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**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF WILLOW CREEK ESTATES**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willow Creek Estates ("Amended and Restated Declaration") is made this 3<sup>rd</sup> day of March, 2013 by the W.C.E. Homeowners Association, Inc., an Oregon nonprofit corporation ("Association").

**RECITALS**

A. Willow Creek Estates was created by that certain "Declaration of Covenants, Conditions and Restrictions-Willow Creek Estates" which was recorded in the Official Records of Clackamas County, Oregon as Document No. 9155843 ("Original Declaration"). Attached to the Original Declaration were the "Bylaws of Willow Creek Estates" ("Original Bylaws") and the "Architectural Standards" ("Standards").

B. The members of the Association have voted to amend and restate the Original Declaration, the Original Bylaws and the Standards. Upon the recording of this Amended and Restated Declaration and the Amended and Restated Bylaws of the Association, the Original Declaration, the Original Bylaws and the Standards shall be of no further force or effect. It is anticipated that in addition to the various architectural standards and restrictions contained in this Amended and Restated Declaration, the Association's Board of Directors will adopt and publish an architectural manual by vote and resolution.

**ARTICLE 1  
DEFINITIONS**

When used in this Declaration, the following terms, whether or not capitalized, have the following meanings:

1.1 "**Act**" means the Oregon Planned Community Act, ORS 94.550 to 94.783, as it may be amended from time to time.

1.2 "**Architectural Committee**" means the committee constituted and acting under Section 8 below.

1.3 “**Articles of Incorporation**” means the Articles of Incorporation of the Association as they may be amended or restated from time to time.

1.4 “**Assessment**” means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the provisions of this Declaration, the Bylaws or the Act, including Association Common Expense Assessments and Individual Assessments as provided in Article 10 below.

1.5 “**Association**” means W.C.E. Homeowners Association, Inc., an Oregon nonprofit, and its successors and assigns.

1.6 “**Association Common Expense Assessment**” means an assessment imposed by the Association under Section 10(1)(a) below.

1.7 “**Board of Directors**” or “**the Board**” means the board of directors of the Association elected as provided in the Bylaws.

1.8 “**Bylaws**” means the Amended and Restated Bylaws of Willow Creek Estates Homeowners Association recorded concurrently with this Declaration, as they may be amended from time to time.

1.9 “**Common Area**” means the areas designated as Common Area in Section 4.1 below.

1.10 “**Common Expenses**” means expenditures made by or financial liabilities incurred by the Association, including expenses specified in Section 10.4 below.

1.11 “**Common Property**” means any property or interest in property that is owned or leased by the Association or owned as tenants in common by the Owners.

1.12 “**Declaration**” means this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willow Creek Estates, as the same may be amended or supplemented, as provided under this Declaration, from time to time.

1.13 “**Governing Documents**” means the Declaration, the Bylaws, the Plat, the Association’s Articles of Incorporation, the Architectural Standards and any rules or regulations adopted by the Board of Directors, as amended from time to time.

1.14 “**Home**” means the primary residential structure constructed on a Lot.

1.15 “**Improvement**” means every structure or improvement of any kind, including, without limitation, landscaping required under Article 6 below, and any Home, deck, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property.

1.16 “**Individual Assessment**” means an assessment imposed by the Association under Section 10.1(a)(2) below.

1.17 “**Lot**” means a numerically designated and platted lot on a Plat (including the Home located thereon).

1.18 “**Majority**” or “**Majority of Owners**” means more than fifty percent (50%) of the voting rights allocated to the Lots under Section 5.3 below.

1.19 “**Mortgage**” means a mortgage or trust deed; “**Mortgagee**” means a mortgagee or a beneficiary of a trust deed; and “**Mortgagor**” means a mortgagor or a grantor of a trust deed.

1.20 “**Oregon Nonprofit Corporation Act**” means ORS Chapter 65.

1.21 “**Owner**” means the person or persons owning any Lot (including the holder of a vendee’s interest under a land sale contract, unless otherwise stated in the contract), but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot (including the holder of a vendor’s interest under a land sale contract, unless otherwise stated in the contract).

1.22 “**Percent of Owners**” or “**Percentage of Owners**” means the percent of the voting rights allocated under Section 5.3 below.

1.23 “**Planned Community**,” “**Property**,” and “**Properties**” mean the property described on attached **Exhibit A** and all improvements located thereon.

1.24 “**Plat**” means all Plats of Willow Creek Estates and all subsequent plats which may annex additional lots or property.

1.25 “**Rules and Regulations**” means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, the Bylaws or the Act.

1.26 “**Voting Rights**” means the portion of the votes allocated to a Lot under Section 5.3 below.

1.27 **Additional Definitions.**

(a) **Incorporation by Reference.** Except as otherwise provided in this Declaration, unless the context clearly requires otherwise, terms used in this Declaration, whether or not capitalized, that are defined in ORS 94.550 have the meanings set forth in ORS 94.550.

