approval of the ARC. Notwithstanding the foregoing, the ARC shall have the right and authority to approve variances for reasonable cause or to alleviate hardship as determined in the sole judgment of the ARC; provided however, the ARC may not approve a variance which contradicts the zoning and/or subdivision ordinances of the local governmental jurisdictional authority unless the jurisdictional authority has previously approved the variance. Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent Lots shall be owned and maintained by the Owner on whose Lot the fence exists, or if the location is indefinite, such fence will be maintained jointly by the Owners of both Lots, with expenses shared equally. Declarant hereby grants to each Owner whose Lot contains a fence (and to any Owner where the location of the fence in relation to its property line is indefinite) an easement over those portions of the adjacent Owner's Lot as is reasonably necessary to maintain the fence, subject to reasonable advance notice to the adjacent Lot Owner. The provisions of this Section 12.17 shall not apply to Declarant.

12.18 General Landscaping. All landscaping must comply with the approved landscaping plan and the landscaping requirements established by the City from time to time, and each Owner is required to have his or her landscaping plan approved by the City if approval is required by City zoning ordinances. All landscaping must be maintained by the Owner pursuant to the terms of Section 7.2. Decorative ground cover consisting of crushed rock (but not bark dust, mulch or any other decomposable material) may be installed on portions of the front, side and rear yards, as approved by the ARC. The remainder of the yard area not covered by improvements shall be lawn or sod.

12.19 Antennae and Satellite Dishes. Except as otherwise provided by law or this Section 12.19, no exterior antennas, satellite dishes, microwave, aerial, tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic radiation shall be erected, constructed, or placed on any Lot. With prior written consent from the ARC, exterior satellite dishes or antennas with a surface diameter of one meter (39") or less and antennas designed to receive television broadcast signals only may be placed on any Lot if they are not visible from any street and are screened from neighboring Lots. The ARC may adopt reasonable rules and regulations governing the installation, safety, placement, and screening of such antennas, satellite dishes, and other transmission devices. Such rules shall not unreasonably delay or increase the cost of installation, maintenance, or use or preclude reception of a signal of acceptable quality (the ARC, in its sole discretion, may determine what constitutes a signal of acceptable quality). Such rules and regulations may prohibit installation of exterior satellite dishes or antennas if signals of acceptable quality can be received by placing antennas inside a Unit without causing an unreasonable delay or cost increase.

12.20 Clothes Hanging Devices. Clothes hanging devices exterior to a Unit shall be temporary, unaffixed structures not to exceed six (6) feet in height and shall not be placed nearer to any street abutting the Lot than the side yard setback line or the back of the Unit constructed on the Lot. Clothes hanging devices shall be screened from public view by a fence approved by the ARC.

12.21 Window Treatments. Aluminum foil, reflective film, newspapers or similar treatments shall not be placed on windows or glass doors.

12.22 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

12.23 Garages. Garages may be used as Declarant's sales offices before permanent occupancy of the main structure; however, sales offices must be converted to garages before permanent occupancy. With the exception of periods when garages are used by the Declarant as sales offices, a garage shall be maintained solely for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except

when necessary to repair or replace a garage door with the same type of garage door. Each Owner must be able to park at least one (1) automobile in his or her garage pursuant to Section 12.9.

12.24 Setback Lines. All Units and other structures (including fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback standards imposed by the local governmental jurisdictional authority.

12.25 Athletic and Recreational Facilities. Outdoor athletic and recreational facilities such as basketball hoops, swing sets and sport courts of a permanent nature shall not be placed on any Lot in the Subdivision, unless located in the rear yard of a Lot and screened so as not to be visible from public view within in the Subdivision or an adjacent street.

12.26 Water and Sewage Systems. No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks.

12.27 Exterior Holiday Decorations. Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly observed holiday between December 1 and December 31 of any year, may not be displayed before November 15th of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday.

All lights and decorations that are not permanent fixtures of the Unit which are part of the original construction or have been properly approved as permanent improvements by the ARC shall be removed within thirty (30) days after the holiday has ended.

12.28 Retaining Walls. Retaining walls may be constructed on a Lot only if in compliance with any adopted Design Guidelines and only if approved in advance by the ARC. Retaining walls may extend into the required front, side or rear setback lines of a Lot. The ARC may require any retaining wall which exceeds two (2) feet in height be designed by a qualified professional engineer licensed to practice engineering in the state of Oregon. Retaining walls constructed by the Declarant shall be exempt from this Section 12.28.

12.29 Household Chemicals. Owners shall be prohibited from dumping or otherwise disposing of household chemicals within the Property, including, but not limited to, cleaning agents, automotive fluids, paint, solvents and other toxic chemicals.

12.30 Prohibited Plants. Owners shall be prohibited from planting the following species of plants on the Lots:

- (a) Cystisus scoparius, commonly known as Scotch broom;
- (b) Hedera helix, commonly known as English ivy;

- (c) *Lythrum salicaria*, commonly known as purple loosestrife;
- (d) *Phalaris arundinacea*, commonly known as reed canarygrass; and
- (e) *Rubus discolor*, commonly known as Himalayan blackberry.

12.31 Rezoning Prohibited. No Owner may apply to the local zoning authority to rezone a Lot to any classification allowing commercial, institutional or other non-residential use.

12.32 Lot Consolidation and Division. No Lot may be further subdivided to create a smaller parcel of land. A Lot may be consolidated with another Lot or portion thereof to create a larger parcel of land upon which a single Unit will be constructed so long as the Owner obtains all applicable municipal approvals, records a consolidation deed in the real property records for Deschutes County, Oregon, and provides the Association with a copy of the recorded consolidation deed. Upon receiving a copy of the consolidation deed, the Association shall adjust the voting rights for the Association pursuant to Section 1.21.

12.33 Drainage Alteration Prohibited. The surface water drainage contours of each Lot shall conform to the approved grading plan established by the Declarant. No Owner shall fill or alter any drainage swale established by the Declarant, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the Declarant without the prior written approval of the ARC.

ARTICLE 13—SPECIAL DECLARANT AND BUILDER RIGHTS

In addition to any rights or easements reserved to Declarant or Builders elsewhere in this Declaration or any of the other Governing Documents, Declarant and/or Builders (as applicable) shall have the following rights in respect to the Subdivision:

13.1 Development and Sales Activities.

13.1.1 So long as Declarant owns any Lot within the Subdivision, Declarant shall have the right to construct and maintain upon portions of the Common Areas and any Lots owned by Declarant such facilities and activities as Declarant, in its sole opinion, may require or desire in connection with the construction and sale of Units and Lots within the Subdivision, including (but not limited to) business and construction offices (within Units or in free standing trailers); signs, banners and flags; model units; and sales offices (within Units or in free standing trailers), subject to compliance with governmental ordinances. Declarant shall also have easements for access to and use of the Common Areas for such facilities at no charge.

13.1.2 So long as a Builder owns any Lot within the Subdivision, the Builder shall have the right to construct and maintain upon any Lot owned by the Builder such facilities and activities as the Builder reasonably requires or desires in connection with the construction and sale of Units on Lots owned by the Builder, including (but not limited to) business and construction offices (within Units or in free standing trailers); signs, banners and flags (subject to Section 12.8.7); model Units; and sales offices (within Units or in free standing trailers), subject

to rules and restrictions established by Declarant from time to time and subject to compliance with governmental ordinances.

