

APPLICATION FOR TENTATIVE PLAN

Date: January 23, 2026

Property: Tax Map 3N10W28, Lot 1401

Applicant: Manzanita Development Group, LLC
1051 NW Bond Street, Suite 410
Bend, Oregon 97703

Architect: SAJ Architecture
721 SW Industrial Way, Suite 130
Bend, Oregon 97702

Civil Engineer: Vando Development
915 SW Rimrock Way, Ste 201-230
Redmond, Oregon 97756

Surveyor: Onion Peak Design
PO Box 326
Nahalem, Oregon 97131

Proposal: The Applicant wishes to subdivide the subject property into 70 single-family lots in accordance with Manzanita Ordinance No. 95-5. The Applicant is applying for a Tentative Plan in accordance with Section 6 of the said Ordinance. This narrative seeks to clarify the proposals compliance with the submission requirements and standards included in said Ordinance. The new subdivision will be annex into the existing Highlands Homeowners Association, which will maintain common area tracts and enforce the restrictive covenants. The Applicant wishes to construct required right-of-way and utility improvements, as well as individual lot grading and utility stubs, in phases as identified on the submitted plans. The Applicant is seeking approval of the Tentative Plan for all phase but will submit Final Plat applications for the phases separately (1, 2, 3, 4

and then 5) or in combination (1 and 2, 3 and 4, then 5, or another sequential combination). The Applicant is therefore requesting that the right-of-way and utility improvements be complete relative to the submitted phasing.

NARRATIVE

SECTION 11 - INFORMATION IN STATEMENT

The statement to accompany the tentative plan shall contain the following information:

1. A general explanation of the improvements and public utilities including street, drainage, water supply and waste disposal systems proposed to be installed, and how they meet City, County and/or NBWA standards.

Applicant Response: The proposed subdivision consists of the creation of 70 single-family lots served by Meadow Drive to the north, an extension of Highland Drive to the south, and two new residential streets within the subdivision. Utilities (water, sewer, storm, electrical) will be provided within the street right-of-way as depicted on the submitted plans. The property is wholly within City limits, and therefore compliance with City standards is required. A summary of the standards and the Applicant's response to said standards is included in Sections 39 through 42 below.

2. Deviations from City, County or NBWA standards, if any.

Applicant Response: The Applicant is not seeking any deviations from the stated standards.

3. Public or common areas proposed, if any.

Applicant Response: The Applicant is proposing common area tracts within the subdivision to provide open space and greenway buffering between the homes as indicated in the submitted plans. These common area tracts will be maintained by the homeowner's association for the benefit of the residents and will provide non-vehicular multi-modal access through the development. The common area tract will also connect to the adjacent subdivision.

4. Tree planting proposed, if any.

Applicant Response: No tree planting is proposed as part of the subdivision.

5. A preliminary draft of restrictive covenants proposed, if any.

Applicant Response: See proposed draft restrictive covenants as Exhibit A of the application.

6. The copies of a tentative plan and a statement of any proposed subdivision shall be submitted to the City Manager at least 30 days prior to the meeting of the Planning Commission at which consideration is desired, together with an initial fee as established in the City Land Use Fee Schedule.

Applicant Response: This item is procedural and not a standard or criteria requiring a response.

- a. The Planning Commission shall not consider any preliminary plat until the total filing fee is paid.

Applicant Response: Acknowledged.

- b. Regardless of Planning Commission action, the filing fee is non-refundable.

Applicant Response: Acknowledged.

7. Optional Preliminary Procedure. Prior to the filing of a tentative plan, a subdivider may submit to the City Manager plans and other information concerning a proposed or contemplated development. The City Manager shall then, within 15 days, schedule a conference with the subdivider on such plans and other data, and shall recommend consultation by the subdivider with other public or private agencies whose interest might be affected. This subdivision conference is an optional procedure which may be elected by the subdivider and is not required by this Ordinance.

Applicant Response: This item is procedural and not a standard or criteria requiring a response. The Applicant attended a pre-application meeting with the City on 12/16/2025 and has coordinated with the Public Works director and Planning Manager on the proposed subdivision.

SECTION 39 – STREETS

1. General. The location, width and grade of streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents and curves appropriate for the traffic to be carried considering the terrain. Where location is not shown in a development plan, the arrangement of streets shall either:

- a. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
- b. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

Applicant Response: The existing streets will be extended to serve the development and new streets will provide connectivity through the development and connect to existing streets at each end. The streets will be designed to City of Manzanita residential street standards and are planned along the topographic contours and planned with intersections, grades and curves meeting ITE standards.

2. **Street Widths.** Unless otherwise indicated on any master plan, or by proceedings initiated by the City Council, or approved by the City Council upon initiation by other legally constituted governmental bodies, widths shall conform to city or county standards as appropriate, except where it can be shown by the land divider, that the number of lots or parcels served and the probable future traffic development are such as to unquestionably justify a narrower width. Increased widths may be required where streets are to serve commercial property, or where probable traffic conditions warrant such width. Approval or determination of street classification shall be made by the Planning Commission taking into consideration the zoning designations imposed by the zoning ordinance, the present use and development of the property in the area, the logical and reasonable prospective development of the area based upon public needs and trends, and the public safety and welfare.

Applicant Response: The proposed streets will be designed to meet the city's residential street standards. No reduction in width is requested, and as a residential street serving the residential neighborhood, a wider street is not warranted. The proposed street width is 20' and is consistent with previous phases.

3. **Alignment.** As far as is practical, streets other than minor streets shall be in alignment with existing streets by continuations of the center lines thereof. Staggered street alignment resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction, and in no case, shall be less than 100 feet.

Applicant Response: New streets intersect with the existing streets at a 90 degree angle, and intersections are appropriately and safely spaced according to their use and speed. The proposed T intersection of "Street A" & "Street B" (streets to be named at later date) is 160' south of the

existing intersection at the easterly terminus of Meadows Drive.

4. Future Street Extension. Where necessary to give access to, or permit a satisfactory future division of adjoining land, streets shall extend to the boundary of the subdivision or partition, and the resulting dead-end streets may be approved without a turn-around. Reserve strips including street plugs may be required to preserve the objectives of street extensions.

Applicant Response: Highland Drive currently intersects Meadows Drive at a T-intersection. The applicant proposed to extend Highland Drive into the development and provide a street plug and easement for the future extension of Highland Drive further to the east.

During the phasing of the development, portions of the site may have dead-ends that will be continued during future phases. If required by the fire department, an all-weather temporary surface will be provided to extend the street to an existing public street, providing effective firefighting access.

5. Intersection angles. Streets shall be laid out to intersect at angles as near to right angles as practical except where topography requires a lesser angle, but in no case shall the acute angle be less than 80 degrees unless there is a special intersection design or the corner radius is increased to allow for safe turning. An arterial or collector street intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection unless topography or other unusual circumstances requires a lesser distance. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection unless topography or other unusual circumstances requires a lesser distance. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line. Ordinarily, the intersection of more than two (2) streets at any one point will not be approved.

Applicant Response: See response to Item 3 above and plans for compliance with this standard.

6. Existing Streets. Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall be provided at the time of the land division.

Applicant Response: During the pre-application meeting, no concerns about the existing streets adjacent to the proposed subdivision adequacy was identified and there are no known issues.

7. **Reserved Strips.** No reserved strips controlling the access to public ways will be approved unless the strips are necessary for the protection of the public welfare, and in these cases they may be required. The control and disposal of the land comprising the strips shall be placed within the jurisdiction of the city under conditions approved by the Planning Commission.
Applicant Response: The Applicant will accept a condition of approval that the reserve strip providing access from the extension of Highland Drive to the east be provided with the first phase of Final Platting.
8. **Half Streets.** Half streets only may be approved where essential to the reasonable development of the subdivision or partitions when in conformity with the other requirements of these regulations, and when the Planning Commission finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract to be divided, the other half of the street shall be platted within the tract. Reserve strips may be required to preserve the objectives of half streets.
Applicant Response: No half streets are being proposed.
9. **Cul-de-sac.** A cul-de-sac shall terminate in a circular turnaround with a minimum radius of 40 feet, or a hammerhead with a length of at least 40 feet. Wherever possible, cul-de-sacs or dead end hammerhead streets shall be connected with walking or bicycle paths to other streets or developments, or with public or private open space.
Applicant Response: No cul-de-sacs or dead ends are being proposed.
10. **Alleys.** When any lots or parcels are proposed for commercial or industrial usage, alleys at least 20 feet in width may be required at the rear thereof with adequate ingress and egress for truck traffic unless alternative commitments for off-street service truck facilities without alleys are approved. Intersecting alleys shall not be permitted.
Applicant Response: No alleys are being proposed.
11. **Grades and Curves.** Grades shall not exceed six per cent on arterials, ten per cent on collector streets, or twelve percent on other streets. Grades in excess of these requirements require approval of the Planning Commission. Center line radii of curves shall not be less than 300 feet on major arterials, 200 feet on secondary arterials, or 100 feet on other streets, and shall be to an even ten feet. Where existing conditions, particularly the topography, make it otherwise impractical to provide buildable sites, the Planning Commission may accept steeper grades and sharper curves. In flat areas, allowance shall be made for finished street grades having a minimum slope, preferably, of at least 0.5 per cent.

Applicant Response: See response to Item 3 above and plans for compliance with this standard.

12. Marginal Access Streets. Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.

Applicant Response: No existing or proposed arterial streets abut or are contained within the proposed subdivision.

13. Street Names. All street names shall be approved by the Planning Commission for conformance with the established pattern and to avoid duplication and confusion.

Applicant Response: Acknowledged.

14. Private Streets. The Planning Commission shall approve or deny the dedication of private streets. The design and improvement of any private street shall be subject to all requirements prescribed by the City for public streets. The land divider shall provide for the permanent maintenance of any street required for access to property in a private street subdivision or a partition.

Applicant Response: No private streets are proposed within the subdivision.

SECTION 40 - UTILITY EASEMENTS

Easements for sewers, drainage, water mains, public utility installations, and other similar public purposes shall be dedicated, reserved or granted by the land divider in widths not less than ten feet on each side of rear lot or parcel lines, alongside lot or parcel lines and in planting strips wherever necessary, provided that easement of lesser width, such as for anchorage, may be allowed when the purposes of easements may be accomplished by easements of lesser width as approved by the city.

Applicant Response: Easements will be provided as required and complying with this standard as needed.

SECTION 41 - BUILDING SITES

1. **Size and Shape.** The size, width, shape and orientation of building sites shall be appropriate for the location of the land division considering all environmental features and for the type of development and use contemplated, and conform to the standards of the zone in which they are located. Each lot shall have an identifiable building site.
Applicant Response: The Applicant is subdividing the land for the purpose of providing buildable, single-family home sites. The lot sizes comply with the R2 zone minimum lot standards of 5,000 square feet, 40-foot lot width and 90-foot lot depth. The submitted plans indicate the lot sizes, lot numbers, and setbacks required in the R2 zone.
2. **Access.** Each lot and parcel shall abut upon a street other than an alley for a width of at least 25 feet.
Applicant Response: The minimum lot width in the R2 zone is 40 feet which is greater than the access standard. All lots will be provided access to a street complying with this standard.
3. **Through Lots and Parcels.** Through lots and parcels shall be avoided except where they are essential to provide separation of residential development from major traffic arteries or adjacent non-residential activities or to overcome specific disadvantages of topography and orientation.
Applicant Response: The development proposes a limited number of through-lots adjacent to Meadow Drive to allow the new street to follow the existing topography. No other through-lots are proposed.
4. **Lot and Parcel Side Lines.** The lines of lots and parcels, as far as is practicable, shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve.
Applicant Response: Lot lines are proposed at right angles to the street where practical, except where lots abut the curved portion of the proposed streets. At such locations, they are radial to the curve.
5. **Character of the Land.** Land which the Planning Commission finds to be unsuitable for subdivision or partitioning due to geologic hazard, flooding, improper drainage, steep slopes, adverse soil conditions or topography, utility easements, or other features which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision or partition and/or its surrounding areas, shall not be subdivided or partitioned unless adequate methods are formulated by the developer and approved by the Planning Commission, upon recommendation of the city staff, to solve the problems created by the unsuitable land conditions.
Applicant Response: No known geologic hazards, flooding, improper

drainage, overly steep slopes, conditions adverse soil conditions or topography, or other features exist within the proposed subdivision. An existing utility and access easement exist within the proposed subdivision and have been incorporated into the proposed subdivision.