(b) **Other Definitions.** Terms that are not defined in this article but are defined elsewhere in this Declaration, whether or not capitalized, have the respective meanings given them in the provisions of this Declaration.

**ARTICLE 2**  
**PROPERTY SUBJECT TO DECLARATION;**  
**DESCRIPTION AND CLASSIFICATION**

## OF PLANNED COMMUNITY

**2.1 The Property.** Association hereby declares that all of the property described in attached **Exhibit A** shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions, restrictions and charges, described in this Declaration run with the Property and are binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and inure to the benefit of the Association and each Owner.

**2.2 Land Classifications.** The Planned Community consists of the Lots and Common Property described in Section 4.1 below.

**2.3 Classification of Planned Community; Application of Act.** The Property is a Class II Planned Community and subject to the provisions of the Act as provided in ORS 94.572 and this Declaration and the Bylaws.

## ARTICLE 3 PROPERTY RIGHTS IN LOTS

**3.1 Use and Occupancy.** Except as otherwise expressly provided in this Declaration or the Bylaws, the Owner of a Lot is entitled to the exclusive use and benefit of the Lot. Each Lot is bound by and the Owner shall comply with the restrictions contained in Article 7 below and all other provisions of the Governing Documents for the mutual benefit of all Owners.

**3.2 Restriction on Lot Division.** Owners may not divide any Lot.

**3.3 Lot Line Adjustments.** The Owners of adjoining Lots may elect to adjust the property line between the Lots as may be permitted by Clackamas County, Oregon in accordance with any applicable ordinances or regulations. If the property line adjustment results in the elimination of a Lot, the voting rights and assessment obligations of the eliminated Lot no longer exist and the Common Expenses and profits of the Planned Community must be reallocated among all remaining Lots in accordance with Sections 10.3 below.

**3.4 Easements.** In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, Lots are subject to the following easements for the benefit of Owners and the Association:

**(a) Right of Entry.**

**(1) Lots.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance referred to in Article 9 below and determining whether or not the Lot is then in compliance with the Governing Documents.

**(2) Requests for Entry.** Requests for entry must be made in advance and at a time convenient to the Owner, except in the case of emergency, when the right is

immediate. An emergency entry may not be deemed to constitute a trespass or otherwise create for the Owner of the Lot any right of action.

(b) **Encroachments.**

(1) As provided in ORS 94.733, each Lot and all Common Property have an easement over all Lots and Common Property for the purpose of accommodating any encroachment as a result of construction, reconstruction, repairs, settlement, shifting or movement of any portion of the Property.

(2) There are valid easements for the maintenance of the encroaching Lots and Common Property so long as the encroachment exists, and the rights and obligations of Owners may not be altered in any way by the encroachment. The encroachments described in this subsection may not be construed to be encumbrances affecting the marketability of title to any Lot.

(3) Nothing in this subsection relieves an Owner of liability in the case of the Owner's willful misconduct or failure to adhere to the Governing Documents.

**3.5 Easements Shown on the Plat.** Each Lot is subject to the easements shown on the Plat.

**ARTICLE 4**  
**PROPERTY AND USE RIGHTS**  
**IN COMMON PROPERTY**

**4.1 Designation of Common Area and Other Common Property.** The Common Area is described on the Plat.

**4.2 Title to Common Area.** Fee title to the Common Area designated in Section 4.1(a) above, including all improvements, is vested in the Association.

**4.3 Owner Easement of Use and Enjoyment.** Subject to the provisions of this article, every Owner and Owner's invitee has a right and easement of use and enjoyment in and to the Common Property. The easement is appurtenant to and passes with the title to every Lot as provided in ORS 94.733.

**4.4 Extent of Owners' Rights.** The rights of use and enjoyment in the Common Property are subject to the following and all other provisions of this Declaration:

**(a) Easements.**

**(1)** The following easements over, under and upon the Common Property are granted for the benefit of the Association and all Owners of Lots within the Property:

**(A)** An easement on all Common Property for underground installations and maintenance of power, gas, electric, water and other utility and communication lines and services and any easement shown on the Plat.

**(B)** An easement over all roadways for vehicular access within the Property and to adjacent areas.

**(C)** An easement for construction, maintenance, replacement, repair and use of Common Property, including common facilities located thereon.

**(2)** Any public authority or utility provider has an easement over the Common Property for the installation, maintenance and development of utilities, including without limitation, street lights, water meters, fire hydrants and drainage facilities.

**(b) Use of Common Property.**

**(1)** Except as otherwise provided in this section and other provisions of this Declaration, the Common Property is reserved for the exclusive use and enjoyment of all Owners and no private use may be made of the Common Property.