13.2 Control of and Changes in Development Plan. Every Owner, by acceptance of the deed to their Lot, acknowledges that the Subdivision is a multi-phased master planned community, the development of which is likely to extend over many years, and that changes in the master plan will likely occur as the development of the Subdivision proceeds. Each such Owner therefore agrees not to protest, challenge or otherwise object to changes made or proposed by Declarant in the development plan or in the uses or density of the Property. The rights and limitations set forth in this Section 13.2 shall continue in effect until Declarant no longer owns any Lot within the Subdivision.

13.3 Right to Transfer or Assign Declarant Rights. Any or all of Declarant's special rights and obligations set forth in this Declaration or any other Governing Documents may be transferred in whole or in part by Declarant by written instrument executed and acknowledged by Declarant and recorded in the real property records for Deschutes County, Oregon. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

ARTICLE 14-- MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article shall apply to both this Declaration and to the Bylaws notwithstanding any other provisions contained therein.

14.1 Notices of Action. An institutional holder, insurer or guarantor of a First Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the street number of the Lot to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Property or Additional Property or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days; or any violation of this Declaration or any other Governing Documents by such Owner which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the First Mortgagees or Owners representing at least sixty-seven percent (67%) of the total outstanding vote of the Association consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Areas which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) material change in the method of applying assessments and other lienable charges to Lots (this restriction shall not apply to the determination of the amount of any assessments or other charges);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design, exterior appearance or maintenance of Lots and the Common Areas (the issuance and amendment of Design Guidelines or architectural standards and related procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and First Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

14.3 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

14.4 Notice to the Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

14.5 Applicability of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration or other Governing Documents, or under Oregon law for any of the acts set out in this Article.

14.6 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested. An affidavit from the President of the Association indicating that a Mortgagee did not respond to a request and is therefore deemed to have consented to the requested action, along with a copy of the return receipt signed by or on behalf of the Mortgagee, may be attached to any amendment to this Declaration and the Bylaws of the Association and shall be conclusive proof such Mortgagee's consent and approval of such action.

ARTICLE 15—AMENDMENT

15.1 General Amendments.

15.1.1 Except as otherwise specifically provided in this Article or in the Act, the Declaration may only be amended by Owners holding at least seventy-five percent (75%) of the votes of the Association, and the consent of the Declarant so long as the Declarant is a Class B member. Prior to the Turnover Meeting, however, Declarant shall be treated as a Class A member with one (1) vote per Lot owned for purposes of voting on an amendment to this Declaration under this Section 15.1. In no event shall an amendment under this Section 15.1: (a) limit or diminish any right of Declarant reserved in this Declaration without the written consent of Declarant; or (b) change the boundaries of any Lot or any uses to which any Lot is restricted as stated in this Declaration, or change the method of determining liability for assessments, the method of determining the right to common profits of the Association, or the method of determining voting rights of any Lot, unless the Owners of the affected Lots unanimously consent to the amendment.

15.1.2 An amendment to this Declaration may be proposed by a majority of the Board or by at least thirty percent (30%) of the Owners.

15.1.3 Upon approval of an amendment as provided herein, the president and secretary of the Association shall execute an instrument amending this Declaration and certifying that the amendment was adopted in accordance with this Declaration and ORS 94.590, which certification shall be properly acknowledged in the manner of acknowledgment of deeds, and the Board, or other duly appointed and authorized persons, shall record the instrument amending this Declaration in the official records of Deschutes County, Oregon. No amendment to this Declaration is effective until recorded, and the effective date of an amendment is the date of recording, unless a later date is indicated in such amendment.

15.2 Declarant Amendments. Declarant reserves the right to unilaterally amend this Declaration if such amendment is necessary to (a) bring this Declaration into compliance with 40 – Amended and Restated Declaration of Covenants, Conditions and Restrictions for Waverly

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any provision of law, including (but not limited to) regulatory amendments permitted by Section 15.3 or (b) correct scriveners' or clerical errors.

15.3 Regulatory Amendments. Notwithstanding any other provisions of this Article 15, and consistent with terms of ORS 94.585, Declarant shall have the right to unilaterally amend this Declaration prior to the Turnover Meeting in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmer's Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

ARTICLE 16—REMEDIES

16.1 Remedies. If any default by any Owner under the provisions of the Declaration or other Governing Documents shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration and any of the other Governing Documents, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, but in all cases subject to the limitations and requirements set forth in Section 16.2 and the Act. No rights or remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. Any and all of rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

To the extent allowed by law, notwithstanding any other provision of this Declaration or other Governing Documents, the Association shall not expend in excess of \$5,000 for attorney fees and costs for any reason unless such expenditure is first approved by Owners holding at least fifty percent (50%) of the votes of the Association. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under this Declaration or the Governing Documents; actions to appoint a receiver; actions to summarily abate, enjoin and remove a structure or condition that violates this Declaration or the other Governing Documents; or for the defense of the Association of an action or proceeding brought against the Association (except for non-mandatory counterclaims).

All expenses of the Association in connection with any actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his or her respective assessment (to the same extent as the lien provided

herein for unpaid assessments) upon the Lot and upon all of his additions and improvements thereto, and upon all of his personal property upon the Lot.

16.2 Dispute Resolution. Before initiating litigation or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to resolve the problem through a dispute resolution program pursuant to terms of ORS 94.630(4). The written offer to resolve the dispute must be hand-delivered or mailed by certified mail, return receipt requested, to the other party at the address contained in the records of the Association. The requirements of this Section 16.2, however, do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments (other than assessments attributable to fines).

16.3 Attorneys' Fees. If an action or proceeding is commenced to enforce the terms of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

ARTICLE 17- GENERAL TERMS

17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years unless amended or terminated as provided in Article 14.

17.2 Rights and Obligations. The provisions of this Declaration and the other Governing Documents and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and Mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the other Governing Documents, whether or not mention thereof is made in said deed.

17.3 Waiver. No restriction, condition, obligation or provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof that may have occurred and the number of times that the pertinent restriction, condition, obligation or provision was not enforced.

17.4 Severability. Invalidity or partial invalidity of any provision of this Declaration shall not affect any of the remaining provisions of the Declaration.

17.5 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 include the plural, and vice versa.

17.6 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

17.7 Conflicts. If there is a conflict between the terms of this Declaration and any other Governing Documents, this Declaration shall control.

17.8 Security. The Association may, but is not obligated to, maintain or support certain activities within the Subdivision designed to increase security within the Subdivision. NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION, AND NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the undersigned President and Secretary of the Association hereby certify that this Declaration was adopted as an amendment to the Original Declaration in accordance with the terms of Section 11.6 of the Original Declaration and ORS 94.590.