SECTION 42 - BLOCKS

The length, width and shape of blocks shall take into account the need for adequate lot size and street width, circulation patterns and conformity with the topography of the site.

Applicant Response: The proposed blocks within the subdivision follow the pattern of development of adjacent subdivisions and are sized appropriately for the number of lots and to follow the existing topography. A significant amount of open space is being proposed to allow for community recreation and buffering between the proposed homes and adjacent developments.

EXHIBIT A

DRAFT CCRs

After recording, return to:

PINE GROVE PROPERTIES INC
PO Box 6299
Bend, Oregon 97708
Attn: Jim Pentz

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR HIGHLANDS AT MANZANITA

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR HIGHLANDS AT MANZANITA ("Declaration") is made and executed on this ____ day of _____, _____ by PINE GROVE PROPERTIES INC, an Oregon corporation ("Declarant") Pine Grove Properties, Inc., an Oregon corporation ("PGP"), is the current owner of the Property (as defined below) and executes this Declaration to indicate its agreement and consent.

RECITALS

A. Declarant is the developer of the real property located in City of Manzanita, Tillamook County, Oregon and legally described on the attached **Exhibit A** (the "Property"). Declarant is in contract to purchase the Property from PGP as soon as the Plat (as defined herein) is recorded. Declarant desires, and PGP agrees, to establish a planned community on the property known as "Highlands at Manzanita". The Property consists of Lots ____ through ____ (each, a "Lot," collectively, the "Lots") and Tract __, as shown on the Plat. The Plat also includes Tracts __, as well as _____, none of which is subject to this Declaration. Both _____ and _____ have or will be dedicated to the City of Manzanita for public use, thereby assuring access to the Lots.

B. NOW THEREFORE, Declarant and PGP hereby declare that the real property described on the attached **Exhibit A**, and any property subsequently annexed into this Declaration (collectively, the "Property") shall be held, sold and conveyed subject to the covenants, conditions and restrictions declared below, which shall run with the real property and shall benefit and be binding upon all parties having or acquiring any right, title or interest in the real property or any part thereof.

ARTICLE 1 DEFINITIONS

1.1 "Architectural Review" shall mean the process of architectural review pursuant to Section 7.7.

1.2 "ARC" or "Architectural Review Committee" shall mean the Architectural Review Committee set up pursuant to Section 7.7.

1.3 "Articles" shall mean the Articles of Incorporation for the non-profit corporation, Highlands at Manzanita Homeowners Association, or such similar name approved by and filed with the Oregon Secretary of State, corporations division.

1.4 "Assessments" shall mean and refer to each and every assessment levied by the Association

pursuant to this Declaration and/or applicable law, including, without limitation, regular or operating Assessments, Reserve Fund Assessments, Working Fund Assessments, LCE Assessments, and Special Assessments.

1.5 "Association" shall mean and refer to Highlands at Manzanita Homeowners Association, its successors and assigns.

1.6 "Association's Insurance" shall mean only that insurance that the Homeowners Association is obligated to obtain and maintain pursuant to Section 8.1 and/or the Bylaws.

1.7 "Board" or "Board of Directors" shall mean the Board of Directors of Highlands at Manzanita Homeowners Association.

1.8 "Bylaws" shall mean and refer to the duly adopted bylaws of Highlands at Manzanita Homeowners Association as the same may hereafter be amended or replaced. The Bylaws are attached hereto as **Exhibit B**, and shall be recorded with this Declaration pursuant to ORS 94.580.

1.9 "Common Areas" mean the real property owned by the Association for the common benefit of the Owners, which shall mean Tract ____, as shown on the Plat, and any other land designated in a Declaration of Annexation as "Common Areas", including all Improvements located thereon, except as otherwise provided herein. The Declarant shall deed the Common Areas to the Association not later than the date of the Turnover Meeting.

1.10 "Common Maintenance Areas" shall mean any property that the Association is required to maintain pursuant to this Declaration or a Declaration of Annexation or that the Board deems necessary or appropriate for the Association to maintain for the common benefit of the Owners, including those areas described in Section 5.1. Common Maintenance Areas specifically include all Common Areas.

1.11 "Common Expenses" shall mean those expenses incurred by the Association for the benefit of all of the Owners of the Lots within the Property, including reserves.

1.12 "Conversion Date" shall be the date that the Declarant designates in writing as the "Conversion Date".

1.13 "Current Operating Account" shall have the meaning given it in Section 8.8.

1.14 "Declarant" shall mean and refer to Encore Investments, LLC, an Oregon limited liability company, its successors or assigns, or any successor or assign to any of their interests in the development of the Property. "Declarant" shall not refer to any other subsequent purchaser of a Lot or Home. Declarant shall have the right to assign its interest as "Declarant" to more than one individual or entity; and Declarant may elect to assign portions of its rights as "Declarant" and retain and/or separately assign others.

1.15 "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in the Declaration of Covenants, Conditions, Easements and Restrictions for Highlands at Manzanita.

1.16 "Declaration of Annexation" or "Supplemental Declaration" shall have the meaning given to such terms in Section 11 below.

- 1.17 "Design Guidelines" shall mean the Design Guidelines established pursuant to Section 7.7.
- 1.18 "Home" shall mean a single-family dwelling located on a Lot.
- 1.19 "Improvement" shall have the meaning given it in Section 7.7.
- 1.20 "Limited Common Elements" means those portions of the Common Maintenance Areas that benefit fewer than all Lots, as determined by the Declarant in its sole discretion in a Supplemental Declaration or in a Declaration of Annexation, or as determined by the Declarant (before Turnover) or the Board (after Turnover) in its sole discretion. The costs and expenses for Limited Common Elements shall be assessed against the benefited Lots rather than against all Lots.
- 1.21 "Limited Common Expense Assessments" or "LCE Assessments" shall mean an Assessments (whether regular or for reserves) levied for a common expense or any part of a common expense that benefits fewer than all of the Lots, as designated in a Supplemental Declaration or in a Declaration of Annexation, or as determined in the sole discretion of the Declarant (before Turnover) or the Board (after Turnover). LCE Assessments include the costs associated with Limited Common Elements.
- 1.22 "Lot" shall mean and refer to any of the Lots 1 through 16, inclusive, as depicted on the Plat, and any other platted or partitioned lot designated as a "Lot" in a Declaration of Annexation, and includes all Improvements located thereon.
- 1.23 "Members" shall mean and refer to the members of the Association, which shall be all Owners of Lots ___ through ___, inclusive within Highlands at Manzanita.
- 1.24 "Neighborhood" shall mean and refer to a collection of Lots that are, in the opinion of the Declarant, unique or different from other Lots subject to this Declaration in one or more ways such that they justify designation as a separate community within Highlands at Manzanita. The initial Neighborhood is Seaview Neighborhood.
- 1.25 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.
- 1.26 "Plat" shall mean and refer to the Plat of _____, City of Manzanita, Tillamook County, Oregon, recorded in the Official Records of Tillamook County, Oregon on _____, as Instrument No. _____, and in Plat Cabinet ___, and any subsequent plats for future phases of Highlands at Manzanita annexed into this Declaration, together with any amendments to any of the foregoing.
- 1.27 "Property" is the real property located in Tillamook County, Oregon, more particularly described as Lots ___ through ___, inclusive, and Tract ___, as shown on the Plat. The Property does not include Tracts ___ and ___ as shown on the Plat. The Property also does not include _____ or _____.
- 1.28 "Reserve Account" shall have the meaning given it in Section 8.8.
- 1.29 "Reserve Fund" shall have the meaning given it in Section 8.6(a).
- 1.30 "Reserve Fund Assessment" shall have the meaning given it in Section 8.6(a).

1.31 "Rules and Regulations" (sometimes hereafter referenced as Policy and Procedure) shall mean and refer to the documents containing rules, regulations and policies adopted by the Board of the Association, and as may be from time to time amended by the Board; as maintained by the Secretary of the Homeowners Association and available to all Homeowners.

1.32 "_____ Neighborhood" shall mean Lots ___ through ___, inclusive, and Tract ___. Future Lots and Common Areas subjected to this Declaration pursuant to a Declaration of Annexation or Supplemental Declaration may be annexed into the Seaview Neighborhood or may be part of a separate Neighborhood.

1.33 "Special Assessments" shall mean those Assessments described in Section 8.7 below.

1.34 "Turnover Meeting" shall be the meeting called by the Declarant to turn over control of the Association to the Members; provided, however, Declarant shall have no obligation to turn over control of the ARC and the Architectural Review process until Declarant elects in writing to do so.

1.35 "Working Fund Assessments" shall mean the Assessment levied by the Association upon each sale or transfer of each Lot to an Owner other than Declarant or a Declarant affiliate, in accordance with Section 8.11 below.

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

The Property is subject to ORS 94.550 to 94.783. _____ at Manzanita is a Class I Planned Community as defined in ORS 94.550(4).

ARTICLE 3 OWNERSHIP AND EASEMENTS

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

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

(a) Easements on Plat. The Lots are subject to the easements and rights of way shown on, or noted, on the Plat. These include easements for utilities.

(b) Association's Easements. The Owners grant to the Association and its duly authorized agents and representatives such easements over their respective Lots as are necessary to perform the duties and obligations of the Association set forth in this Declaration, the Bylaws and Articles for Highlands at Manzanita, including support, maintenance, repair and replacement of and for all Common Maintenance Areas and enforcement of the terms of this Declaration.

ARTICLE 4 USE AND MAINTENANCE

4.1 Residential Use; Consolidation; Partition.

(a) No structures shall be erected or permitted to remain on any Lot except structures

containing living units and structures normally accessory thereto provided such structure is in conformity with the applicable governmental regulations and permitted by the City of Manzanita, is compatible in design and decoration with the dwelling structure on such lot and has been approved by the Board. Without limiting the generality of the foregoing, accessory dwelling units shall be permitted, if permitted by the City of Manzanita.

(b) No Lot may be consolidated with any other Lot, and each Owner, whether by deed, gift, devise or operation of law, for such Owners' benefit and for the benefit of all other Owners, specifically waives and abandons all right to consolidate any Lot or Lots owned by an Owner.

(c) There shall be no partition of any Lot and 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 to partition any Lot or Lots owned by an Owner.

(d) Lots shall only be used for residential purposes; provided, however, the foregoing shall not be construed to prohibit short-term rentals. Except as specifically provided herein, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. The Owner of a Lot shall be allowed to maintain the Owner's professional personal library, keep the Owner's personal business or professional records or accounts, handle the Owner's personal business or professional telephone calls or confer with business or professional associates, clients or customers in Owner's living unit provided that the impacts of such activities, in terms of parking, noise and traffic in the neighborhood, are not materially more than ordinary residential uses.

4.2 Construction. Except for construction performed by, contracted for by Declarant or expressly permitted by the Declarant, no construction, reconstruction or exterior alterations (including, without limitation, modification or replacement of exterior person doors, garage doors and windows) shall occur on any Lot, unless the design of such construction, reconstruction or alterations is first approved by the ARC pursuant to Section 7.7.

4.3 Fencing. Fencing is permitted if first approved, including location, materials and design, by the ARC. ARC approval shall be required to replace fencing in the event of damage or destruction or to add to existing fencing.

4.4 Nuisance. No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to Owners or occupants. No unlawful use shall be made of the property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.

4.5 Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted within any Lot other than up to two (2) domestic household pets, which shall not be kept, bred or raised for commercial purposes and must be reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets, including noise and waste, shall be the responsibility of the respective Owners thereof. No dogs shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside the living unit, except that unleashed pets are allowed within a fenced area on the Owner's Lot; provided, however, such fence

was permitted pursuant to Section 4.3. An Owner may be required to remove a pet from the Property upon the receipt of the third notice in writing from the Association Board of Directors of violations of this section or any rule, regulation or restriction established by the Board. The definition of "domestic household pets" shall be subject to rules adopted and approved by the Board in its sole discretion. Nothing in this Declaration shall operate to restrict or otherwise limit the bona fide use of service animals. In the event of a dispute over the meaning or applicability of this section, the determination of the Board shall be definitive.