**(2)** The Board of Directors may adopt rules under Article 9 of the Bylaws that govern use of Common Property, including, without limitation, rules that:

(A) Limit the number of guests or Owners permitted to use the Common Property.

(B) Require a reasonable charge for admission and other fees for the use of any recreational facility located on Common Property and govern the use of the facilities.

(C) Designate specific areas of the Common Property that may be used by persons other than Owners or persons delegated the right to use the Common Property under Section 4.5 below and prescribe restrictions regarding the use of the areas.

(3) The Common Property and any facilities thereon must be used for the purposes for which the same are reasonably intended, and their use, operation and maintenance may not be obstructed, damaged or unreasonably interfered with by any Owner or other person.

(c) **Alienation of Common Property.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber, create a security interest therein, sell or transfer the Common Property owned directly or indirectly by the Association for the benefit of the Lots unless Owners representing at least eighty percent (80%) of the voting rights have given their prior written approval in accordance with ORS 94.665. However, the prior approval specified in this subsection does not apply to easements described in Subsection (a) and (e) of this section.

(d) **Limitation on Use.** Use of the Common Property by the Owners is subject to the provisions of the Governing Documents, the Act, and other applicable laws and to the right of the Association to adopt, to amend and to repeal rules and regulations as provided in Article 9 of the Bylaws.

(e) **Easements in Favor of Municipalities and Utilities.** In addition to the easements described in this section, the Association's Board may (and to the extent required by law, shall) grant or assign easements on Common Property to municipalities or other utilities performing utility services and to communication companies, and may grant free access over the Common Property to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

4.5 **Delegation of Use.** An Owner may delegate Owner's right of enjoyment to the Common Property to other occupants, tenants, or contract purchasers who reside on the Property, whose use of the Common Property is subject to this Declaration, the Bylaws and all rules and regulations.

## **ARTICLE 5**

### **GOVERNANCE OF THE PLANNED COMMUNITY**

The administration, management and operation of the Planned Community shall be by the Association as provided in this article, the Articles of Incorporation and the Bylaws.

#### **5.1 Association Organization.**

(a) **Incorporation.** The Association is organized as a nonprofit corporation

under the Oregon Nonprofit Corporation Act. The name of the association is "W. C. E. Homeowners Association, Inc."

(b) **General Powers, Duties and Obligations.** The Association has such powers and duties as may be granted to it or imposed by the Act, including each of the powers and duties set forth in ORS 94.630 as the statute may be amended to expand the scope of associations powers and duties, together with such additional powers and duties afforded by this Declaration, the Bylaws, the Oregon Nonprofit Corporation Act. The duties include:

(1) The establishment of reserve accounts in accordance with ORS 94.595 and Section 11.4 of the Bylaws; and

(2) The preparation, review and update of the reserve study and maintenance plan required by ORS 94.595 in accordance with Section 9.1(b) below and Section 11.4 of the Bylaws.

(c) **Bylaws.** The Amended and Restated Bylaws of W. C. E. Homeowners Association, Inc. being recorded concurrently with this Declaration in the Records of Clackamas County, Oregon govern the operation of the Association and the Planned Community.

(d) **Board of Directors.** The affairs of the Association shall be governed by the Board of Directors as provided in the Bylaws.

5.2 **Automatic Membership.** Each Owner is automatically a member of the Association. The rights, obligations and other entitlements granted to or imposed upon an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of the ownership. However, termination of ownership does not discharge an Owner from obligations incurred prior to termination.

### 5.3 **Voting Rights.**

(a) **Allocation of Voting Rights.** Each Lot is allocated one (1) vote in the affairs of the Association. If an Owner owns more than one Lot, the person has one (1) vote for each Lot owned. The Board of Directors is entitled to vote on behalf of any Lot which has been acquired by or on behalf of the Association. However, the Board of Directors is not entitled to vote on any Lot in any election of directors. The method of voting is as specified in the Bylaws.

(b) **Suspension of Voting.** During any period when an Owner is delinquent in the payment of any Assessment as determined under Section 11.3 below, and after notice and an opportunity to be heard before the Board:

(1) Except in the case of a vote on an amendment for which the consent of the Owner is required under Section 12.3 below or as otherwise provided in the Act or the Oregon Nonprofit Corporation Act, an Owner's right to participate in any Association meeting or to vote on any Association matter is automatically suspended. The rights of the Owner, including a subsequent Owner, remain suspended until the assessment is paid.



(2) Except as provided in this subsection, or as may be otherwise limited pursuant to this Declaration, the Bylaws, the Act or other law, a suspended owner has all rights of an Owner, including, but not limited to the right to receive notices and inspect records of the Association.