ASSOCIATION:

WAVERLY HOMEOWNERS ASSOCIATION,
an Oregon nonprofit corporation

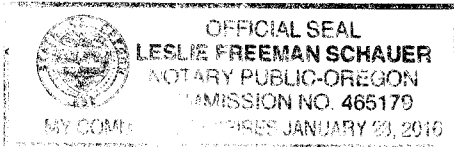
By: *R. Corby*
Name:
Title: President

By: *Judith D. Godfrey*
Name:
Title: Secretary

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss.
County of Deschutes)

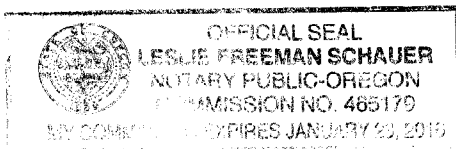
⁴ The foregoing instrument was acknowledged before me this 9th day of January 2016, by Robert L. Godfrey the President of WAVERLY HOMEOWNERS ASSOCIATION, an Oregon nonprofit corporation, on behalf of the corporation.



Leslie Freeman Schauer
Notary Public, State of Oregon
My Commission Expires: 1-23-2016

STATE OF OREGON)
) ss.
County of Deschutes)

⁴ The foregoing instrument was acknowledged before me this 9th day of January 2016, by Judith D. Godfrey the Secretary of WAVERLY HOMEOWNERS ASSOCIATION, an Oregon nonprofit corporation, on behalf of the corporation.



Leslie Freeman Schauer
Notary Public, State of Oregon
My Commission Expires: 1-23-2016

[Consent of Declarant appears on the following page]

CONSENT OF DECLARANT

WAVERLY ASSOCIATES LLC,
an Oregon limited liability company

BOBJUDY LLC, an Oregon
limited liability company

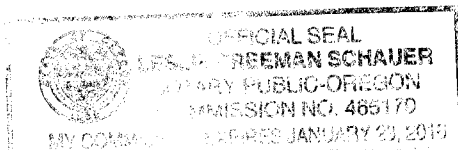
By: R. Godfrey
Name:
Title:

By: R. Godfrey
Name:
Title:

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss.
County of Deschutes)

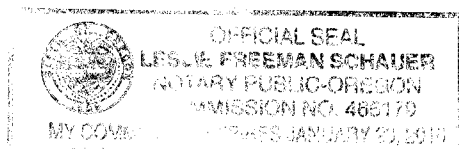
4 The foregoing instrument was acknowledged before me this 9th day of January 2017, by Robert D. Godfrey, the President of WAVERLY ASSOCIATES LLC, an Oregon limited liability company, on behalf of the company.



Leslie Freeman Schauer
Notary Public, State of Oregon
My Commission Expires: 1-23-2016

STATE OF OREGON)
) ss.
County of Deschutes)

4 The foregoing instrument was acknowledged before me this 9th day of January 2017, by Robert D. Godfrey, the President of BOBJUDY LLC, an Oregon limited liability company, on behalf of the company.



Leslie Freeman Schauer
Notary Public, State of Oregon
My Commission Expires: 1-23-2016

CONSENT OF THE OWNER OF LOTS 8 THROUGH 11

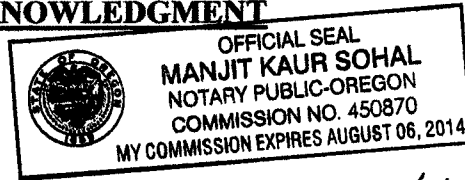
X Richard Sachse

Name: Richard Sachse

Title: owner of lots 8 through 11

ACKNOWLEDGMENT

STATE OF OREGON)
) ss.
County of Deschutes)



The foregoing instrument was acknowledged before me this 4th day of MARCH 2014, by Richard Sachse, the owner of lots 8 through 11.

Manjit Kaur Sohal
Notary Public, State of Oregon
My Commission Expires: 8/6/2014

EXHIBIT A

BYLAWS OF THE ASSOCIATION

EXHIBIT A

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**AMENDED AND RESTATED
BYLAWS OF WAVERLY HOMEOWNERS ASSOCIATION**

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**AMENDED AND RESTATED
BYLAWS OF WAVERLY HOMEOWNERS ASSOCIATION**

**ARTICLE I
NAME, LOCATION AND EFFECT**

The name of the Association is the *Waverly Homeowners Association*, an Oregon nonprofit corporation, hereinafter referred to as the “**Association**.” The initial registered office of the Association is located at 2529 NW Canyon Drive, Redmond, Oregon 97756, and the name of its initial registered agent at such address is Robert Godfrey.

These Amended and Restated Bylaws of Waverly Homeowners Association are intended to replace and supersede the Bylaws of Waverly Homeowners Association (the “**Original Bylaws**”), which were attached as **Exhibit A** to the Declaration of Covenants, Conditions and Restrictions for Waverly, recorded on September 28, 2007 as Document No. 2007-52475, Deschutes County Records.

**ARTICLE II
DEFINITIONS**

2.1 “**Act**” shall mean the Oregon Planned Community Act, being ORS 94.550 et seq., as amended from time to time.

2.2 “**Association**” shall have the meaning given in the introductory paragraph to these Bylaws.

2.3 “**Board**” shall mean the Board of Directors of the Association.

2.4 “**Conversion Date**” shall be the date upon which Class B membership shall cease and be converted to Class A membership. Such date shall be the date which is the earlier of (i) the date on which all of the Lots within the Subdivision have been conveyed to Class A members; or (ii) upon written election of Declarant.

2.5 “**Declarant**” shall mean Waverly, LLC and Bobjudy LLC, their respective successors or assigns whom are designated as such in an instrument recorded in the Official Records of Deschutes County, Oregon.

2.6 “**Declaration**” shall mean and refer to the Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions for Waverly, and any amendments or supplements thereto made in accordance with its terms.

2.7 “**Directors**” shall mean the Board of the Association.

2.8 “**Governing Documents**” shall mean the Declaration and the Article of Incorporation, Bylaws and Rules and Regulations of the Association, all as may be amended from time to time.

2.9 “**Lot**” shall have the meaning set forth in Article 1 of the Declaration.

2.10 "Member" or "Members" shall mean Declarant and every other record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation. There shall be two (2) classes of membership, Class A and Class B, as described in Section 3.2 of the Declaration and in Section 3.3 of these Bylaws. All Members shall also be Owners.

2.11 "Owner" or "Owners" shall mean Declarant and every other record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation. All Owners shall also be Members.

2.12 "Plat" shall mean the plat map or maps described in Article 1 of the Declaration.

2.13 "Property" shall mean the real property described in Article 1 of the Declaration.

2.14 "Transitional Advisory Committee" shall mean the committee described in Section 4.2 to assist in transitioning administrative responsibility for the Association from Declarant to the Members.

2.15 "Turnover Meeting" shall be the meeting called by the Declarant for the purpose of turning over administrative responsibility of the Association to the Members.

2.16 Other Terms. Capitalized terms used herein without definition shall have the respective meanings given to them in the Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1 Membership

The Declarant and every Owner of a Lot by virtue of being an Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Transfer of ownership of a Lot shall automatically transfer membership in the Association. Without any other act or acknowledgment, Owners shall be governed and controlled by the Governing Documents. There shall be two classes of membership, Class A and Class B, as described in Section 3.3 of these Bylaws.

3.2 Suspension

All voting rights of a Member shall be suspended during any period in which such Member is delinquent in the payment of any assessment duly established pursuant to the Declaration or is otherwise in default hereunder or under any other Governing Documents. The Board may also suspend the Member's right to use of any of the Common Areas during such period of default.