4.6 Owners' Responsibility. Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair, in such fashion as not to create a fire or other hazard of any kind, and consistent with any maintenance standards established by the Association from time to time. Such maintenance shall include, without limitation, landscaping, exterior walks, windows, window screens, lights and glass surfaces. In addition, each Owner shall keep all exterior areas of the Lot, including driveways and sidewalks, free of trash, weeds, noxious plants, unmaintained vegetation and other unsightly material and shrubs, trees, grass and plantings of every kind on the Owner's Lot neatly trimmed, properly cultivated, and appropriately watered. Landscape installation and alterations costing more than Five Hundred Dollars (\$500) must be approved by the ARC prior to commencement of work to assure, among other things, consistency of the Lots and Homes. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time, not to exceed six (6) months unless otherwise approved by the Board; provided, however, an Owner shall have the right to demolish damaged Improvements within such six-month period and maintain the lot as a vacant Lot. Each Owner shall maintain any vacant Lot he or she owns in a manner consistent with the standards, if any, set forth by the Board for vacant Lots. Vacant Lots shall be maintained in an attractive and neat condition. The Owner shall take reasonable steps to remove and/or control weeds. In an Owner fails to perform any of its obligations under this Section 4.6, the Association will have the right to perform such obligation on the Owner's behalf, and charge the cost and all related expenses, to the applicable Owner and Lot as a Special Assessment.

4.7 Vehicles; Parking. No Owner shall permit any vehicle, which is in an extreme state of disrepair, to be abandoned or to remain parked on the Owner's Lot for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. The Association shall have the right to enforce the parking restrictions contained in this Declaration by imposing fines on the responsible Owner (each Owner will be responsible for the vehicles of its family members, tenants, guests and invitees) and/or towing the offending vehicles.

4.8 Rubbish and Trash. Trash, garbage and other waste shall be kept in sanitary containers, screened from public view. No part of the Property shall be used as a dumping ground for trash, garbage, waste, debris or rubbish of any kind. Yard rakings, dirt, tree and shrub leaves and prunings and other material resulting from landscaping work shall not be dumped onto Lots or streets, or Common Maintenance Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or the Property where deposited by such person within five (5) days following the date on which notice is

mailed to the Owner or occupant by the Association, the materials will be removed by the Association and the expense of such removal charged to the Owner. If an Owner chooses to use a professional waste removal company, the Owner may place his or her cans only in the designated spot and no sooner than the night before the scheduled pickup day, and must remove the cans no later than the end of the day of pickup.

4.9 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently. No structure may be occupied prior to connection to power, water and sewer and approval by the City of Manzanita, Oregon.

4.10 Screening. Service facilities (garbage cans, fuel tanks, clotheslines, clothesline poles and other outside drying of clothes, linens and such, firewood, gardening tools, and equipment, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring Lot. Appliances may not be stored outside. All heat pumps and condenser units (or other utilities and devices commonly placed out of doors) shall receive special consideration to provide visual screening and noise reduction.

4.11 Outdoor Furniture. Furniture left outside a Home shall be limited to items commonly accepted as outdoor or patio furniture. Subject to the prior approval of the ARC in terms of location, design and screening, hot tubs are permitted.

4.12 Outdoor Sports Courts and Equipment. No sports courts or equipment, including basketball nets and trampolines, shall be installed or used on any Lot.

4.13 Air Conditioning Units. Portable air conditioning units shall only be permitted on a Lot if the Board of Directors first approves the design, appearance and location. The Board of Directors shall have the right to revoke approval in the event that a portable air conditioning unit: (i) becomes non-functional; (ii) is moved from the approved location; or (iii) becomes worn or damaged such that the Board of Directors deems it unsightly or hazardous.

4.14 Firearms and Fireworks. Firearms shall not be discharged on the Property at any time. Firearms are to be unloaded at all times while on the Property and shall be secured in a locking container when stored on the Property. Weapons including "BB" guns, pellet guns, dart guns, paint-ball guns and any other weapon capable of firing a projectile are considered firearms. Oregon statutory law prohibits the use of certain types of fireworks. Only fireworks considered legal and that are both silent and hand held will be allowed on the Property. Owners and their guests must clean up any fireworks discharged on the Property.

4.15 Substance Disposal. No motor oil, paint or other caustic or nonbiodegradable substance may be deposited in any street drain, sewer system or on the grounds within the Property. Any fine and/or costs associated with the cleanup of any nonbiodegradable substance that is caused by any Owner or their guests shall be the responsibility of the offending Owner.

4.16 Antennas and Satellite Dishes. Exterior antennas, satellite receiver and transmission dishes and other communication devices shall not be permitted to be placed upon any Lot unless screened from the view from the street and screened from all neighboring Homes, all as approved by the ARC. If screening is not reasonably practical, an Owner may, with ARC approval, paint such devices to match the Home. The authority of the ARC in this matter shall be subject to any regulations issued

by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

4.17 Signage. No signs of any kind shall be erected or maintained on any Lot including, but not limited to, business, professional, real estate and political signage, except to the extent such a prohibition violates applicable law. Posting and display includes any signage mounted on or around the Home exterior and signage visible in the Home windows.

4.18 Solar Collection Facilities. Solar panels and any other on-site renewable energy systems will be permitted, subject to approval by the ARC of the design, size, appearance and location.

4.19 Health and Safety. No Owner shall permit anything or condition to exist upon any portion of the Property, which shall induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

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

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

4.22 Violation. The Association may impose a fine, charge or penalty for any violation of this Declaration, the Bylaws or the Rules and Regulations after reasonable notice of the violation and a reasonable opportunity for a hearing. Additionally, the Association may seek injunctions or other equitable relief or may file an action for money damages owing from such violations. The Association shall be entitled to recover its costs, including attorneys' fees, incurred in connection with enforcing the Declaration, the Bylaws and Rules and Regulations.

4.23 Drainage. An Owner may not change the drainage pattern on his or her Lot without the prior written approval of the Board, which approval may be conditioned upon the Owner obtaining any required governmental permits and the written opinion of a licensed professional engineer that such changes will not negatively impact any part of the Property.

ARTICLE 5 COMMON MAINTENANCE AREAS

5.1 Common Maintenance Areas. In addition to any Common Maintenance Areas described in Declaration of Annexation, the Common Maintenance Areas shall include the following:

- (a) All Common Areas, including Tract ___;
- (b) Trails, if any, installed on the Property, to the extent not maintained by a public entity;

- (c) Public Roads adjacent to the Property, including related landscaping, to the extent not maintained by a public entity and to the extent permitted by applicable law;
- (d) Entry monuments whether located on Common Area or private property; and
- (e) Any other area determined by the Board to be in the best interest of the Association to maintain.

5.2 Association Maintenance Obligations. The Association shall maintain the Common Maintenance Areas, including all Improvements. The Association shall be responsible for maintaining parking areas and sidewalks, if any, within the Common-Maintenance Areas but not driveways, walkways, sidewalks or patios located on individual Lots, which shall be the responsibility of the applicable Owner.

5.3 Transfer of the Common Areas. The Association may not sell, transfer or grant a security interest in any portion of the Common Areas unless approved by the Owners holding at least eighty percent (80%) of the total voting power of the Association, including eighty percent (80%) of the votes not held by Declarant, and the Class B Member, if any. A sale, transfer or grant of security interest in any portion of the Common Areas in accordance with this Section 5.3 may provide that the Common Areas so conveyed shall be released from any restrictions imposed on such Common Areas by this Declaration or the Bylaws. No such sale, transfer, or grant of security interest may, however, deprive any Lot of such Lot's right of access or support without the written consent of the Owner of such Lot.

5.4 Authority to Grant Easements and Other Property Interests in Common Areas. The Association may execute, acknowledge and deliver leases, easements, rights of way, licenses, and other similar interests affecting the Common Areas and consent to vacation of roadways within and adjacent to the Common Areas. Except for those matters described in ORS 94.665(4)(b), which the Board may approve without Owner consent, the granting of any interest pursuant to this Section 5.4 must be approved by at least seventy-five percent (75%) of the Owners present at a meeting of the Association or with the consent of at least seventy-five percent (75%) of all Owners solicited by any means the Board determines is reasonable. If a meeting is held to conduct the vote, the meeting notice shall include a statement that the approval of the granting of an interest in the Common Areas will be an item of business on the agenda of the meeting. Notwithstanding anything to the contrary contained in this Declaration, until Declarant has conveyed the Common Areas to the Association, Declarant shall have the right to reserve for itself or grant to third parties easements in the Common Areas, which it may do so, if not sooner, in the deed conveying the Common Areas to the Association.

ARTICLE 6 COMMON EXPENSES

6.1 The cost of all maintenance by the Association shall be a Common Expense paid out of Assessments described in Article 8; subject, however, to the allocation of maintenance costs for Limited Common Elements as LCE Assessments as provided herein. However, the Association will have the right, at the discretion of the Board, to assess an Owner and his or her Lot for the cost of maintenance or repairs that are not covered by the Association's insurance (regardless of whether the Association made an insurance claim) if the maintenance or repairs are needed because of the willful or negligent act or omission of that Owner, or his/her or her family, tenants, guests or invitees. The acceptance and submission of any insurance claims for Association insurance is at the

sole discretion of the Board of Directors. Such an Assessments will be a Special Assessment.

6.2 The Association shall regularly inspect, maintain, repair and keep the Common Maintenance Areas in good condition and provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the proper maintenance of the Common Maintenance Areas. The Association shall perform all maintenance obligations set forth in this Declaration or the Bylaws or any maintenance manual provided by the Association and shall employ all other commonly accepted maintenance practices intended to prolong the life of the materials and construction of Improvements within the Common Maintenance Areas.

ARTICLE 7 HIGHLANDS AT MANZANITA HOMEOWNERS ASSOCIATION

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

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

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

7.4 **Voting.** The Association shall have the following two (2) classes of voting membership:

(a) **Class A Members.** Class A Members shall be all Owners other than Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A Members shall be all Owners, including Declarant). Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a Lot, all such persons shall be Members. However, only one (1) vote shall be exercised for the Lot. The vote for the Lot shall be exercised as the Owners of the Lot determine among themselves. If the Owners of the Lot cannot agree upon how to exercise the vote, then the vote for that Lot shall be disregarded in determining the proportion of votes with respect to the particular matter at issue.

(b) **Class B Members.** The Class B Member shall be Declarant. The Class B Member shall be entitled to one thousand (1,000) votes for each Lot owned. On the Conversion Date, the Class B membership shall cease and be converted to Class A membership.

7.5 **Turnover Meeting.** Declarant shall call the Turnover Meeting within ninety (90) days following the Conversion Date for the purpose of turning over control of the Association to the Owners; provided, however, such turnover shall not include control of the ARC pursuant to Section 7.7.

Declarant may retain control of the ARC indefinitely, as provided in Section

7.7. The Turnover Meeting shall be conducted in accordance with the Bylaws and the Oregon Planned Community Act.

7.6 Board of Directors. Prior to Turnover, directors need not be Owners, but after Turnover, all directors must be Owners. Declarant shall have the right to appoint an interim Board consisting of one (1) to three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting as provided in the Bylaws. Following the Turnover Meeting, the Board shall consist of between three (3) and five (5) directors elected by the Owners in accordance with the Bylaws. The number shall be set by the Board. In the event of a vacancy occurring on the Board after Turnover, the position of such director(s) shall be filled in accordance with the terms and provisions of the Bylaws through appointment by the Board of Directors. The term of office for elected Directors will be two (2) years. The Board of Directors shall annually elect a President, Secretary and Treasurer.