## **ARTICLE 6**

### **ARCHITECTURAL AND LANDSCAPING RESTRICTIONS**

**6.1 Homes and Improvements on Lots.** Unless otherwise provided in this Declaration or approved by the Architectural Committee, no structure may be erected or maintained on any Lot except one single-family dwelling. Homes shall be of an attractive and high quality architectural design that is compatible in external appearance, design and quality with existing structures in Willow Creek Estates. Set back requirements for single-family lots shall be those set forth in the R-1 zone in the City of Canby.

(a) The minimum size for a newly-constructed home, excluding garage, shall be as follows:

1. Single family detached single story home – 1800 square feet.
2. Single family detached two story home – 2000 square feet.

### **6.2 Materials.**

(a) Every building, fence, wall or other structure placed on any part of Property must be constructed with new material, unless the use of other than new material has received the written approval of the Architectural Committee as provided in Article 8 below.

(b) No buildings constructed elsewhere may be moved or placed on the Property except with the written approval of the Architectural Committee as provided in Article 8 below.

(c) Exterior siding must be cedar or concrete composite lap siding, brick, stone or stucco. Exterior paint colors must be harmonious with those of the rest of the neighborhood, as reasonably determined by the Architectural Committee.

(d) Fencing must be constructed of rock, brick, wood or wrought iron. Other materials may be allowed at the Architectural Committee's discretion. Fencing must comply with City of Canby height and placement standards.

(e) Roofing must be cedar or concrete shakes, tile or 3-ply 50 year architectural composite. Material, design, and color must be approved by Architectural Committee.

### **6.3 Garages and Sheds.**

(a) Garages. Each single family detached home shall include a garage designed to enclose a minimum of two and maximum of three vehicles. The structure shall correspond architecturally to the other structures on the Lot in character, material and finishes.

(b) Sheds. Any shed must be of a design in keeping with the existing residence and use roofing and siding materials consistent with the main residence on the Lot. Sheds must comply with City of Canby size and set back standards.

#### **6.4 Landscaping.**

(a) Landscaping Design. The front yard of all Lots shall be landscaped in a manner that is harmonious and compatible with the rest of the neighborhood, as reasonably determined by the Architectural Committee.

(b) Landscaping Maintenance. Each Owner shall maintain his or her landscaping and yard area in an attractive appearance, including, but not limited to, keeping yards free from insects, disease, unsightly overgrowth, dead trees or vegetation, large holes and untended areas of barren dirt. Shrubs and trees may not be allowed to encroach upon sidewalks or impede clear vision at street corners. Owners are fully responsible for the maintenance of landscaping to acceptable standards even if they are not occupying the residence.

(c) Landscaping Plan Submittal and Review. Landscaping plans for newly landscaped yards shall be submitted in duplicate to the Architectural Committee for approval. Plans shall include a site plan (to scale) showing property lines, structures, planting areas and location, and description of planting including species. Applicant shall not proceed with work until approval has been granted by the Architectural Committee.

**6.5 Decks, Patios, Awnings, Trellises, Pergolas and Porches**. All decks, patios, awnings, trellises, pergolas and porches must be constructed of materials in keeping with the quality of the existing residence and the rest of the neighborhood, as reasonably determined by the Architectural Committee. All such structures must comply with City of Canby size and set back standards.

**6.6 Flagpoles and Recreational Structures**. Installation of flagpoles and recreational equipment such as basketball hoops must receive approval prior to installation from the Architectural Committee.

#### **6.7 Completion of Construction; Occupancy.**

(a) The construction of any building or structure must be prosecuted with reasonable diligence continuously from the time of commencement until fully completed.

(b) No building may be in any manner occupied while under construction or substantial reconstruction or until it complies with all requirements as to area and with all other applicable conditions and restrictions under this Declaration and Article 8 below.

**ARTICLE 7**  
**RESTRICTIONS ON USE**

The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration and the Bylaws:

**7.1 Residential Purposes; Commercial Activities Prohibited.**

(a) Lots may only be used for single family residential purposes.

(b) No trade, craft, business, profession, commercial or similar activities of any kind may be conducted in any Home or in any other portion of the Planned Community without the consent of the Board of Directors in accordance with Subsection (c) of this subsection. However, this subsection may not be construed so as to prevent or prohibit an Owner from:

(1) Maintaining owner's professional personal library.

(2) Keeping Owner's personal business or professional records or accounts.

(3) Handling Owner's personal business or professional telephone calls.

(4) Conducting activities of an Owner relating to the rental or sale of Owner's Lot.

(5) Occasionally conferring with business or professional associates, clients, or customers in an Owner's Home.

(6) Subject to compliance with applicable local ordinances or regulations, using the Home as a "home office" provided clients, customers and employees do not regularly visit the "home office."

(c) An Owner may submit a written request to the Board of Directors for approval to conduct commercial activities not otherwise permitted under this section. The Board, in its sole discretion, may permit an activity only if:

(1) Clients, customers, vendors and employees do not regularly visit the Planned Community.