3.3 Voting Rights

The Association shall have two (2) classes of voting membership:

A. Class A

Class A Members shall be all Owners with the exception of Declarant (provided that Declarant shall become a Class A member from and after the Turnover Date) and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot. If the co-Owners of a Lot cannot agree upon the vote, the vote of the Lot shall be disregarded in determining the proportion of votes with respect to the particular matter at issue.

B. Class B

The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot it owns. The Class B membership shall cease and be converted to Class A membership on the Conversion Date.

ARTICLE IV MEETINGS OF MEMBERS

4.1 Initial Meeting

The initial meeting of the Association shall be held within one (1) year after the Association is formed by filing of the Articles of Incorporation. Declarant shall call the initial meeting by written notice to each Owner in accordance with the requirements of Section 4.6, except that Declarant shall fulfill the role of secretary.

4.2 Transitional Advisory Committee

Unless the Turnover Meeting has been held, the Declarant shall call a meeting of the Members for the purpose of forming the Transitional Advisory Committee to assist in transitioning administrative responsibility for the Association from the Declarant to the Members within sixty (60) days after the conveyance to Owners other than the Declarant of fifty percent (50%) or more of the Lots then existing in the Subdivision. If the meeting is not called by the Declarant within the time specified, the meeting may be called and notice given by any Member. Notice of the meeting shall be given in accordance with the requirements of Section 4.6.

The Transitional Advisory Committee shall be advisory only and shall consist of three (3) or more members, with two (2) or more members selected by Members other than Declarant and no more than one (1) member selected by Declarant. The Transitional Advisory Committee members shall serve until the Turnover Meeting. If at the meeting to form the Transitional Advisory Committee the Members, other than the Declarant, fail to select a Transitional Advisory Committee, the Declarant shall have no further responsibility to form the Transitional Advisory Committee. The requirement for a Transitional Advisory Committee shall not apply once the Turnover Meeting has been held. The Transitional Advisory Committee shall have

reasonable access to all information and documents which Declarant is required to turn over to the Association under ORS 94.616.

4.3 Turnover Meeting

The Declarant shall call the Turnover Meeting for the purpose of turning over administrative control of the Association to the Class A Members within ninety (90) days following the Conversion Date. If the Declarant does not call the Turnover Meeting within the time specified, the Transitional Advisory Committee or any Owner may call the Turnover Meeting. Notice of the Turnover Meeting shall be given in accordance with the requirements of Section 4.6. At the Turnover Meeting, the Members shall elect a new Board in accordance with the terms of Article V, and Declarant shall deliver to the Board the information and documents required by ORS 94.616. In order to facilitate an orderly transition, during the three (3) month period following the Turnover Meeting, Declarant or an informed representative shall be available to meet with the Board on at least three (3) mutually acceptable dates to review the information and documents delivered to the Board pursuant to this Section.

4.4 Annual Meetings

The Association shall hold a meeting of the Members each calendar year. Such annual meeting shall be held on a date and at a time designated by the Board from time to time, and notice of the annual meeting shall be sent to all Members in accordance with the requirements of Section 4.6. Annual meetings may not be conducted by written ballot.

At the annual meeting, new members of the Board shall be appointed or elected (as applicable) to replace those members whose terms have expired pursuant to the terms of Section 5.3, and the Board shall transact any other business within the powers of the Association.

The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of Directors;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

4.5 Special Meetings

Special meetings of the Association may be called at any time by the president, by a majority of the Board, or by written request of Members entitled to cast at least twenty percent (20%) of the votes of the Association. Notice of a special meeting shall be sent to all Members in accordance with the requirements of Section 4.6, and business transacted at a special meeting shall be restricted to the purposes set forth in such notice.

4.6 Notice of Meetings

Written notice of any meeting of the Association shall be given by the president, secretary or other person authorized by the Board to call a meeting at least ten (10) days but not more than fifty (50) days before such meeting. The notice shall be sent to each Member, and to each Mortgagee who has requested notice, by first class mail, electronic mail or facsimile to the physical address, e-mail address or facsimile number last appearing on the books of the Association (or to such other physical address, e-mail address or facsimile number as a Member or Mortgagee has designated in writing to the Association at least ten (10) days prior to the giving of such notice of meeting); provided, however, that a notice of (i) failure to pay assessments, (ii) foreclosure of an Association lien, or (iii) an action the Association may take against a Member may not be sent by electronic mail or facsimile. A Member may decline to receive notice by electronic mail or facsimile by sending written notice to the Association, in which event all notices to such Member shall be sent by first class mail. The notice of a meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, or any proposal to remove a Director or officer. Notice of a meeting may be waived by any Member at any time before or after the meeting. No Member who is present at a meeting may object to the adequacy or timeliness of the notice given.

4.7 Place of Meetings

Meetings of the Association shall be held within ten (10) miles of the Subdivision, at an exact location determined by the Board and designated in the notice required by Section 4.6.

4.8 Adjournment of Meetings

As permitted by ORS 65.214, if any meeting of the Members does not constitute a quorum, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than two (2) days nor more than ten (10) days from the time of the original meeting. The adjournment provisions of this Section do not apply to actions proposed to be taken by written ballot.

4.9 Quorum

The presence at the meeting of Members entitled to cast, either in person or by proxy, twenty percent (20%) of the votes of the Association shall constitute a quorum for any action, unless a greater percentage is required elsewhere in the Declaration or these Bylaws. The subsequent joinder of Member in the action taken at a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Member for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a Member or Members.

4.10 Majority Vote

When a quorum is present at any meeting of the Members, the vote of Owners holding more than fifty percent (50%) of the votes of the Association present, in person or by proxy, at

the meeting shall be binding on all Owners for all purposes, except where a higher percentage vote is required by the Governing Documents or the Act.

4.11 Proxies

A vote may be cast in person or by proxy. A proxy may require the holder to cast a vote for or against any special proposal set out in the notice calling the meeting. A proxy shall be in writing and filed with the secretary before or during the meeting. A proxy shall expire one (1) year after the date it was signed unless a shorter period is specified in the proxy; provided, however, that appointment of a proxy is revoked if the Member appointing the proxy (i) attends any meeting and votes in person, (ii) signs and delivers to the secretary either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form, or (iii) sells his or her Lot. Unless withdrawn, a proxy given to another person to vote at a specific meeting shall also be valid at an adjourned meeting called under the provisions of Section 4.8. The Association must retain proxies and ballots for one (1) year from the date of the determination of the vote.

4.12 Fiduciary and Corporate Owners.

An executor, administrator, conservator, guardian or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same has been transferred to such person's name; provided, however, that such person must provide the secretary with written evidence satisfactory to the secretary that the person is the executor, administrator, conservator, guardian or trustee, holding such Lot in such capacity. Any person voting on behalf of a Lot owned by a corporation or other entity must provide the secretary with written evidence, satisfactory to the secretary, that such person is the duly constituted representative thereof.

4.13 Voting by Mail or Electronic Ballot.

Except as set forth in subsection (f) below, the Board, in its discretion, may provide that a vote, approval or consent of any Member be given by regular mail, electronic mail or facsimile in accordance with the procedure outlined below. For purposes of this Section, "written ballot" shall include any ballot distributed by electronic mail or facsimile.