7.7 ARC Review. Except as specifically provided in this Section 7.7, no improvement or portion thereof including fencing, decks, hot tubs, patios, patio trellises, play structures, court yards, walkways and driveways (each, an "Improvement") shall be commenced, erected, placed, altered, repaired or replaced on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the Improvement have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials. Notwithstanding the foregoing, to the extent that an Owner replaces an exterior feature of a home, such as a door, shutter, fence or trellis, with a replacement that is newer, but substantially identical, such replacement shall not require ARC approval. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the ARC. Improvements constructed or altered by the Declarant are presumed to have been approved and are thereby exempt from this review. In all cases for which the ARC consent is required by this Declaration, the provision of this Section shall apply. The ARC, the Declarant, and the Board, as applicable, are hereby granted an easement over the Lots to enable the ARC to carry out its designated functions.

(a) Architectural Review Committee - Appointment and Removal. The ARC shall consist of no fewer than three (3) members and no more than five (5) members. The Declarant reserves the right to appoint and remove all members of the ARC until Declarant relinquishes control of the ARC. After the Declarant relinquishes control of the ARC in writing, the following shall apply:

(a) the Board of Directors shall assume the right to appoint and remove members of the ARC; (b) the terms of office for each member of the ARC shall be for one (1) year unless lengthened by the Board at the time of appointment or unless the Board serves as the ARC in which event the terms of the ARC members shall be the same as their terms as Board members; (c) the Board may appoint any or all of its members for the ARC and there should be no requirement for non-Board members on the ARC. In the discretion of the Declarant or the Board, as applicable, the ARC may include one or more members who are not Owners, but who have special expertise regarding the

matters, which come before the ARC. In the sole discretion of the Declarant or the Board, as applicable, such non-Owner members of the ARC may be paid and that cost paid by applicants or the Association.

(b) **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member(s) of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

(c) **Duties.** The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Section. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines ("Design Guidelines"). The Design Guidelines shall establish guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used within the Property.

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

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

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

(g) **Appeal.** At any time after the Declarant has relinquished control over the ARC and Architectural Review to the Board of Directors, any Owner adversely impacted by action of the ARC may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board is already acting as the ARC, the appeal shall be treated as a request for a rehearing, but in such case the Board must actually meet and receive evidence and argument. A final, conclusive decision shall be made by the Board of Directors within fifteen (15) days after receipt of such notification. The determination of the Board shall be final.

(h) **Effective Period of Consent.** The ARC's consent to any proposed work shall automatically be revoked six (6) months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the ARC.

(i) **Determination of Compliance.** The ARC shall inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or

if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of any noncompliance and shall require the Owner to take the necessary action to bring the work into compliance with the approved project.

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

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

(l) Fees. The Declarant or the ARC may charge applicants a reasonable application fee and additional costs incurred or reasonably expected to be incurred by the ARC to retain architects, attorneys, engineers and other consultants to advise the ARC concerning any aspect of the applications described herein or compliance with any appropriate architectural criteria or standards. Such fees shall be collectible as Assessments against the applicable Owner.

(m) Declarant Exempt from ARC Review. The Declarant shall be exempt from the requirement for ARC review and approval of any kind.

(n) Association Cooperation with Declarant. If Declarant elects not to relinquish control over the ARC at Turnover, then the Association, through the Board of Directors, shall cooperate with Declarant, as Declarant may request from time to time, to facilitate Declarant's efforts to manage ARC review, enforce the Design Guidelines and carry out all ARC functions under this Declaration.

ARTICLE 8 FUNDS AND ASSESSMENTS

8.1 Purpose of Assessment. The Assessments (including regular or operating, Reserve Fund Assessments, Special Assessments, LCE Assessments and any other Assessments levied by the Association pursuant to this Declaration or applicable law) levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants, to

cover Association operational costs and expenses, and for the improvement, operation and maintenance of the Common Maintenance Areas, including maintenance and administrative costs, and insurance for the Association.

(a) Common Expense Designations. Common Expenses of the nature described in Section 8.1 which are to be, or are, incurred by the Association for the benefit of all of the Owners of Lots within the Property shall be separately budgeted for allocation among all such Owners and shall be designated "General Common Expenses".

(b) Insurance General. The Board shall obtain and maintain at all times insurance of the type and kind and in the amounts hereinafter provided and additional insurance for such other risks of a similar or dissimilar nature as are now or as shall be hereafter customarily covered by insurance obtained by other planned communities similar in construction and design. Such additional insurance shall be governed by this Article.

(i) Types of Insurance Policies Maintained By the Association. For the benefit of the Association and Owners, the Board shall obtain and maintain at all times, and shall pay for out for the common expense funds, the following insurance to the extent that it is available at reasonable cost:

(1) Liability Insurance. A policy or policies insuring the Association, its Board and the Owners individually against any liability to the public or the Owners and their invitees or tenants, incident to the ownership, supervision, control or use of the Property, excepting portions of the Property under an Owner's exclusive use or occupancy. Limits of liability under such insurance shall be per occurrence for bodily injuries and property damage liability in such amounts as the Board deems advisable. Such limit and coverage shall be reviewed at least annually by the Board, which may increase the limit of and/or coverage, in its discretion. Said policy or policies shall be issued on a commercial General Liability form and shall provide for cross liability coverage wherein the rights of the named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(2) Directors and Officers Insurance. At the discretion of the Board, the Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Association, or is or was serving at the request 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, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of the Articles of incorporation of the Association.

(3) Fidelity Bond. For the benefit of the Association and Owners, the Board may obtain a fidelity bond for employee, officer, and director dishonesty, or dishonesty of any authorized agent of the Board, for the amount determined by the Board. The Board may pay for such bond out of the Common Expenses of the Association.

(4) Such other insurance as may be required by applicable law or deemed advisable by the Board.

(5) Insurance Companies Authorized. All policies obtained under this Articles shall be written by a company licensed to do business in Oregon and holding a

"Commissioner's Rating" of "A-" and a size rating of "VI," or better, by Best's Insurance Reports, or as may be otherwise acceptable to the Board.

(6) Provisions in Insurance Policies. The Board shall make a reasonable effort to secure insurance policies that will provide for the following:

- (A) Waiver of Subrogation. A waiver of subrogation by the insurer as to any claims against the Board, the officers, the manager, the Owners and their respective servants, agents, guests and tenants.
- (B) Noncancelation without Opportunity to Cure. A provision that the master policy on the Property cannot be canceled, invalidated or suspended on account of the conduct of any officer, Board member or employee of the Board or the manager, if any, without prior demand in writing that the Board or manager cure the defect.

(ii) Planned Community Act Requirements. The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780. At least annually, the Board shall review all insurance carried by the Association, which review shall include a consultation with a representative of the insurance carrier writing the master policy.

8.2 Covenants to Pay. Each and every current and subsequent Owner of any Lot, covenants and agrees that each Lot Owner will pay the Association the Assessments and any additional charges levied pursuant to this Declaration.

(a) Funds Held. The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of Highlands at Manzanita or as expressly provided by this Declaration.

(b) Transfer. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner, and is not refundable.

8.3 Basis of Assessments and Commencement of Assessments; Common Profits. Except as described herein, all Lots will pay operating or regular Assessments, Reserve Fund Assessments, and, when applicable, Working Fund Assessments, LCE Assessments and/or Special Assessments, under the payment provisions contained in this Declaration. Except for Limited Common Expenses, Common Expenses shall be allocated equally between all Lots and charged to the Owner of each Lot for the maintenance of the Common Maintenance Areas and all other expenses of the Association. LCE Assessments will be assessed equally among the Lots subject to such LCE Assessments. Operating/regular and Reserve Fund Assessments (as described below) will commence as to each Lot upon the conveyance of the Lot from Declarant to an Owner other than Declarant.

8.4 Annual Assessments. Annual Assessments for each calendar year shall be established when the Board approves the budget for that calendar year. Annual Assessments shall be levied on a calendar year basis and collected and paid at intervals to be determined by the Board. Annual Assessments shall include operating (also called regular) Assessments, Reserve Fund Assessments and, if applicable, Special Assessments and/or LCE Assessments. The calendar year shall begin on January 1, unless another date is adopted by majority vote of the Board members.

8.5 Budget. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a budget in accordance with the relevant provisions of the Oregon Planned Community Act. For the first calendar year, the budget shall be approved by the Board no later than the date on which annual Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the annual Assessments to be levied against the Owner's Lot, within thirty (30) days after adopting the annual budget. The Assessments in the budget are to be collected at intervals as determined by the Board of Directors. The Board may update and revise the budget from time to time as the Board may deem reasonably necessary, provided, however, the Board shall distribute such revised budget to each Member within ten (10) days of adoption and at least thirty (30) days before the imposition of revised Assessments.

(a) Allocation of Assessments. Except for Limited Common Expenses, the total amount in the budget shall be charged equally against all Lots subject to Assessments as annual Assessments. In preparing the annual budget, the Board shall separately track expenses (including reserves) for Limited Common Elements so that the cost of such items may be allocated to the appropriate Lots.

(b) Other Assessments. Subject to the allocation of LCE Assessments to the appropriate Lots, operating Assessments shall include all costs incurred by the Association, including, without limitation, the costs of upkeep, maintenance, repair and replacement of Common Maintenance Areas; the cost of insurance; the cost of fulfilling all obligations hereunder or under the Planned Community Act; and all other costs that the Board deems to be in the best interests of the Association. Reserve Fund Assessments shall be those the Board deems necessary to fund the Reserve Account. Annual Assessments, including operating Assessments, Reserve Fund Assessments, and if applicable, LCE Assessments and/or Special Assessments, will be fixed annually in accordance with the general budget guidelines outlined in Section 8.S(a) above for the general association Assessment.

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

8.6 Reserve Funds

(a) Reserve Fund for Periodic Maintenance, Repairs and Replacements. The Board shall establish a reserve fund in the name of the Association for periodic maintenance, repair or replacement, in whole or in part, of any completed Improvements located in, on, or under the Common Maintenance Areas for which the Association is responsible pursuant to this Declaration, that will normally require periodic maintenance, repair or replacement in more than one (1) year and less than thirty (30) years, ("Reserve Fund"). The Reserve Fund need not include those items that could reasonably be funded from the maintenance fund or operating Assessments, or for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws. For purposes of funding the Reserve Fund, the Association shall impose an Assessment to be called the "Reserve Fund Assessment" equally against all Lots (except that the portion allocated to Limited Common Elements shall be charged equally to only those Lots that benefit from such Limited Common Element). The Reserve Fund Assessments shall commence as to each Lot upon the conveyance of the Lot from Declarant to an Owner other than Declarant. Reserve

Fund Assessments shall not be levied against Declarant-owned Lots upon which construction of a Home has not been completed. However, if the exemption from Reserve Fund Assessments is rendered unenforceable or otherwise invalid by any applicable law, then Declarant hereby reserves the right, for itself and any successor Declarant, to defer payment of any accrued Reserve Fund Assessments on each Lot owned by Declarant or a successor Declarant until the date on which the Lot is conveyed to an Owner other than Declarant or a successor Declarant, but in no event beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association. As provided in a Supplemental Declaration or as Declarant (before Turnover) or the Board (after Turnover) deems appropriate, LCE Assessments may include reserve costs associated with Limited Common Elements.

The Reserve Fund Assessment, including any portion associated with Limited Common Elements, shall be based on the reserve study, and updates thereof, described in Section 8.6(b), or other sources of reliable information. The Reserve Fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section, although the Board may borrow funds with a specified repayment program, in accordance with the Oregon Planned Community Act. In the event the Board elects to borrow funds secured by an interest any portion of the Common Area, then said loan shall be pursuant to ORS 94.665.

The Board may adjust the amount of the Reserve Fund Assessments as indicated by any reserve study or update thereof or based on the then current inflation rate. The Board may provide for other reserve items that the Board, in its discretion, may deem appropriate. In addition to the foregoing powers and rights vest in the Board, the Association may elect to reduce or increase future Reserve Fund Assessments by a seventy-five percent (75%) vote of the Owners.

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

(b) Reserve Study. The Board of Directors shall annually conduct a reserve study, or review and update an existing study, of the Improvements, Common Maintenance Areas and other items for which the Association is responsible under this Declaration to determine the requirements of the Reserve Fund described in Section 8.6 (a) above. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the Reserve Fund, to meet the maintenance, repair, and replacement schedule. Reserves for Limited Common Elements shall be separately tracked.