(2) The type of activity will not unreasonably disturb other Owners or occupants of surrounding Homes.

(3) The activity is not in violation of any law or regulation or ordinance of the local governing body.

(d) In accordance with Section 7.15 below, the Board may adopt by resolution an application and approval procedure and rules necessary to implement this section.

## **7.2 Animals.**

(a) Except as provided in Subsections (b) and (c) of this section, no animals (including birds, fish, reptiles, amphibians, rodents, livestock and poultry of any kind) may be raised, bred or kept in any Home or other part of a Lot.

(b) The following animals may be kept within a Home as household pets without the prior approval of the Board of Directors provided they are not raised or bred for commercial purposes:

(1) A total of 3 pets (cats and/or dogs).

(2) Fish in a properly maintained aquarium, outdoor pond, and small birds confined to a cage.

(c) The Board of Directors, in its sole discretion, may permit animals other than specified under Subsection (b) of this section to be kept in a Home. An Owner may apply to the Board for approval to keep an animal other than permitted under Subsection (b) of this section as a house pet. When reviewing an application for approval, the Board may consider the number of animals, the animal's size (by weight, height or other characteristic), breed or species or any other relevant criteria to minimize the possibility of violations of this subsection or other provisions of this Declaration.

(d) No permitted household pet may be allowed to cause or create a nuisance or unreasonable disturbance or noise.

(e) All dogs must be carried or controlled by a leash while outside a Home or enclosed part of a Lot. No cat, dog or other permitted household pet may be allowed to run at large or otherwise to be or become a nuisance or source of annoyance to other residents.

(f) Any inconvenience, damage or unpleasantness caused by animals is the responsibility of the respective Owner of the animal. Owners are responsible for the removal of all waste of their animals.

(g) In addition to rules and regulations promulgated by the Board from time to time, the keeping of dogs, cats or other permitted household pets within the Planned Community is subject to all applicable laws and local ordinances. All animals must be registered and inoculated as required by local regulations and ordinances.

(h) Pursuant to Section 7.15 below, the Board of Directors may adopt by resolution rules to implement this subsection. The rules may, without limitation:

(A) Define the term "household pets" and "reasonable number of dogs

and cats” used in Subsection (b)(1) of this section.

(B) Require the removal of any animal that the Board, in the exercise of reasonable discretion, finds is unreasonably disturbing or posing an unreasonable risk to occupants of Homes. The Board may exercise this authority for specific animals even though other animals are permitted to remain.

7.3 **Parking.** Except as provided in this section and without the written consent of Board of Directors, no vehicles may be parked or stored on any part of a Lot or Common Property other than within the confines of an enclosed garage of a Home or concealed behind a fence or screen that is constructed parallel with the front of the garage on a Lot.

(a) **Permitted Passenger Vehicles.** Passenger vehicles (including automobiles, minivans and sports utility vehicles), light trucks without campers (vehicles with single rear axles and single rear wheels), and motorcycles, all of which are operable and properly licensed (collectively, “Permitted Passenger Vehicles”) may be parked in the driveway of a Lot.

(b) **Loading and Unloading.** Motor homes, recreational vehicles, light trucks with campers, boats, trailers, moving vans and other similar vehicles and equipment are allowed in the driveway of a Lot for the purpose of loading and unloading.

(c) **Temporary Parking.** A motor home or recreational vehicle of an Owner, occupant or guest of an Owner or occupant may not be parked in the driveway of the Lot of the Owner or occupant for more than seventy-two (72) hours during any given month (per vehicle), without the written approval of the Board of Directors.

(d) **Assumption of Risk.** The owner of any vehicle parked or stored on any part of the Property assumes the risk for any damage, theft, vandalism or any other occurrence affecting the vehicle.

(e) **Rules and Regulations.** Pursuant to Section 7.15 below, the Board of Directors may adopt rules and regulations necessary to implement this section. The rules may include the right to tow vehicles or equipment parked or stored in violation of this section and to assess the towing and storage costs to the Owner under Article 10 below.

7.4 **Unlawful Activities.** No unlawful use may be made of the Planned Community or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof must be observed.

7.5 **Offensive Activities.** No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of car parts and appliances, or activities may be permitted on any Lot or other portion of the Planned Community, nor may anything be done in or placed upon any Lot that interferes with or jeopardizes the enjoyment of other Lots or the Common Property or that is a source of annoyance to residents.

7.6 **Increase in Insurance Cost.** Nothing may be done or kept within any Lot or the

Common Property that will increase the cost of insurance to the Association or to other Owners. No Owner may permit anything to be done or kept within Owner's Lot or in the Common Property that will result in cancellation of insurance on any Lot or any part of the Common Property.

7.7 **Noise Disturbance.** Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers and may not disturb other residents.

7.8 **Rubbish and Trash.**

(a) No part of the Planned Community may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste.