(a) In the case of an election of Board members by written ballot, then in addition to the other requirements set forth in this Section 4.13, the following procedures must be followed:

(i) the existing Board members must advise the secretary in writing of the names of proposed Board members sufficient to constitute a full board and of a date at least fifty (50) days after such advice is given by which all votes are to be received;

(ii) the secretary, within five (5) days after such advice is given, must give written notice of the number of Board members to be elected and of the names of the nominees to all Members;

(iii) the notice must state that any such Owner may nominate an additional candidate or candidates, not to exceed the number of Board members to be elected, by giving written notice of such nomination to the secretary on or before a specified date which must be fifteen (15) days from the date after the notice was given by the secretary; and

(iv) five (5) days after such specified date, the secretary must give written notice to all Members, stating the number of Board members to be elected, stating the names of all persons nominated by the Board and by the Members on or before the deadline, stating that each Member may cast a vote by mail and stating the deadline established by the Board by which such votes must be received by the secretary at the address of the principal office of the Association (which must be specified in the notice) and that votes received after that date will not be effective.

(b) Any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Association member that is entitled to vote on the matter.

(i) A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(ii) The Board must provide owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered.

(iii) If, at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Owners petition the Board requesting secrecy procedures, a written paper ballot must be accompanied by a secrecy envelope, a return identification envelope to be signed by the owner and instructions for marking and returning the paper ballot. In this instance, no electronic mail voting will be accepted. Written paper ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(c) Matters that may be voted on by written ballot will be deemed approved or rejected as follows:

(i) If approval of a proposed action otherwise would require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed approved when the date for return of ballots has passed, a quorum of Members has voted, and the required percentage of approving votes has been received. Otherwise, the proposal will be deemed to be rejected.

(ii) If approval of a proposed action otherwise would require a meeting at which a specified percentage of Owners must authorize the action, the proposal will be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met.

(d) All solicitations for votes by written ballot must state the following:

(i) If approval of the proposal by written ballot requires that the total number of votes cast equal or exceed a certain quorum requirement, the number of responses needed to meet such quorum requirement;

(ii) If approval of a proposal by written ballot requires that a certain percentage of total votes cast approve the proposal, the required percentage of total votes needed for approval; and

(iii) If the matter being voted on is the election of Directors to the Board, the additional items set forth in subsection (a) above.

(e) All solicitations for votes by written ballot must specify the period during which the Association will accept written ballots for counting, and a date certain on which all ballots must be returned to be counted.

(f) Action by written ballot may not substitute for the Turnover Meeting or the annual meeting of the Association.

ARTICLE V BOARD OF DIRECTORS

5.1 Number and Qualification

The affairs of the Association shall be managed by a Board consisting of (i) between one (1) and three (3) Directors (as determined by Declarant) prior to the Turnover Meeting; and (ii) between three (3) Directors and five (5) Directors after the Turnover Meeting (as determined by the Members from time to time). The Directors need not be Members prior to the Turnover Meeting but shall be Members after the Turnover Meeting; provided, however, that if a Lot is owned by more than one (1) Owner, only one (1) Owner of that Lot may serve on the Board at any time.

5.2 Appointment

Until the Turnover Meeting, Declarant shall appoint the Directors, and may remove and replace the Directors, with or without cause, except that Declarant may revocably or irrevocably delegate the power to appoint, remove and replace Directors hereunder by written instrument delivered to the Association naming the party to whom the power to appoint Directors has been delegated. At and after the Turnover Meeting, the Directors shall be elected in the manner provided in Section 5.3.

5.3 Election of Directors

At the Turnover Meeting, the Directors appointed by Declarant or its appointee shall submit their resignations, and the Members shall elect new Directors as provided herein. If three (3) Directors are elected, one (1) Director shall be elected for a term of one (1) year and two (2) Directors for a term of two (2) years. If five (5) Directors are elected, two (2) Directors shall be

elected for a term of one (1) year and three (3) Directors shall be elected to serve for a term of (2) years. Thereafter, at each annual meeting of the Association, the Members shall elect the number of Directors equal to the number whose terms are then expiring, each to serve a term of two (2) years. Any Director may serve more than one (1) term. Voting for Directors shall not be cumulative.

5.4 Removal

Any Director, other than a Director appointed by Declarant, may be removed, with or without cause, by the affirmative majority vote of the Members present, in person or by proxy, at any meeting of the Members at which a quorum is present. No removal of a Director is effective unless the matter of removal was included in the notice of the meeting and the Director whose removal is proposed is given the opportunity to be heard at the meeting. At the meeting, the Members shall elect a replacement Director to serve the remainder of the replaced Director's term.

5.5 Resignation

Any Director may resign at any time by sending a written notice of such resignation to the secretary. Unless otherwise specified in such notice, a resignation shall take effect upon receipt of the notice by the secretary.

5.6 Vacancies

Vacancies on the Board caused by the death, resignation, or removal of a Director shall be filled by vote of the majority of the remaining Directors, even if they constitute less than a quorum. Any Director so elected shall serve the remainder of the replaced Director's term.

5.7 Compensation

No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for his or her actual out-of-pocket expenses reasonably incurred in the performance of his or her duties.

5.8 Liability and Indemnification of Directors, Officers, Manager and Managing Agent

The Directors and officers of the Association shall not be liable to the Association or the Members for any mistake of judgment, negligence, or otherwise except for their own willful misconduct or bad faith. The Association shall indemnify and hold harmless each Director and officer and the manager or managing agent on behalf of the Association unless such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these Bylaws. Each Director and officer and the manager or managing agent, if any, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed upon them in connection with any proceeding to which they may be a party, or which they may become involved by reason of being or having been a Director, officer, manager or managing agent and shall be indemnified upon any reasonable settlement thereof; provided, however, there shall be no indemnity if the Director, officer, manager or

managing agent is adjudged guilty of willful nonfeasance, misfeasance or malfeasance in the performance of their duties. As to any manager or managing agent this Section shall only be applicable to third party tort claims up to the amount of the Association's liability insurance coverage and shall not in any way apply to contractual liability or obligations under the management contract.

5.9 Special Committees

The Board by resolution may designate one or more special committees, each committee to consist of two (2) or more Members which, to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Board. Such special committees must keep regular minutes of their proceedings and report the same to the Board when required. The members of such special committee or committees designated shall be appointed by the Board or the president. The Board or the president may appoint Members to fill vacancies on each of said special committees occasioned by death, resignation, removal, or inability to act for any extended period of time.