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

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

(b) Breach of Documents. To collect amounts due to the Association from an Owner for breach of the Owner's obligations under the Declaration, the Bylaws, or the Rules and Regulations,

by vote of a majority of the Board. All provisions of this Section 8.7(b) shall be interpreted by the provisions of the Oregon Planned Community Act relative to the imposition of fines and penalties;

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

(d) For any other purposes authorized by this Declaration or applicable law.

(e) Any Special Assessments shall be owned solely by the Association regardless of their purpose and the individual Owners so assessed shall have no rights or interests in said funds. Depending upon the reason for the Special Assessments, such Assessments may be levied as part of the operating/regular Assessments or may be separately assessed against the applicable Lots and Owners. Any Special Assessment funds collected, which exceed the actual expenses incurred for the stated purpose, shall be transferred to the Current Operating Account and can be used thereafter for General Common Expenses.

8.8 Accounts.

(a) Types of Accounts. Assessments collected by the Association will be deposited into at least two separate accounts with a bank, which accounts shall be designated as (i) the "Current Operating Account" and (ii) the "Reserve Account". Those portions of the Assessments collected for current maintenance and operation levied under Section 8.S(b) will be in the Current Operating Account and those portions of the Assessments collected as Reserve Fund Assessments for periodic maintenance, repair or replacement and deferred maintenance of capital Improvements into the Reserve Account. The Board may hold funds in the Current Operating Account until such time as the total Reserve Funds meet bank account minimum deposits to avoid special fees. Special Assessments shall be deposited into one of the two accounts, whichever is deemed by the Board to be appropriate. Withdrawal of funds for the Association's Reserve Account shall require the signatures of two (2) Directors, or Board approval in the written minutes of the Association. Though the Association shall separately track operating and Reserve Fund Assessments collected with respect to Limited Common Elements, it need not keep separate accounts for such Assessments.

(b) Reserve Account. The Association shall pay out of the Reserve Account only those costs that are attributable to the periodic maintenance, repair or replacement of capital Improvements for which Reserve Fund Assessments have been collected and held. Reserve Fund Assessments for Limited Common Elements may be kept in the Reserve Account, but shall be separately tracked. After the individual Lot Owners have assumed responsibility for administration of the planned community, the Board of Directors may borrow funds from the Reserve Account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses. Funds borrowed must be authorized by a resolution passed by the Board of Directors, which also outlines the manner of repayment from later Assessments. Such resolution may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

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

8.9 Default in Payment of Assessments, Enforcement of Liens.

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

(b) **Association Lien.** Any Assessment which is not paid within thirty (30) days of the due date shall be delinquent. At any time any Assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent for a period of more than sixty (60) days following the due date, the Association, by and through its Board or any management agent, may file a notice of lien in the deed records of Tillamook County, Oregon against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorneys' fees (whether or not suitor action is instituted) and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and Assessments, any first mortgage, deed of trust or land sale contract recorded previously to the Association's notice of lien and any mortgage or deed of trust granted to an institutional lender which is recorded previously to the Association's notice of lien.

(c) **Interest; Fines; Late Fees; Penalties.** The Board in its reasonable discretion may from time to time adopt resolutions to set the rate of interest, and to impose late fees, fines and penalties on delinquent Assessments or for violations of the provisions of this Declaration, the Bylaws, and any Rules and Regulations. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the Assessment billing addresses of such Owners. Such impositions shall be considered Assessments which are lienable and collectible in the same manner as any other Assessments. Provided, however, no fine or penalty for violation of this Declaration, the Bylaws or any Rules and Regulations (other than late fees, fines or interest arising from an Owner's failure to pay regular or Special Assessments) may be imposed against an Owner or his/her Lot until such Owner is given an opportunity for a hearing as provided in Section 4.22.

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

(e) **Association's Right to Rents/Receiver.** In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his/her Lot or shall be entitled to the appointment of a Receiver. Any default by

the Owner in any provisions of the Declaration or Bylaws shall be deemed to be a default by the Owner of any mortgage to which the Owner is party or to which the Lot is subject.

8.10 Reallocation upon Annexation of Additional Property. When (and if) additional property is annexed to the Property, the Association shall, as the Board deems advisable, recompute the budget based upon the additional Lots, and Common Maintenance Areas, if any, and re-compute all applicable Assessments for each Lot. Each newly annexed Lot shall be subject to assessment (including, without limitation, Reserve Fund Assessments) upon the sale of the Lot to an Owner other than Declarant. The Association shall send notice of any applicable Assessment to the Owners of newly annexed Lots not later than sixty (60) days after the Lot(s) becomes subject to assessment or with the next occurring annual Assessment, whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws. If the Association elects to adjust Assessments pursuant to this Section 8.10 during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to Assessments for Lots which were assessed pursuant to the previous budget. Notice of the adjustment in the Assessments shall be sent to such Owners not later than sixty (60) days after calculation or with the next occurring annual Assessment, whichever is sooner. To the extent that any adjustment results in a credit with respect to Assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable Assessment.

8.11 Working Fund Assessments. Except for a sale or transfer to Declarant or a Declarant affiliate, each sale or transfer of a Lot will subject the Lot to a Working Fund Assessment in the amount of Three Hundred Dollars (\$300.00). The purchaser (party acquiring title) of the Lot shall pay the Working Fund Assessment to the Association. The Board may use the Working Fund Assessments either for operations or reserves, at its discretion. The Working Fund Assessments shall be used by the Association for any purpose for which Assessments may be used, including, without limitation, capital improvements or upgrades to the Common Maintenance Areas.

ARTICLE 9 SPECIAL DECLARANT RIGHTS

9.1 Declarant shall have the following Special Declarant Rights, in addition to all other rights reserved in this Declaration:

(a) Responsibility and control of the Association until the Turnover Meeting, including the right to appoint, remove and replace members of the Board.

(b) The right to control ARC Review pursuant to Section 7.7 until Declarant relinquishes the same by recording a signed instrument to that effect in the official records of Tillamook County, Oregon.

(c) The right to reserve easement and access rights across the Common Areas for use in connection with future development until the Turnover Meeting.

(d) As provided in this Declaration, the right to annex additional property to this Declaration, including the right to create new Neighborhoods, annex Lots and Common Areas to Neighborhoods, and create sub-associations.

(e) Until the Turnover Meeting, the right to designate additional Common Areas, and the right to construct Improvements in the Common Areas and other portions of the Property, whether or not such Improvements are described in this Declaration, provided that Declarant has no obligation to construct any such Improvements.

(f) The right to approve amendments to this Declaration and the Bylaws prior to the Turnover Meeting and for a period of ten (10) years thereafter regardless of whether Declarant still owns a Lot. No such amendment shall be effective unless so approved in writing by Declarant.

(g) Until the Turnover Meeting, the right to approve Special Assessments for capital Improvements or additions for so long as Declarant owns a Lot. No Special Assessment shall be levied against Declarant unless so approved in writing by Declarant.

(h) The right to receive notice of and to attend all Owner meetings and Board meetings for a period of ten (10) years following the Turnover Meeting regardless of whether Declarant still owns a Lot. Meeting notices to Declarant shall be given in the same manner as notices to the Owners; provided, however, that any notice of a Board meeting that is posted at the Property pursuant to the Bylaws must also be given to Declarant by mail or any other delivery method described in the Bylaws within the time period prescribed in the Bylaws.

(i) The right to inspect the Common Maintenance Areas for a period of ten (10) years following the Turnover Meeting regardless of whether Declaration still owns a Lot, for purposes of determining whether the Association is performing appropriate and sufficient maintenance and repairs.

(j) The right to review and make copies of all inspection, maintenance and other records of the Association regardless of whether the Turnover Meeting has occurred or Declarant still owns a Lot.

(k) The rights of Declarant under the Planned Community Act, including but not limited to those under ORS 94.550(24), and all other rights reserved for Declarant elsewhere in this Declaration or in the Bylaws.

ARTICLE 10 CASUALTY OR CONDEMNATION

10.1 Casualty. The Owner of each Home shall repair, reconstruct, and rebuild the damaged or destroyed portions of his or her Home to substantially the same condition that existed prior to the damage or destruction. In the event of damage to or destruction of the Common Areas, the Association shall repair and restore the damaged portion of the Common Areas, unless the holders of at least 75% of the voting power of the Class A Members, together with the Class B Member, if any, agree that the damaged or destroyed portions shall not be repaired or restored. All repair, reconstruction, rebuilding, or restoration shall begin within six (6) months following the damage or destruction and shall be diligently pursued to completion within twelve (12) months following the damage or destruction, unless work is delayed by causes beyond the reasonable control of the Owner or the Association, as the case may be. If the proceeds of the insurance policies held by the Association are insufficient to fund the full cost of repair and/or restoration of the Common Areas, the difference between the amount of such proceeds and such cost may, at the Board's discretion, be charged to the Owners by means of a Special Assessment.

10.2 Condemnation. If any part of the Common Areas are taken by any authority having the power of condemnation or eminent domain (or shall be sold under threat of condemnation), each Owner shall be entitled to notice of such event. The Association shall represent the Owners in negotiations with the condemning authority. The condemnation award shall be applied first to restoration of the Common Areas not taken (unless holders of at least 75% of voting power of the Class A Members, together with the Class B Member, if any, agree that the remaining Common Areas shall not be restored) and then to such other purposes as the Board may determine in its discretion (including payment to the Owners).

ARTICLE 11 ANNEXATION

11.1 Annexation by Declarant. At any time during the Initial Term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately one hundred (100) Lots, including Lots intended for single-family residential use in Highlands at Manzanita, including the Lots currently existing, and Lots expected to be created in property to be annexed to Highlands at Manzanita, but this number may be adjusted at the sole discretion of Declarant, subject to the terms of Section 11.1(a). Declarant shall have no obligation of any kind to annex any additional property to the Property.

(a) Eligible Property. Any real property in Tillamook County, Oregon, shall be eligible for annexation, regardless of whether such property is adjacent or contiguous to the Property. There is no limitation on the amount of land that Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals or as set forth herein.

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

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

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

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

Without limitation of the meaning of the foregoing provisions of this Section 11.1, in any Declaration of Annexation Declarant may, but shall not be obligated to, establish easements particular to different Lots as it may elect.

(d) Voting Rights: Allocation of Assessments. Upon annexation, additional Lots so annexed shall be entitled to the voting rights as set forth in Section 7.4(a), and Assessments shall be reallocated and reapportioned in the manner set forth in Section 8.10.

11.2 Annexation by Action of Members. At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved by at least seventy-five percent (75%) of the outstanding votes, and, if such annexation is to occur before the date that is ten (10) years after the date of the Turnover Meeting, the annexation must first be approved by Declarant in writing. Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 11.1(c) above executed by the parties herein described.

11.3 No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

ARTICLE 12 NEIGHBORHOODS

12.1 Seaview Neighborhood at Highlands at Manzanita. The Declarant has created the Seaview Neighborhood at Highlands at Manzanita as a community. If the Declarant subsequently annexes additional Lots into this Declaration, Declarant may elect to place such Lots in the Seaview Neighborhood, or create separate Neighborhoods for such Lots.

12.2 Other Neighborhoods at Highlands at Manzanita. The Declarant shall have the right to create additional Neighborhoods in addition to Seaview. Declarant may do so, if at all, by establishing the Neighborhood in a Declaration of Annexation or Supplemental Declaration, which may include restrictions or provisions that are separate than those that are applicable to other Lots subject to this Declaration. Declarant reserves the right to create a sub-association for a Neighborhood. Declarant and/or the Board may establish additional or separate Rules and Regulations and/or Design Guidelines for individual Neighborhoods.

ARTICLE 13 GENERAL PROVISIONS

13.1 Records. The Board of Directors shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual Assessment accounts of Owners, the balance sheet, and income and expense statements. Individual Assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each Assessment as it becomes due, the

amounts paid upon the account, and the balance due on the Assessments. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for labor and materials relative to providing copies, Owners can obtain copies of this information within ten (10) days of receipt of a written request.

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

13.3 Enforcement; Attorneys' Fees. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may pertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event of an action by the Association to enforce the terms of this Declaration, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, including, without limitation, attorneys' fees incurred in any bankruptcy court.