(b) No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure screened from public view.

(c) All containers or other equipment for the storage or disposal of material must be kept in a clean and sanitary condition and all waste and garbage must be promptly and periodically removed.

(d) Burn barrels or containers for the outdoor burning of waste materials are prohibited.

7.9 **Pest Control.** No Owner may permit any thing or condition to exist upon any portion of the Property that will induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

7.10 **Clothing and Materials.** Clothes lines are allowed in the privacy of backyards, however no garments, rugs, rags, laundry, or other clothing or materials may be allowed to hang from the windows or from any of the facades or any other part of a Home.

7.11 **Yard Areas.** No items constituting a nuisance may be stored in front yard areas or other areas of Lots so as to be visible from public view. In order to preserve the attractive appearance of the Planned Community, the Board of Directors, pursuant to rules and regulations adopted under Section 7.15 below, may regulate the nature of items which may be placed in front yard areas and other areas of Lots so as to be visible from public view.

7.12 **Antennas and Service Facilities.** Except as otherwise provided by law or this section, no exterior antennas, satellite dishes, microwave, aerial, tower or other devices for the transmission or reception of television, radio or other forms of sound or electromagnetic radiation shall be erected, constructed or placed on any Lot. Without prior written consent from the Architectural Committee, exterior satellite dishes or antennas with a surface diameter of one (1) meter or less and antennas designed to receive television broadcast signals only may be placed on any Lot if they are not visible from the street and are screened from neighboring Lots. The Board or Architectural Committee may adopt reasonable rules and regulations governing the installation,

safety, placement and screening of antennas, satellite dishes and other transmission devices. Such rules shall not unreasonably delay or increase the cost of installation, maintenance or use or preclude reception of a signal of acceptable quality.

**7.13 Temporary Structures.** No structure of a temporary character, trailer, recreational vehicle, shack, garage, barn or other outbuilding may be used on any Lot at any time as a residence, either temporarily or permanently. However, with the approval of the Architectural Committee, a temporary structure may be maintained during a period of construction or substantial reconstruction of a Home approved by the Architectural Committee under Article 8 below.

**7.14 Grades Slopes and Drainage.**

(a) There may be no interference with the established drainage patterns and grades, slopes and courses related thereto over any Lot so as to affect any other Lot or Common Property or any real property outside the Planned Community without the approval of the Board of Directors/Architectural Committee under Article 8 below.

(b) Without the approval of the Board, no structure, planting or other materials may be placed or permitted to remain on or within any grades, slopes or courses, nor may any other activities be undertaken that may damage or interfere with established slope ratios, create erosions or sliding problems, or obstruct, change the direction of, or retard the flow of water through drainage channels.

**7.15 Association Rules and Regulations.** In addition to the restrictions and requirements specified in this article and other provisions of this Declaration and the Bylaws, the Board of Directors from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots, and Common Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Planned Community. The action is subject to the procedures prescribed in the Bylaws.

**ARTICLE 8**  
**ARCHITECTURAL REVIEW**

**8.1 Architectural Review.**

(a) No Improvement may be commenced, erected, placed, maintained or altered (if the maintenance or alteration would materially change the exterior appearance of any structure) on any Lot until an application has been submitted to and approved in writing by the Architectural Committee as provided in this article.

(b) The application required under Subsection (a) of this section shall be on a form adopted under Section 8.3 below and include:

(1) Construction plans and specifications showing the nature, kind, shapes, heights, materials, exterior colors and proposed location of Improvements or changes on the Lot.

(2) Any other information required by Architectural Standards and Guidelines adopted under Section 8.3 below.

(c) In all cases in which approval of the Architectural Committee is required by this Declaration or the Bylaws, the provisions of this article apply.

## **8.2 Architectural Committee.**

(a) **Membership; Appointment.** The Architectural Committee shall consist of three (3) members appointed by the Board of Directors. The term of office of each member of the Architectural Committee is one (1) year unless lengthened or shortened by the Board at the time of appointment. The Board may appoint any director to serve as a member of the Architectural Committee. However, directors may not constitute a majority of the Architectural Committee except when the Board serves as the Architectural Committee as provided under Subsection (c) of this section.

(b) **Removal of Members.** Members of the Architectural Committee serve at the pleasure of the Board of Directors. When in the judgment of the Board of Directors the best interest of the Association will be served, any member of the Architectural Committee (except when the Board is performing the duties of the Architectural Committee under Subsection (c) of this section) may be removed, with or without cause, by an affirmative vote of a majority of the members of the Board.

(c) **Board as the Architectural Committee.** If the Board fails to appoint an Architectural Committee or if all members of the Architectural Committee are removed, the duties of the Architectural Committee shall be performed by the Board. When the Board functions as the Architectural Committee under this article, the meeting requirements of Article 6 of the Bylaws apply.