5.10 Powers of Board

The business and affairs of the Association shall be managed by the Board. The Board may exercise all of the powers of an Association under the Act, except such as are by the laws of Oregon or the Governing Documents conferred upon or reserved to the Members. The Board shall have the power to:

- (a) To adopt and publish the Rules and Regulations governing the use of Common Areas, and the personal conduct of the Members and their guests thereon, and to establish fines for the infraction thereof;
- (b) To suspend a Member's voting rights and/or right to use the Common Areas (other than streets and roadways) during any period in which such Member is in default in the payment of assessments levied by the Association. Such rights may also be suspended, after notice and a hearing, for a period not to exceed sixty (60) days for an infraction of the Rules and Regulations or a violation of the Declaration;
- (c) To declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board without just cause having been furnished to and accepted by the Board;
- (d) To adopt an annual budget for the operation of the Association;
- (e) To levy and collect assessments, late fees, interest and fines as provided in the Governing Documents, including filing liens against Lots and instituting legal proceedings to collect such assessments, late fees, interest and fines;
- (f) To appoint and disband such committees as the Board deems appropriate;

(g) To establish, disburse and maintain such petty cash as is necessary for efficiently carrying on the business of the Association;

(h) To engage the services of a manager, an independent contractor, or such employees and contractors as it deems necessary, and to prescribe the conditions, compensation and duties of their work. Such power shall include authority to enter into management agreements with other parties to manage, operate or perform all or any part of the affairs and business of the Association;

(i) To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners;

(j) To borrow funds to pay costs of operation of the Association with the approval of sixty percent (60%) of the Members present at a meeting of the Members at which a quorum is present;

(k) To grant easements or rights-of-way to any utility company, public agency or to any other entity;

(l) To protect or defend the Common Areas from loss or damage by suit or otherwise, and to provide adequate reserves for maintenance and replacement of the Common Maintenance Areas;

(m) To adjust the amount, collect and use any insurance proceeds to repair damage or replace damaged or lost property, and if proceeds are insufficient to repair damaged or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

(n) To enforce the provisions of the Governing Documents and to enjoin and seek damages from any Owner for violation of such Governing Documents; and

(o) To exercise any additional or different powers necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Governing Documents or otherwise promoting the general benefit of the Members of the Association.

5.11 Duties of Board

It shall be the duty of the Board:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the votes of the Members who are entitled to vote;

(b) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) To fix the amount of all assessments required or permitted under the Declaration against each Lot, and to send written notice of each such assessment to every Owner;

(d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not assessments have been paid in respect to a particular Lot. A reasonable charge may be made by the Board for the issuance of these certificates, and the information contained on the certificates shall be binding on the Association.

(e) To procure and maintain adequate liability and property insurance on property owned by the Association or other property for which the Association has an obligation under the Declaration or these Bylaws to insure and, if deemed appropriate, insurance on the behalf of any Director, officer, employee, or agent of the Association against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such;

(f) To cause all officers, employees or agents, having fiscal responsibility to be bonded, as it may deem appropriate;

(g) To cause the Common Maintenance Areas to be maintained;

(h) To maintain a current mailing list of the Members and Mortgagees who have requested notice of meetings and other events;

(i) To file annual tax returns for the Association;

(j) To adopt a budget annually for the Association to manage and operate the Subdivision. Within thirty (30) days after adopting the annual budget, the Board shall provide a summary to all Owners. If the Board fails to adopt a budget, the last adopted budget shall continue in effect; and

(k) To perform all other duties of the Association and the Board as set forth in the Governing Documents.

In performing its duties, the Board shall be governed by ORS 94.640 and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377, as amended from time to time.

ARTICLE VI MEETINGS OF THE BOARD

6.1 Initial Meeting

The initial meeting of the Board shall occur within fourteen (14) days after the date the initial meeting of the Members pursuant to Section 4.1. Notice of the initial meeting shall be posted or sent to each Director and the Members in accordance with the requirements of Section 6.9.

6.2 Regular Meetings

Regular meetings of the Board may be held at such time as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be posted or delivered to each Director and the Members in accordance with the requirements of Section 6.9.

6.3 Special Meetings

Special meetings of the Board may be called at any time by the president or a majority of the Directors. Notice of special meetings shall be posted or delivered to each Director and the Members in accordance with the requirements of Section 6.9.

6.4 Emergency Meetings

Emergency meetings may be held without notice, if the reason for the emergency is stated in the minutes of the meeting. Only emergency meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all Directors participating to hear each other simultaneously or otherwise be able to communicate during the meeting.

6.5 Executive Session

At the discretion of the Board, the following matters may be considered in executive session:

- (a) consultation with legal counsel concerning rights and duties of the Association regarding existing or potential litigation or criminal matters;
- (b) personnel matters, including salary negotiations and employee discipline;
- (c) negotiations of contracts with third parties;
- (d) collection of unpaid assessments; and
- (e) for any other purpose permitted by ORS 64.640, as amended from time to time.

Except in emergencies, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the president shall state the general nature of the action to be considered and when and under what circumstances the deliberations can be disclosed to Members. The statement, motion, or decision to meet in executive session must be included in the minutes of the meeting. A contract or action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in an open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

6.6 Adjournment

Any meeting of the Board may be adjourned by a majority of the Directors present at the meeting, even if a quorum is not present. When a meeting is adjourned for fewer than thirty (30) days, no notice of the resumption or reconvening of the adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place.

6.7 Board Meetings Open to all Members

Except of executive sessions, all meetings of the Board shall be open to the Members, provided that no Member shall have the right to participate in the Board's meeting unless such Member is also a member of the Board. The president shall have the right to exclude any Member who disrupts the proceedings at a meeting of the Board.

6.8 Place of Meetings

Meetings of the Board shall be held within ten (10) miles of the Subdivision, at an exact location determined by the Board and designated in the notice required by Section 6.7.

6.9 Notice of Meetings

The secretary shall give written notice to each Director of any meeting of the Board at least three (3) prior to the date set for such meeting, stating the purpose, time and location of the meeting. Notice shall be sent to the address of each Director as listed on the books of the Association, or to such other address as a Director may designate by written notice to the secretary given at least ten (10) days prior to the giving of notice of the meeting. Notice of any meeting may be waived by any Director at any time before or after the meeting. No Director who is present at a meeting may object to the adequacy or timeliness of the notice given.

For other than emergency meetings, notice of Board meetings shall also be given the Members by posting at a place or places within the Subdivision likely to be seen by all Members at least three (3) days prior to the Board meeting, or by one of the means described in Section 4.6 not less than ten (10) days prior to the Board meeting.

6.10 Voting by the Board

Each Director shall have one (1) vote. The votes of more than fifty percent (50%) of Directors present at a meeting at which a quorum is present shall constitute the act of the Board.

6.11 Quorum

The presence in person of a majority of the Directors shall constitute a quorum for voting at a Board meeting. If less than a quorum is present at a meeting, a majority of the Directors present at the meeting may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

ARTICLE VII OFFICERS OF ASSOCIATION

7.1 Enumeration of Officers

The principal officers of the Association shall be the president, secretary and treasurer, each of whom shall be elected by the Board in accordance with Section 8.2. The Board may appoint other officers as in its judgment may be desirable. All officers must be Members, or members of their immediate family, fiduciaries, beneficiaries or Mortgagees (and in the case of Lots owned by corporations, trusts or partnerships, the offices may be held by directors, officers, shareholders, trustees, partners or employees of such organizations).

7.2 Election of Officers

The officers of the Association shall be elected by the Board and shall hold office at the pleasure of the Board and until their successors are elected and qualified. If any office becomes vacant, the Board shall elect a successor to fulfill the unexpired term at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

7.3 Term

The officers of the Association shall be elected by the Board and shall hold office for a period of one (1) year, unless an officer resigns or is removed by the Board or is otherwise disqualified for service.