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

13.5 Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees; provided, however, that amendments which do not constitute rescission of

the planned development may be adopted as provided in Section 13.6 below.

13.6 Amendment. Except as otherwise provided in Section 13.5, 13.7, or ORS 94.590, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes for all Lots subject to this Declaration. Any amendment must be executed, recorded and certified as provided by law. Provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents, and the Oregon Non-Profit Corporation Act.

13.7 Regulatory Amendments. Notwithstanding the provisions of Section 13.6, until the Turnover Meeting, Declarant shall have the right to amend this Declaration or the Bylaws without any other Owner approval in order to correct scrivener's errors or to comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community.

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

13.9 Sub-Associations. Declarant shall have the right to establish sub-associations, if any, on such terms as Declarant shall elect. If Declarant elects to establish such sub-associations, it shall so specify in the Declaration of Annexation or Supplemental Declaration that subjects the sub-association Lots to this Declaration, and it shall record a separate declaration of covenants, conditions and restrictions establishing the sub-association. At Declarant's option, a sub-association declaration may provide that the votes of Lot Owners within the sub-association shall be voted as a block by the board of directors of the sub-association. A sub-association may cover a Neighborhood or multiple neighborhoods. Declarant may establish different or additional Rules and Regulations and/or different design guidelines for a sub-association, and if such document provides, the Lots within such sub-association will not be subject to the Design Guidelines established pursuant to this Declaration.

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

1. Declaration of Covenants, Conditions and Restrictions; and
2. Bylaws (Exhibit B)

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first written above.

[SIGNATURE PAGE]

DRAFT

EXHIBIT A PROPERTY
LEGAL DESCRIPTION TO BE ADDED HERE

DRAFT

EXHIBIT B
To Declaration of Covenants, Conditions, Easements and Restrictions
for Highlands at Manzanita

BYLAWS OF
HIGHLANDS AT MANZANITA HOMEOWNERS ASSOCIATION

1. DEFINITIONS

The terms specified below shall have the following meanings when used in these Bylaws:

1.1 "Articles" mean the Articles of Incorporation for the non-profit corporation, Highlands at Manzanita Homeowners Association, or such similar name approved by and filed with the Oregon Secretary of State, corporations division, as amended from time to time in accordance with the provisions thereof.

1.2 "Association" means Highlands at Manzanita Homeowners Association, an Oregon nonprofit mutual benefit corporation, formed for the purposes set forth in these Bylaws, the Declaration and the Articles.

1.3 "Board" or "Board of Directors" means the Board of Directors of the Association constituted in accordance with Section 5 of these Bylaws.

1.4 "Common Maintenance Areas" has the meaning given it in the Declaration.

1.5 "Declaration" means the Declaration of Covenants, Conditions, Easements and Restrictions for Highlands at Manzanita, as amended from time to time in accordance with the provisions thereof.

1.6 "Director" means a member of the Board elected or appointed in accordance with Section 5.3 of these Bylaws.

1.7 "Improvement" has the meaning given it in the Declaration.

1.8 "Lot" has the meaning given it in the Declaration. No Common Area, no tracts reserved for future development and no areas deeded to a governmental authority shall constitute a "Lot".

1.9 "Member" means each member of the Association and shall include every Owner of a Lot.

1.10 "Officer" means an officer of the Association as described in and elected in accordance with Section 6 of these Bylaws.

1.11 "Owner" has the meaning given it in the Declaration.

1.12 "Plat" has the meaning given it in the Declaration.

1.13 "President" means the President of the Association as described in Section 6.5 of these Bylaws.

1.14 "Property" has the meaning given it in the Declaration.

1.15 "Secretary" means the Secretary of the Association as described in Section 6.6 of these Bylaws.

1.16 "Treasurer" means the Treasurer of the Association as described in Section 6.7 of these Bylaws.

1.17 Other Defined Terms. All other capitalized terms not otherwise defined in these Bylaws shall have the meaning given to them in the Declaration.

2. OFFICES

2.1 Principal Office. The principal office of the Association in the State of Oregon shall be at a location determined by the Board. The Association may have such other offices as the Board may determine or as the affairs of the Association may require from time to time.

2.2 Registered Office and Agent. The Association shall have and continuously maintain in the State of Oregon a registered office, and a registered agent whose office is identical with such registered office, as required by the Nonprofit Corporation Act. The registered office of the Association may be, but need not be, identical with the principal office of the Association and the address of the registered office may be changed from time to time by the Board.

3. MEMBERSHIP, VOTING RIGHTS, AND POWERS AND OBLIGATIONS

3.1 Membership. Every Owner of a Lot by virtue of ownership of such Lot, including Declarant for so long as Declarant owns a Lot, shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of a Lot, be a Member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

3.2 Voting Rights. The Association shall have the classes of voting membership set forth in the Declaration

3.3 Suspension of Voting Rights. All voting rights of a Member shall be suspended during any period in which the Member is delinquent in the payment of any Assessment or is otherwise in default under these Bylaws, the Declaration or any rules and regulations of the Association.

3.4 Powers and Obligations. The Association shall have, exercise and perform all of the following powers, duties and obligations:

3.4.1 Governing Documents. The powers, duties and obligations granted to the Association by these Bylaws, the Articles or the Declaration, including, without limitation, the authority to levy Assessments against the Owners for the costs of operating and managing the Association and performing the Association's responsibilities under these Bylaws and the Declaration.

3.4.2 Statutory Powers. The powers and obligations of a nonprofit corporation pursuant to the Nonprofit Corporation Act, and of an owners association pursuant to the Planned Community Act, as either may be amended from time to time, except as provided otherwise by these Bylaws or the Declaration.

3.4.3 General. Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Declaration and these Bylaws or otherwise promoting the general benefit of the Members. The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in these Bylaws made in accordance with the provisions herein, accompanied by changes in the Articles or Declaration made in accordance with such instruments, as applicable, and with the Planned Community Act and Nonprofit Corporation Act.

4. MEMBER MEETINGS

4.1 Annual Meetings. A meeting of the Members shall be held annually. The first annual meeting of the Members shall be held not later than the first anniversary of the date of incorporation of the Association and each subsequent regular annual meeting of the Members shall be held annually on a date within thirty (30) days of the anniversary date of the first annual meeting of the Members or at such other time as is set by the Board. Subject to the foregoing, the date and time of the annual meeting shall be set by the Secretary. At the annual meeting, the President, and any other Officer or person whom the President may designate, shall report on the activities and financial condition of the Association.

4.2 Special Meetings. Special meetings of the Members may be called at any time by the President, by a majority of the Directors, or by the President or Secretary upon receipt of a written request of the Members holding at least twenty-five percent (25%) of the outstanding votes of the Association. If the Members request a special meeting as provided herein and notice of the meeting is not given to the Members within thirty (30) days after the date the written request for the meeting was delivered to the President or Secretary, then any Member who signed the request may set the date, time and place of the meeting and give the required notice. Business transacted at a special meeting shall be restricted to the purposes set forth in the notice for the meeting.

4.3 Place of Meetings. Meetings of the Members shall be held at the principal office of the Association or at such other suitable and convenient place within Tillamook County, Oregon, as may be designated in the notice for the meeting.

4.4 Notice of Meetings. Any meeting held pursuant to this Section 4 shall be held on such date, at such time, and at the principal office of the Association or such other place within Tillamook County, Oregon, as may be designated by the Secretary. Written notice of each meeting of the Members under this Section 4 shall be given by, or at the direction of, the Secretary or other person authorized to call the meeting at least ten (10) days before the meeting, but not more than fifty (50) days before the meeting, to each Member entitled to vote at the meeting and to any mortgagee of a Lot having requested notice thereof in writing. A mortgagee of a Lot may designate a representative to attend a meeting called under this Section 4. The notices shall be given in accordance with the notice provisions set forth in Section 17.1 and shall specify the place, day, and hour 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. Notice of any such meeting may be waived by a Member at any time. No Member who is present at a meeting may object to the adequacy or timeliness of the notice given.

4.5 Quorum. The presence at any Member meeting of a number of Members, whether in person, by proxy or by absentee ballot (if authorized by the Board), who are entitled to cast at least one-third (1/3) of the outstanding votes of the Association shall constitute a quorum for any action except as otherwise provided in the Articles, the

Declaration, or these Bylaws. If a quorum is not constituted at a meeting, the Members who are present, either in person or by proxy, and entitled to vote shall have the power to adjourn the meeting until another date and time, without notice other than announcement at the meeting. The quorum requirement for any such subsequent meeting shall be reduced to a number of Members, whether in person, by proxy or by absentee ballot (if authorized by the Board), who are entitled to cast at least one-fifth (1/5) of the outstanding votes of the Association; provided that (i) the meeting is adjourned to a date that is at least forty-eight (48) hours from the time the original meeting was called or (ii) the original meeting notice states that the quorum requirement will be reduced if the meeting cannot be organized because of a lack of quorum and specifies the reduced quorum requirement. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

4.6 Majority Vote. A vote by the Members holding more than fifty percent (50%) of the voting power of the Association present in person, by proxy or by absentee ballot (if authorized by the Board) at a meeting at which a quorum is constituted shall be binding upon all Members for all purposes unless a higher voting percentage is specifically required by these Bylaws, the Articles, the Declaration, the Planned Community Act or any other applicable law, in which case such higher voting percentage shall apply.

4.7 Proxies and Absentee Ballots. At all meetings of the Members, each Member may vote in person, by proxy or, if authorized by the Board, by absentee ballot. All proxies shall be in writing, dated and signed by the Member, filed with the Secretary and in compliance with all other proxy requirements of the Planned Community Act. Proxies may only be revoked upon the giving of actual notice of revocation to the person presiding over the meeting or to the Board if a vote is being conducted by written ballot. Proxies shall automatically cease upon cessation of membership or restriction of the Member's voting rights. An absentee ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for absentee ballots shall include instructions for return delivery of the completed absentee ballot and information about whether or not the absentee ballot may be canceled if it is returned in accordance with the instructions. If an absentee ballot is delivered by a Member, the Member may vote in person at the meeting if the Member returned the absentee ballot and canceled the absentee ballot, if cancellation was permitted in the instructions included with the absentee ballot.

4.8 Turnover Meeting. Declarant shall call a Turnover Meeting within ninety (90) days following the Conversion Date, as defined in the Declaration, for the purposes of turning over control of the Association to the Members; provided, however, Declarant shall have the right to retain control of the ARC after the Turnover Meeting. The Turnover Meeting shall be conducted in accordance with Section 13 of these Bylaws.

4.9 Action without A Meeting. Any action which applicable law, the Declaration or these Bylaws require or permit the Members to take at a meeting may be taken without a meeting by written or electronic ballot if the procedures set forth in ORS 94.647 and 94.661, as applicable, are followed. For votes of the Members by written or electronic ballot, the Board shall provide the Members with at least ten (10) days' notice before ballots are mailed or otherwise distributed. The notice shall state the general subject matter of the ballot vote, the right of Members to request secrecy procedures in accordance with ORS 94.647, the date after which ballots may be distributed, the date and time by which any petition requesting secrecy procedures must be received by the Board, and the address where such a petition may be delivered. If, at least three (3) days before the ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Members petition the Board requesting secrecy procedures, then the Board must comply with the

secrecy procedures set forth in ORS 94.647. The secrecy procedures shall not apply to the ballot of a Member if the consent or approval of that particular Member is required under these Bylaws, the Declaration or the Planned Community Act. All ballots must set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written or electronic ballot shall state the number of responses needed to satisfy any applicable quorum requirement, the required percentage of votes needed for approval, and the period during which the Association will accept ballots for counting. Electronic ballots include any ballots given by electronic mail, facsimile transmission, posting on a website or other means of electronic communication approved by the Board. Approval by written or electronic ballot shall be valid only when the number of votes cast by written or electronic ballot equals or exceeds any quorum required to be present if a meeting were held to authorize the action and the number of approvals equals or exceeds the number of votes required to approve the matter if a meeting were held to authorize the action. Notwithstanding the foregoing, action by written or electronic ballot may not substitute for any meeting that must be held in person or via electronic communication pursuant to the Oregon Planned Community Act.