## **8.3 Architectural Standards and Guidelines.**

(a) **Adoption.** The procedure and specific requirements for review and approval of an application required under Section 8.1 above, including fees charged under Section 8.15 below, must be set forth in design guidelines and standards ("Architectural Standards") adopted from time to time by resolution of the Board of Directors at its sole discretion.

(b) **Provisions.** The Architectural Standards shall interpret and implement the provisions of the Governing Documents for architectural review and guidelines for architectural design of Homes and other Improvements, exterior color schemes, exterior finishes and materials and similar features that may be used in the Planned Community and landscaping. Architectural Standards may not be in derogation of the minimum standards established by the Governing Documents.

## **8.4 Committee Procedure and Actions.**



(a) **Majority Action.** At all meetings of the Architectural Committee, a majority of the members of the Architectural Committee have the power to act on behalf of the Architectural Committee.

(b) **Committee Procedure.** Committee procedure shall be as prescribed in the resolution of the Board establishing the Architectural Committee.

**8.5 Duties.** The Architectural Committee shall consider and act upon the proposals or plans submitted pursuant to this article.

**8.6 Architectural Committee Decision.**

(a) The Architectural Committee shall render its approval or denial decision with respect to the proposal within thirty (30) days after it has received all material required by it with respect to the application.

(b) A decision of approval by the Architectural Committee may:

(1) Include terms and conditions that the Architectural Committee determines appropriate.

(2) Be subject to the Board of Directors, on behalf of the Association, and the owner of the Lot executing a written agreement that sets forth the rights and responsibilities of the Association and the Owner regarding the terms and conditions of approval by the Architectural Committee under this article.

(c) If the Architectural Committee fails to render its decision of approval or denial in writing within thirty (30) days of receiving all material required by it with respect to the proposal, the application is deemed approved.

**8.7 Architectural Committee Denial of Application.** The Architectural Committee may, in its sole discretion, deny any application submitted under Section 8.1 above for any of the following reasons:

(a) Failure of the proposal to comply with any of the covenants, conditions or restrictions contained in this Declaration.

(b) Failure by the applicant to include in the plans such information as reasonably requested by the Architectural Committee.

(c) Reasonable objections by the Architectural Committee to the site plan, exterior design, appearance or materials of any proposed modification or alteration, including, without limitation, colors or color scheme, finish, height, shape, location, proportion and style of architecture.

(d) Incompatibility (as reasonably determined by the Architectural Committee)

of the proposed modification, alteration, or Improvement or use of the proposed modification, alteration or Improvement with existing Improvements, other uses within the Property, or the enjoyment of other Owners.

(e) Failure of the proposed modification, alteration or Improvement to comply with the Architectural Standards and Guidelines established under Section 8.3 above.

(f) Failure of the proposed modification, alteration or Improvement to comply with any applicable zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations.

(g) Any other matter that, in the reasonable judgment of the Architectural Committee, would render the proposed modification, alteration or Improvement, or the uses intended, inharmonious or incompatible with the general plan of Improvement of the Planned Community, including any possible adverse impact on the use and enjoyment of the Property by any other Owner.

**8.8 Nonwaiver, Precedent and Estoppel.** Approval or disapproval by the Architectural Committee of any matter proposed to it or within its jurisdiction may not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

**8.9 Appeal to Board of Directors.**

(a) Unless the Board of Directors is serving as the Architectural Committee under Section 8.2(c) above, any Owner adversely impacted by action of the Architectural Committee may appeal the action to the Board of Directors.

(b) Appeals must be made in writing within ten (10) days of the Architectural Committee's action and must contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision in writing must be made by the Board of Directors within twenty (20) days after receipt of the appeal. The determination of the Board is final.

**8.10 Effective Period of Consent.** Unless otherwise provided in the Architectural Committee's approval of any proposal or a decision of the Board of Directors under Section 8.9. above, the Architectural Committee's approval or Board's decisions is automatically revoked six (6) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the Architectural Committee .

**8.11 Determination and Notice of Compliance.**

(a) **Inspection.** In response to alleged violation, the Architectural Committee or any person authorized by the Architectural Committee at any reasonable hour after reasonable notice, may enter and inspect from time to time, all work performed and determine whether the

work is in substantial compliance with the approval granted under Section 8.6 above.

(b) **Notice of Noncompliance.** If the Architectural Committee finds that the work was not performed in substantial conformance with the approval granted under Section 8.6 above, or if the Architectural Committee finds that the approval required was not obtained, the Architectural Committee shall notify the Owner in writing of the noncompliance. The notice of noncompliance must specify the particulars of noncompliance and require the Owner to remedy the noncompliance by a specific date.