7.4 Resignation and Removal

Any officer of the Association may be removed from office, with or without cause, upon the affirmative vote of a majority of the Board and a successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. An officer of the Association may resign at any time by giving notice to the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein; the acceptance of such resignation shall not be necessary to make it effective.

7.5 Vacancies

A vacancy in any office may be filled by election at any regular meeting of the Association or at a special meeting of the Board called for such purpose. The officer elected to fill a vacancy shall serve for the remainder of the term of the officer he or she replaces.

7.6 Multiple Offices

The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices.

7.7 Duties

The duties of the officers of the Association are as follows:

President

The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Members and Board and shall have all of the powers and duties which are usually incident to the office of the chief executive officer of an Association, including, but not limited to, the power to appoint committees from time to time as may, in the president's discretion, be appropriate to assist in the conduct of the affairs of the Association.

Secretary

The secretary shall keep minutes of all proceedings of the Board and minutes of all Association meetings. The secretary shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. Association records shall be kept by the secretary, except for those of the treasurer. The secretary shall perform all other duties incident to the office of secretary of an association and as may be required by the Directors or the president. In addition, the secretary shall act as vice president, taking the place of the president and performing such duties whenever the president is absent or unable to act, unless the Directors have appointed a vice president.

Treasurer

The treasurer shall be responsible for Association funds and securities and shall be responsible for supervising the managing agent and causing the same to keep full and accurate financial records and books of account showing all receipts and disbursements necessary for the preparation of all required financial statements. The treasurer shall review the reports and statements provided by the managing agent with respect to the deposit of all funds and other valuable effects in such depositories as may from time to time be designated by the Board, and the disbursement of Association funds in accordance with the approved Association budget and any special authorizations from the Board for unbudgeted items. The treasurer shall in general perform all other duties incident to the office of treasurer of an association and such other duties as may be assigned by the Board. The treasurer shall cause all assessments to be deposited in a separate bank account in the name of the Association and all expenses of the Association to be paid from that account.

7.8 Execution of Instruments

All agreements, contracts, deeds, leases and other instruments of the Association, except checks, shall be executed by such person or persons as may be designated by general or special resolution of the Board and, in the absence of any general or special resolution applicable to any such instrument, then such instrument shall be signed by the president. All checks for less than Two Thousand Four Hundred Ninety-Nine Dollars (\$2,499.00) may be signed by the managing agent or any duly elected officer of the Association. All checks of Two Thousand Five Hundred (\$2,500.00) or more shall require the signatures of at least two (2) authorized signatories.

7.9 Compensation

Other than reimbursement of reasonable out-of-pocket expenses incurred on behalf of the Association, no officer of the Association shall receive any compensation from the Association

for acting as an officer, unless such compensation is authorized by a majority vote of the Members present, in person or by proxy, at a meeting of the Members at which a quorum is present.

ARTICLE VIII BUDGET, ASSESSMENTS, RESERVE STUDY AND MAINTENANCE PLAN

8.1 Budget

The Board shall annually prepare and approve the budget for the Association and distribute a copy thereof to each Member as provided in Section 4.1 of the Declaration.

8.2 Assessments

The Association shall levy and collect assessments and other charges pursuant to the terms of Article 4 of the Declaration.

8.3 Reserve Study and Maintenance Plan

The Declarant and Association shall prepare a reserve study and maintenance plan pursuant to the terms of Section 4.3 of the Declaration.

ARTICLE IX BOOKS AND RECORDS

9.1 Books and Records

The Association and managing agent (if applicable) shall keep (a) financial records sufficiently detailed for proper accounting purposes, including an assessment roll for each Lot (b) detailed records of the actions of the Board and managing agent (if applicable) and minutes of Board and Association meetings, (c) a list of Owners entitled to vote at Association meetings and a list of all Mortgagees whom have requested notice of meeting and other events, and (d) all other documents, information and records required to be maintained by the Association under the terms of the succeeding paragraph. All Association documents, information and records shall be maintained within the State of Oregon at all times.

The Association shall maintain within the State of Oregon the documents, information and records required to be delivered to the Association under ORS 94.616 and all other records of the Association for not less than the period specified for record under ORS 65.771 or any other applicable law, except that (a) the documents specified in ORS 94.616(3)(o), if received, must be retained as permanent records of the Association, and (b) proxies and ballots must be retained for one (1) year from the date of determination of the vote. Such documents, information and records shall include, but are not limited to, the following: (i) the Declaration and Bylaws, including any amendments or supplements thereto, (ii) the Plat, including any amendments or supplements thereto, (iii) the Rules and Regulations then in effect, (iv) the most recent annual financial statement of the Association, (v) the current operating budget of the Association, and (vi) any other documents required by the Act to be maintained by the Association. All documents, information and records shall be made reasonably available for

inspection and duplication (at a reasonable fee) by Owners, Mortgagees, and prospective purchasers of Lots upon written request, unless such documents are protected from disclosure under ORS 94.670(8) or any other applicable law.

9.2 Financial Statements

Within ninety (90) days after the end of each fiscal year, the Board shall distribute to each Member and, upon request, any Mortgagee a copy of the annual financial statement of the Association, consisting of a balance sheet and income and expense statement for the preceding fiscal year. Commencing with the fiscal year following the Turnover Meeting, (i) if annual assessments exceed \$75,000 for the fiscal year, then the Board shall cause such financial statements to be audited within one hundred eighty (180) days after the end of the fiscal year by an independent certified public accountant licensed in State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or (ii) if the annual assessments are \$75,000 or less, shall cause such review within one hundred eight (180) days after receipt of a petition requesting such review signed by at least a majority of Members. Notwithstanding the foregoing to the contrary, the Board need not cause such an audit or review of the financial statements of the Association to be performed if at least sixty percent (60%) of the Members, not including votes of Declarant with respect to Lots owned by Declarant, elect on an annual basis not to comply with the above audit requirements.

9.3 Tax Returns

The Board shall cause to be filed the necessary state and federal income tax returns for the Association.

9.4 Payment Vouchers

The method of approving payment vouchers (if applicable) for the maintenance, upkeep and repair of the Common Maintenance Areas and payment for the expense of the Association will be as established from time to time by the Board.

9.5 Fiscal Year

The Fiscal Year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

ARTICLE X INSURANCE

The Association shall maintain the insurance coverages required by Article 9 of the Declaration.

ARTICLE XI DAMAGE OR DESTRUCTION BY CASUALTY

Any damage to or destruction of the Common Areas or any other areas the Association is required to insure against an event of casualty shall be handled in accordance with the terms of Article 10 of the Declaration.

ARTICLE XII RULES AND REGULATIONS

The Board shall have power to adopt and publish rules and regulations governing the conduct of persons and the operation and use of the Lots and the Common Areas as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Subdivision, and to establish fines for the infraction thereof. Such rules and regulations may be adopted upon a majority vote of the Directors present at a meeting at which there is a quorum present and as to which notice has been given as provided in these Bylaws. Such notice shall include a verbatim copy of all proposed rules and regulations. No rule or regulation shall be adopted without a copy thereof first having been delivered or mailed to each Member in accordance with the requirements of Section 4.6. Upon adopting any such rules and regulations, the Board shall cause copies thereof to be delivered to each Member. All such rules and regulations become binding on all Members and occupants of all Lots upon the date of delivery. Any rule or regulation which conflicts with these Bylaws or the Declaration shall be null and void.