5. BOARD OF DIRECTORS

5.1 General. The affairs of the Association shall be managed by the Board, which shall be comprised of the number of Directors specified in Section 5.2 below. The Board shall have all requisite power, duty and authority to perform its obligations under the Declaration, the Articles, these Bylaws, the Nonprofit Corporation Act and the Planned Community Act, including, without limitation, the power, duty, and authority to enforce the provisions of the Declaration and these Bylaws and to acquire and pay for, out of the funds received from the collection of Assessments pursuant to the Declaration, all goods and services necessary or appropriate for the proper functioning of the Association in accordance with the Declaration and these Bylaws. In performing its duties, the Board shall be governed by ORS 94.640 and the applicable provisions of ORS 65.

5.2 Number and Qualification. Declarant shall have the right to appoint an interim Board as described in Section 5.3. Following the Turnover Meeting, the Board shall consist of between three (3) and five (5) directors elected by the Owners in accordance with these Bylaws. The number shall be set by the Board. To assure staggered term, at the first annual meeting after the Turnover Meeting, the three Directors (or two, if the board is to be three members) receiving the most votes shall serve two-year terms and the other Directors shall serve one-year terms. Thereafter, all Directors shall serve two-year terms. Each Director shall be a Member; provided, however, if a corporation, limited liability company, partnership or trust owns a Lot or an interest in an entity that owns a Lot, then an officer, employee or agent of the corporation, member, manager, employee or agent of the limited liability company, partner, employee or agent of the partnership or trustee of the trust, as applicable, may serve as a Director. Additionally, an executor, administrator, guardian, conservator or other individual appointed by a court to serve in a fiduciary capacity for a Member, or an officer or employee of an entity if the appointee is an entity, may serve as a Director. Prior to election to the Board, any individual wishing to serve on the Board in the capacity as a representative or fiduciary of a Member pursuant to this Section 5.2 shall provide the Board with documentation satisfactory to the Board that the individual is qualified to represent the Member in compliance with the requirements of this Section 5.2. An individual serving on the Board as a representative or fiduciary of a Member in accordance with this Section 5.2 shall be disqualified from serving as a Director and his or her seat on the Board shall automatically be vacated if the individual no longer meets the requirements set forth in this Section 5.2.

5.3 Appointment by Declarant Prior to Turnover Meeting. Declarant shall have the right to appoint an interim Board consisting of one (1) to three (3) Directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting. Until the Turnover Meeting, Declarant shall appoint all Directors, and may remove and replace any Director, 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 5.4 and Section 3. Voting for Directors shall not be cumulative.

5.4 Election of Directors. At the Turnover Meeting, the Members shall elect three (3) to five (5) Directors, as determined by the Declarant. Each Director shall serve for a term of two (2) years; provided, however, to minimize turnover of the Board in any one year, the initial terms of Directors elected by the Members (as opposed to appointed by the Declarant) shall be staggered as provided in Section 5.2 above. In voting for Directors, Members shall have the votes specified in the Declaration. Voting for Directors shall not be cumulative. A Director may serve more than one (1) term.

5.5 Resignation. A Director may resign at any time by sending a written notice of resignation to the Secretary. Unless otherwise specified in the resignation notice, a resignation shall take effect upon receipt of the notice by the Secretary.

5.6 Removal. Any Director may be removed, with or without cause, by the affirmative majority vote of the Members entitled to vote, at any meeting of the Members at which a quorum is present. No removal of a Director is effective unless the matter of removal is included in the notice of the meeting. At such meeting, the Members shall elect a replacement Director to serve the remainder of the removed Director's term.

5.7 Vacancies. Vacancies on the Board caused by the death, resignation, or disqualification of a Director shall be filled by the affirmative majority vote 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. Vacancies on the Board caused by the removal of a Director pursuant to Section 5.6 above shall be filled in accordance with the procedures set forth in Section 5.6 above.

5.8 Meetings of the Board.

5.8.1 The initial meeting of the Board shall occur within sixty (60) days after the date the Articles of the Association are filed. Thereafter, the Board shall meet at least annually, within thirty (30) days after each annual meeting of the Members. At each annual meeting, the Board shall adopt a budget for the following fiscal year and determine the amount of the regular Assessment and Reserve Fund Assessment for such year. Within thirty (30) days after adopting the annual budget, the Board shall provide a summary of the budget to all Owners. In addition, the Treasurer shall present to the Board a report on the financial condition of the Association, including a report of receipts and disbursements for the preceding calendar year, the allocation thereof to each Lot, and the estimated receipts and expenses for the coming year. If the Board fails to adopt a budget, the last adopted annual budget shall continue in effect.

5.8.2 Special meetings of the Board may be called at any time by the President or two (2) Directors. Such meetings shall be scheduled by the Secretary within thirty (30) days after the Secretary's receipt of a written request signed by the President or at least two (2) Directors; provided that if the purpose of a special meeting is to elect a

successor Secretary or to consider removal of the Secretary, then such meeting may be scheduled by the President or, if the meeting is also for the purpose of electing a successor President or removing the President, any other Director.

5.8.3 Meetings of the Board shall be held at the principal office of the Association or such other place within Tillamook County, Oregon, as may be designated from time to time by the Board.

5.8.4 The Secretary shall give written notice to each Director of each Board meeting at least three (3) but not more than thirty (30) days prior to the date set for the meeting, stating the purpose, time, and place of the meeting. Notice shall be given in accordance with the notice provisions set forth in Section 17.1 below. Notice of any meeting may be waived by any Director at any time. No Director who is present at a meeting may object to the adequacy or timeliness of the notice given. When a meeting is adjourned for fewer than thirty (30) days, whether or not a quorum is present at the adjourned meeting, no notice of the resumption or reconvening of such adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place. Notwithstanding the foregoing, emergency meetings of the Board may be held without notice if the reason of the emergency is stated in the minutes of the meeting.

5.8.5 All meetings of the Board shall be open to the Members, except that at the discretion of the Board, the following matters may be considered in executive session, as provided by law: (a) consultation with legal counsel; (b) personnel matters, including salary negotiations and employee discipline; (c) the negotiation of contracts with third parties; (d) collection of unpaid Assessments; and (e) any other matters permitted by applicable law. For other than emergency meetings, notice of Board meetings shall be posted at the Property at least three (3) days prior to the meeting or shall be provided to the Members by another method reasonably calculated to inform the Members of the meeting. Except in an emergency, 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 the 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. To the maximum extent permitted by applicable law, Board meetings may be conducted by telephonic communication or by the use of other means of electronic communication.

5.8.6 The presence in person of a majority of the Directors shall constitute a quorum for voting at a Board meeting. The Board shall have the power to adjourn a meeting even if less than a quorum is present. Each Director shall have one vote. So long as a quorum is constituted, the vote of a majority of the Directors present at the meeting shall be a binding vote of the Board for all purposes, unless a greater percentage is required by law, these Bylaws or the Declaration. A Director who is present at a meeting of the Board at which action is taken on any Association matter is presumed to have assented to the action unless the Director votes against the action or abstains from voting on the action because the Director claims a conflict of interest. When action is taken on any matter at a meeting of the Board, the vote or abstention of each Director present shall be recorded in the minutes of the meeting. The Directors may not vote by proxy or by secret ballot at Board meetings, except that the Directors may elect Officers by secret ballot.

5.9 Action Without A Meeting. Any action which applicable law, the Declaration or these Bylaws permit the Board to take at a meeting may be taken without a meeting if a written consent setting forth the action so taken is signed by all of the Directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the Board, shall be filed in the records of the Association.

5.10 Compensation. No Director shall receive compensation for any service rendered to the Association. However, a Director may be reimbursed for the Director's actual expenses incurred in the performance of his or her duties.

6. OFFICERS

6.1 Enumeration and Qualifications. The Officers shall be the President, the Treasurer, and the Secretary, each of whom shall be elected by the Board. The Board may designate such additional Officers as it deems appropriate. All Officers must be individuals. The Officers shall be Members; provided, however, if a corporation, limited liability company, partnership or trust owns a Lot or an interest in an entity that owns a Lot, then an officer, employee or agent of the corporation, member, manager, employee or agent of the limited liability company, partner, employee or agent of the partnership or trustee of the trust, as applicable, may serve as an Officer. Additionally, an executor, administrator, guardian, conservator or other individual appointed by a court to serve in a fiduciary capacity for a Member, or an officer or employee of an entity if the appointee is an entity, may serve as an Officer. Any individual wishing to serve as an Officer in the capacity as a representative or fiduciary of a Member pursuant to this Section 6.1 shall provide the Board with documentation satisfactory to the Board that the individual is qualified to represent the Member in compliance with the requirements of this Section 6.1. Any Officer serving in a representative or fiduciary capacity of a Member in accordance with this Section 6.1 shall be disqualified from serving as an Officer and his or her office shall automatically be vacated if he or she no longer meets the requirements set forth in this Section 6.1. An Officer may not simultaneously hold more than one (1) office.

6.2 Election and Term of Office. The Officers shall be elected annually 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 a special meeting of the Board called for such purpose.

6.3 Removal. The Board may remove any Officer, at any time, with or without cause, and a successor may be elected at a special meeting of the Board called for such purpose.

6.4 Compensation. Other than reimbursement of out-of-pocket expenses incurred on behalf of the Association, no Officer shall receive any compensation from the Association for acting as an Officer, unless such compensation is authorized by the Board.

6.5 President. The President shall be a Director and shall be the chief executive officer of the Association. The President shall preside at all meetings of the Board and shall have all of the general powers and duties normally incident to the office of the chief executive officer of a corporation. The President shall perform all of such duties at the expense of the Association.

6.6 Secretary. The Secretary shall be a Director. The Secretary shall keep, or cause to be kept, the minutes of all proceedings of the Board and all other Association records and shall attend to the giving of all notices to the Board and Members and any other notices pursuant to these Bylaws or the Declaration or required by law. The Secretary shall

perform all other duties incident to the office of secretary of a corporation or as may be directed by the Board. The Secretary shall perform all of such duties at the expense of the Association.

6.7 Treasurer. The Treasurer shall be a Director and be responsible for Association funds and shall keep full and accurate financial records and books of account sufficient for proper accounting purposes showing all receipts and disbursements necessary for the preparation of all financial data and tax returns. The Treasurer shall be responsible for the deposit of all Association funds in such depositories as may from time to time be designated by the Board, and shall disburse Association funds for such purposes as may be permitted under these Bylaws or the Declaration. The Treasurer shall perform all other duties incident to the office of the Treasurer of a corporation or as may be directed by the Board. The Treasurer may retain outside professional services to assist in accomplishing such duties. The Treasurer shall perform all such duties at the expense of the Association.

7. **SHARES OF STOCK AND DIVIDENDS PROHIBITED**

The Association shall not have or issue shares of stock. No dividends shall be paid and no part of the income of the Association shall be distributed to its Directors or Officers, or to the Owners.

8. **LOANS TO DIRECTORS AND OFFICERS PROHIBITED**

8.1 No Loans to Directors or Officers. No loan shall be made by the Association to its Directors or Officers. The Directors who vote for or assent to the making of a loan to a Director or Officer and any Officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

8.2 Contribution; Subrogation. Any Director against whom a claim is asserted under or pursuant to this Section 8 shall be entitled to contribution from the other-Directors who voted for the action upon which the claim is asserted. To the extent that any Director is required to pay such claim, he or she shall be subrogated to the rights of the Association against the debtor on the loan.

9. **CONTRACTS, CHECKS, DEPOSITS AND FUNDS**

9.1 Contracts. The Board may authorize any Officer or agent of the Association, in addition to the Officers so authorized in these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances. Among other things, such contracts may provide for the employment of personnel necessary for the maintenance, upkeep, and repair of the Common Maintenance Areas.

9.2 Checks, Drafts, Etc. All checks, payment vouchers, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association (including checks or vouchers for the payment of the expenses incurred in maintaining the Common Maintenance Areas), shall be signed by such Officers or agents of the Association and in such manner as shall from time to time be determined by the Board.

9.3 Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select. All Assessments shall be deposited in one or

more separate accounts in the name of the Association. All expenses of the Association shall be paid from such accounts. Reserve Fund Assessments shall be maintained in a segregated account.