ARTICLE XIII AMENDMENTS

13.1 General Amendments

Except as set forth below, any and all provisions of these Bylaws may be amended or repealed and new Bylaws may be adopted at any annual meeting of the Members, or at any special meeting called for that purpose, by at least a majority of the votes of the Members, and the written consent of the Declarant so long as the Declarant is a Class B Member. Notwithstanding the foregoing to the contrary, if a particular provision required to be in the Declaration under the terms of ORS 94.580 is included in these Bylaws (including, but not limited to, voting rights of Members, the method of determining liability for assessments, and the period of Declarant control of the Association), then the voting requirements for amending the Declaration shall also govern the amendment of the provision in the Bylaws.

Amendments or changes to these Bylaws may be proposed by either a majority of the Board or by the Members holding at least thirty percent (30%) of the votes of the Association. The proposed amendment must be in writing and shall be included in the notice of any meeting at which action is to be taken thereon.

An amendment or change to these Bylaws shall not be effective unless it is (i) certified by the president and secretary of the Association as having been adopted in accordance with these Bylaws and ORS 94.625 and acknowledged in the manner provided for acknowledgement of deeds, and (ii) recorded in the office of the recording officer of Deschutes County, Oregon.

13.2 Declarant Amendments

Notwithstanding any provisions hereof to the contrary, the Declarant may unilaterally amend these Bylaws (i) at any time before the conveyance of the first Lot to a person other than Declarant or a successor declarant; (ii) to bring this Declaration into compliance with any provision of law, including, but not limited to, regulatory amendments permitted by Section 13.3; (iii) to correct scriveners' or clerical errors; and (iv) as otherwise permitted by applicable law.

13.3 Regulatory Amendments

Notwithstanding any other provisions of this Article XIII, and consistent with terms of ORS 94.585, Declarant shall have the right to unilaterally amend these Bylaws prior to the Turnover Meeting in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmer's Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

ARTICLE XIV DISPUTE RESOLUTION

Before initiating litigation or an administrative proceeding in which the Association and a Member have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to resolve the problem through a dispute resolution program pursuant to terms of ORS 94.630(4). The written offer to resolve the dispute must be hand-delivered or mailed by certified mail, return receipt requested, to the other party at the address contained in the records of the Association. The requirements of this Article XIV, however, do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments (other than assessments attributable to fines).

ARTICLE XV MISCELLANEOUS

15.1 Notices

All notices to the Association or to the Board shall be sent in care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board hereafter may designate from time to time. Any notice to a Member, except as otherwise provided in these Bylaws, shall be sent by first class mail to the address of Member last appearing on the books of the Association (or to such other address as the Member has designated in writing to the Association).

15.2 Waiver

No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof that may have occurred and the number of times that the pertinent restriction, condition, obligation or provision was not enforced.

15.3 Severability

Invalidation or partial invalidation of any provision of these Bylaws shall not affect any of the remaining provisions of the Bylaws.

15.4 Personal Pronouns

All personal pronouns used in these Bylaws, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

15.5 Headings

The headings contained in these Bylaws are for reference purposes only and shall not in any way affect the meaning or interpretation of these Bylaws.

15.6 Conflicts

These Bylaws are intended to comply with applicable law and the Declaration. In case of any irreconcilable conflict, applicable law and the Declaration shall control over these Bylaws (unless these Bylaws expressly provide otherwise) and any amendments hereto, and any rules or regulations adopted hereunder.

15.7 Dissolution

Upon dissolution of the Association, voluntarily or otherwise, it shall automatically be succeeded by an unincorporated association of the same name and having the same purposes. All assets, property, powers, and obligations of the Association existing prior to dissolution shall thereupon automatically vest in the successor unincorporated association.

[Continued on the following page]

IN WITNESS WHEREOF, the undersigned President and Secretary of the Association hereby certify that these Bylaws were adopted as an amendment to the Original Bylaws in accordance with the terms of the Original Bylaws and ORS 94.625.

ASSOCIATION:

WAVERLY HOMEOWNERS ASSOCIATION,
an Oregon nonprofit corporation

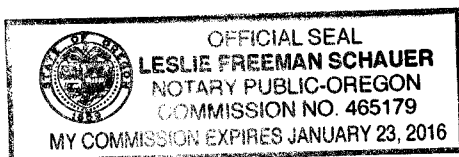
By: R Coffey
Name:
Title: President

By: Judith D. Godfrey
Name:
Title: Secretary

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss.
County of Deschutes)

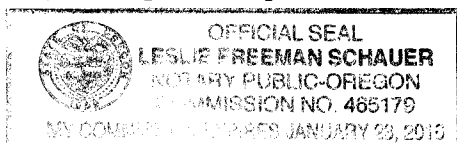
4 The foregoing instrument was acknowledged before me this 9th day of January, 2016, by Robert L. Godfrey, the President of WAVERLY HOMEOWNERS ASSOCIATION, an Oregon nonprofit corporation, on behalf of the corporation.



Leslie Freeman Schauer
Notary Public, State of Oregon
My Commission Expires: 1-23-2016

STATE OF OREGON)
) ss.
County of Deschutes)

4 The foregoing instrument was acknowledged before me this 9th day of January, 2016, by Judith D. Godfrey, the Secretary of WAVERLY HOMEOWNERS ASSOCIATION, an Oregon nonprofit corporation, on behalf of the corporation.



Leslie Freeman Schauer
Notary Public, State of Oregon
My Commission Expires: 1-23-2016

[Consent of Declarant appears on the following page]

CONSENT OF DECLARANT

WAVERLY, LLC, an Oregon
limited liability company

BOBJUDY LLC, an Oregon
limited liability company

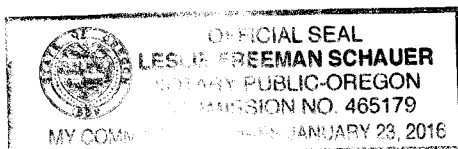
By: R. Godfrey
Name:
Title:

By: R. Godfrey
Name:
Title:

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss.
County of Deschutes)

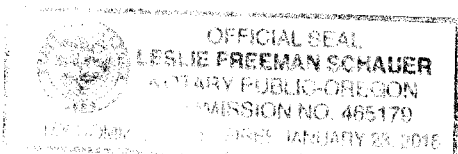
4 The foregoing instrument was acknowledged before me this 9th day of January 2016, by Robert L. Godfrey the President of WAVERLY, LLC, an Oregon limited liability company, on behalf of the company.



Leslie Freeman Schauer
Notary Public, State of Oregon
My Commission Expires: 1-23-2016

STATE OF OREGON)
) ss.
County of Deschutes)

4 The foregoing instrument was acknowledged before me this 9th day of January 2016, by Robert L. Godfrey, the President of BOBJUDY LLC, an Oregon limited liability company, on behalf of the company.



Leslie Freeman Schauer
Notary Public, State of Oregon
My Commission Expires: 1-23-2016