10. COMMITTEES

10.1 Committees. The Board may appoint such committees as deemed appropriate in carrying out its purposes, which may include for example, but not by way of limitation, a maintenance committee to advise the Board on all matters pertaining to the maintenance, repair or improvement of the Common Maintenance Areas, if any, and to perform such other functions as the Board in its discretion determines.

10.2 Committee Function. It shall be a function of each committee to receive complaints from the Owners on any matter involving Association duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or Officer as is further concerned with the matter presented. Complaints received and the disposition of the complaints shall be reported promptly to the Board by the committee.

11. ASSOCIATION BOOKS AND RECORDS: FINANCIAL MATTERS

11.1 General. The Association shall keep accurate and complete books and records of its activities and accounts as required by the Planned Community Act and shall also keep minutes of the proceedings of the Board and committees having any of the authority of the Board and shall keep at its registered or principal office a record of the names and addresses of the Members and Directors. All books and records of the Association (except for those items which are exempt from disclosure under ORS 94.670) may be inspected by any Member, or his or her agent or attorney, for any proper purpose at any reasonable time. Without limiting the generality of the foregoing, the Association shall maintain a copy, suitable for duplication, of the following: (a) the Declaration, these Bylaws, the Articles and any rules and regulations adopted by the Board; (b) the most recent financial statement of the Association prepared in accordance with Section 11.2 below; (c) the current operating budget of the Association; and (d) the reserve study for the Association (if any). The Board may adopt reasonable rules regarding the frequency, time, location, notice and manner of inspection and duplication of the Association's records and the imposition of a reasonable fee for furnishing copies of any documents. The fee may include reasonable personnel costs for furnishing such copies.

11.2 Financial Statements. Within ninety (90) days after the end of each fiscal year, the Board shall distribute to each Owner and, upon request, any mortgagee of a Lot, 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. Additionally, if required by applicable law, the Board shall cause the financial statements to be reviewed within one hundred eighty (180) days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The terms of this Section 11.2 are intended to comply with the requirements of ORS 94.670, as the same may be amended and/or supplemented from time to time, and all other applicable Oregon laws and shall be deemed modified, as applicable, to comply therewith.

11.3 Tax Returns. The Board shall cause to be filed the necessary income tax returns for the Association.

11.4 Fiscal Year. The Association's fiscal year shall commence January 1 and shall end on December 31.

12. INSURANCE

12.1 By the Association. The Board shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon: (i) a policy or policies insuring the Association, its Board, committee members, and the Owners individually against any liability to the public or the Owners and their invitees or tenants, incident to the ownership, supervision, control or use of the Property, excepting portions of the Property under an Owner's exclusive use or occupancy. Limits of liability under such insurance shall be per occurrence for bodily injuries and property damage liability in such amounts as the Board deems advisable; and (ii) workers' compensation insurance to the extent necessary to comply with any applicable laws. The insurance coverage obtained and maintained by the Board may not be brought into contribution with insurance bought by Owners or their mortgagees. Any insurance policy obtained by the Association shall identify the Association as the named insured and shall, if possible, be written by an insurer with a "B" general policyholder's rating and a "III" financial size category in Best's "Key Rating Guide." The policies obtained by the Association may contain a reasonable deductible not to exceed the lesser of \$10,000 or one percent of the face value of the policy. The Board may adopt a resolution prescribing responsibility for payment of the deductible under the Association's insurance policy. Any policies obtained by the Association shall, if reasonably available, provide a waiver of subrogation by the insurance company as to any claims against the Board, any Owner, or any guest of an Owner.

12.2 By the Owners. Each Owner of a Lot shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability and property damage insurance with respect to such Lot in an amount of not less than \$250,000.00 per person, per occurrence. Additionally, each Owner shall obtain, and maintain in effect, from such companies fire and extended coverage casualty insurance with respect to the Home and other Improvements located on the Owner's Lot in an amount equal to 100% of the replacement cost thereof. Each Owner shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to the Owner's personal property. The Board of Directors shall have the right, from time to time, to increase the amount and type of insurance required pursuant to this Section 12.2 by providing Owners not less than ninety (90) days advance written notice.

12.3 Director and Officer Insurance and Fidelity Insurance. At the discretion of the Board, the Association may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, committee member, or agent of the Association, or is or was serving at the request 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, whether or not the Association would have the power to indemnify him or her against such liability under the Articles of the Association. The Board may also cause the Association to maintain fidelity insurance for Officers, Directors, committee members, trustees and employees of the Association and any other persons handling or responsible for funds of, or administered by, the Association. If the Association has retained a management agent, the Board may require the management agent to maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association. The total amount of fidelity insurance coverage, if any, shall be determined by the Board.

12.4 General Provisions. Premiums for insurance obtained by the Board on behalf of the Association pursuant to this Section 12 shall be a common expense of the Association. At least annually, the Board shall review the insurance coverage of the Association. If reasonably available, the Board shall obtain insurance policies with the provisions specified in ORS 94.690 and with an "inflation guard" endorsement.

13. TRANSFER OF CONTROL: TURNOVER MEETING

Declarant shall call the Turnover Meeting within ninety (90) days following the Conversion Date for the purpose of turning over control of the Association to the Owners; provided, however, Declarant shall retain control over the Architectural Review process, including the ARC, after the Turnover Meeting pursuant to Sections 1.28 and 7.7 of the Declaration until Declarant elects to formally relinquish control.

Declarant shall give notice of the Turnover Meeting to each Member in accordance with Section 17.1 below. The notice shall state the time and place at which the meeting is to be held and the purpose of the meeting, which shall be the relinquishment by Declarant of control of the administration of the Association (except for Architectural Review, including appointment of the ARC) and the election of new Directors by the Members. If Declarant does not call the Turnover Meeting required by this Section 13 within the required period, any Member may call the Turnover Meeting and give notice of the Turnover Meeting as required by this Section 13. At the Turnover Meeting: (a) Declarant shall relinquish control of the administration of the Association (except for Architectural Review, including appointment of the ARC), and the Members shall assume the control thereof; (b) the Directors then serving shall resign and, if a quorum of the Members is present, the Members shall elect new Directors in accordance with these Bylaws; and (c) Declarant shall deliver to the Association the books, records, and other materials belonging to the Association that are in Declarant's control.

14. RULES AND REGULATIONS

The Board shall have power to adopt and publish rules and regulations and to establish penalties for the infraction thereof as provided in the Declaration. The adoption and amendment of such rules and regulations must conform to the requirements of the Declaration. Upon adopting any such rules and regulations, the Board shall cause copies thereof to be delivered to each Owner in accordance with the notice provisions set forth in Section 17.1 below. All rules and regulations adopted by the Board shall become binding upon the date of delivery. Any rule or regulation which conflicts with these Bylaws or the Declaration shall be null and void.

15. MAINTENANCE

The Association shall have the maintenance responsibilities set forth in the Declaration. Costs and expenses incurred by the Association in discharging its maintenance responsibilities shall be paid in the manner described in Section 9.2 of these Bylaws.

16. ASSESSMENTS

16.1 Generally. All Lots shall be subject to assessment in accordance with the provisions of the Declaration. All Assessments shall be due and payable on a monthly, quarterly, annual, or other basis as determined by the Board. Subject to amendment by the Board, the Association shall give written notice to each Member as to the amount of the

operating and Reserve Fund Assessments with respect to each Lot on or before December 15 of each year for the calendar year commencing January 1 of the next year.

16.2 Request for Assessments Due. The Association shall provide, within ten (10) business days of receipt of a written request from a Member, a written statement that provides: (i) the amount of Assessments due from the Member and unpaid at the time the request was received, such as operating or regular Assessments, Reserve Fund Assessments, LCE Assessments, and Special Assessments, fines, accrued interest, late payment charges and other charges; (ii) the percentage rate at which interest accrues on unpaid Assessments; and (iii) the percentage rate or fixed charge for late payments. The Association is not required to provide a statement of outstanding Assessments if the Association has commenced litigation by filing a complaint against the Member and the litigation is pending when the statement would otherwise be due.

17. NOTICES

17.1 Notices. Unless another form of notice is specifically permitted in these Bylaws or under the Planned Community Act, all notices given hereunder shall be delivered by: (i) messenger service (or hand delivery); (ii) overnight courier service; (iii) regular U.S. Mail; or (iv) electronic mail, facsimile transmission or any other form of electronic communication acceptable to the Board and permissible under the Planned Community Act. Notices delivered by messenger service (or hand delivery), overnight courier service or regular U.S. Mail shall be sent to the mailing address last appearing on the books of the Association. Notices delivered by facsimile or email shall be sent to the email address or facsimile number last appearing on the books of the Association. Notwithstanding the foregoing, electronic mail, facsimile or other form of electronic communication may not be used to give notice of: (i) failure to pay an Assessment; (ii) foreclosure of an Association lien under ORS 94.709; or (iii) an action the Association may take against a Member. Additionally, a Member may decline to receive notice by electronic mail, facsimile or other form of electronic communication by giving written notice thereof to the Board. Notices shall be deemed given on the date the notices are sent in accordance with the procedures outlined herein.

17.2 Waiver. Whenever any notice is required to be given under the provisions of the Articles, the Declaration, these Bylaws or any applicable law or statute, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

18. DISPUTE RESOLUTION

To the fullest extent required by law, all claims, controversies, or disputes, whether they are statutory, contractual, tort claims, and/or counterclaims between or among the Association, and/or Owner(s) (collectively, the "Parties" and individually, a "Party") which arise out of or are related to the Property, the Lots, the Homes, the Planned Community Act, the Declaration, these Bylaws, the Articles, or any rules and regulations of the Association, or which relate to the interpretation or breach of the Planned Community Act, the Declaration, these Bylaws, the Articles, or any rules and regulations of the Association (collectively referred to as "Claims") shall be resolved in conformance with all applicable procedures specified in the Planned Community Act, including ORS 94.630(4). Except as otherwise required by the Planned Community Act, the following matters are excluded from these dispute resolution provisions and do not constitute Claims: (i) judicial or non-judicial foreclosure or any other action or proceeding to collect or enforce Assessments, fines, interest or a trust deed, mortgage, Association lien, or land sale contract; (ii) a forcible

entry and detainer action; (iii) actions by the Association related to removal of a structure or other condition that violates the Declaration, these Bylaws, or any rules and regulations of the Association; (iv) actions for the appointment of a receiver; (v) provisional remedies such as injunctions or the filing of a lis pendens; or (vi) the filing or enforcement of a mechanic's lien. The filing of a notice of pending action (lis pendens) or the application to any court having jurisdiction thereof for the issuance of any provisional process remedy described in Rules 79 through 85 of the Oregon Rules of Civil Procedure (or corresponding federal statutory remedies), including a restraining order, attachment, or appointment of receiver, shall not constitute a waiver of the right to mediate or arbitrate under this Section 18, nor shall it constitute a breach of the duty to mediate or arbitrate. The proceeds resulting from the exercise of any such remedy shall be held by the Party obtaining such proceeds for disposition as may be determined by an agreement of the Parties pursuant to a mediation or by the arbitration award.

19. AMENDMENTS TO BYLAWS

These Bylaws may be amended or repealed and new bylaws may be adopted by a majority of the Directors present at any regular meeting or at any special meeting, if at least three (3) days' written notice is given of intention to amend or repeal and adopt new bylaws at such meeting accompanied by a copy or summary of the amendment; provided, however, that the Board shall have no authority to amend or repeal any provision of these Bylaws relating to the election, qualifications, powers, duties, compensation or terms of Directors without the approval of the Owners given at a special meeting called for such purpose; and provided, further, that all such amendments shall be consistent with the provisions of the Declaration. An amendment is not effective unless it is certified by the President and Secretary of the Association as having been adopted in accordance with these Bylaws and ORS 94.625, acknowledged in the manner provided for acknowledgment of deeds and recorded in the official records of Tillamook County, Oregon.

20. 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, any amendments hereto and any rules or regulations adopted hereunder.

The Declarant adopted the foregoing Bylaws as the bylaws of the Association, effective as of the filing of the Articles of Incorporation for the Association in the Oregon Secretary of State's Office.