**8.12 Notice to Board of Noncompliance; Enforcement.**

(a) **Notice of Hearing.** Unless otherwise provided by resolution of the Board of Directors:

(1) If after receipt of a notice of noncompliance pursuant to Section 8.11 above, the Owner fails to diligently commence to remedy the noncompliance in accordance with the provisions of the notice of noncompliance, at the expiration of the 15<sup>th</sup> day from the date of the receipt of notice of noncompliance, the Architectural Committee shall notify the Board of Directors in writing of the noncompliance.

(2) As soon as practicable after receiving the notification required under Paragraph (1) of this subsection, the Board shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing must be set not less than seven (7) or more than thirty (30) days from receipt by the Board of required notification.

(b) **Hearing.** At the hearing, if the Board of Directors finds that there is no valid reason for the continuing noncompliance, the Board shall determine the estimated costs of correcting the noncompliance and:

(1) Shall require the Owner to remedy or remove the noncompliance within a period the Board determines reasonable.

(2) May fine the Owner for the noncompliance pursuant to a schedule of fines adopted in accordance with ORS 94.630.

(3) May take any other action provided for under the Governing Documents.

(c) **Continued Noncompliance.** If the Owner fails to comply with action taken by the Board under Subsection (b) of this section, the Board may proceed with any available legal remedy. The cost of any action shall be assessed against the Owner either before or after any remedied action as provided in Article 11 below.

**8.13 Liability.**

(a) Neither the Association, Board of Directors, the Architectural Committee

nor any member of the Architectural Committee shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Architectural Committee or a member thereof, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

(b) The Architectural Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

#### **8.14 Estoppel Certificate.**

(a) Within fifteen (15) business days after a written request is delivered to the Architectural Committee by an Owner, and upon payment to the Architectural Committee of a reasonable fee fixed by the Architectural Committee to cover costs, the Architectural Committee shall provide the Owner with a certificate executed by the chairman, or other authorized member of the Architectural Committee certifying with respect to any Lot owned by the Owner, that as of the date thereof either:

(1) All improvements made or done upon or within the Lot by the Owner that are subject to the requirements of this article comply with the Governing Documents; or

(2) The improvements do not comply, in which event, the certificate must also identify the noncomplying improvements and set forth with particularity the nature of the noncompliance.

(b) The Owner, Owner's heirs, devisees, successors and assigns are entitled to rely on the certificate with respect to the matters set forth. The certificate is conclusive as between and among the Architectural Committee, the Association and all Owners and persons deriving any interest through any of them.

#### **8.15 Fees; Plans.**

##### **(a) Fees.**

(1) Pursuant to a fee schedule included in Architectural Standards and Guidelines or a separate resolution adopted by the Board, the Architectural Committee may charge:

(A) A reasonable fee for issuance of an estoppel certificate issued under Section 8.14 above.

(B) A reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the Architectural Committee to retain architects, attorneys, engineers, landscape architects and other consultants to advise the Architectural Committee concerning any aspect of the application or compliance with any appropriate

architectural criteria or standards. The fee is collectible as an Individual Assessment pursuant to Article 10 below.

(2) Fees and costs incurred under this subsection constitute Assessments against the Owner and Lot as provided under Article 10 below.

(b) **Plans.** A copy of the plans as finally approved must be retained as a permanent record of the Association.

**ARTICLE 9**  
**MAINTENANCE, REPAIR, REPLACEMENT,**  
**CONDEMNATION, DAMAGE**

The maintenance, repair and replacement of property in the Planned Community are governed by this article.

**9.1 Responsibility of Association.**

(a) The Association is responsible for maintenance, repair and replacement of Common Property and the improvements located thereon as provided in this subsection.

(b) Maintenance shall be performed in accordance with a maintenance plan prepared and updated in accordance with ORS 94.595.

**9.2 Responsibility of Owners.**

(a) **Maintenance, Repair and Replacement of Exterior of Homes and Lots.** Each Owner is responsible for all maintenance, repair and replacement of Owner's Home and Lot, including, without limitation, appropriate care for trees, shrubs, grass, landscaped areas, walks (including front sidewalks) and other exterior improvements.

(b) **Maintenance of Interior of Home.** Each Owner is responsible for maintaining and keeping in good order and repair the interior of the Home and any other structure located on Owner's Lot, to the extent that any interior is visible from another Lot or other part of the Property or when failure to perform the maintenance creates a nuisance, disturbance or danger to another Lot or occupants of other Homes.

**9.3 Failure of Owner to Maintain Improvements and Lot.** If an Owner fails to maintain landscaping or improvements located on Owner's Lot in accordance with Section 9.2 above, the Board of Directors may cause the maintenance to be performed pursuant to rules adopted by resolution under Article 9 of the Bylaws. The resolution shall comply with Section 11.2(b) below and provide that the maintenance may only be performed at reasonable hours. Any cost incurred by the Association is collectible as an Individual Assessment pursuant to Article 10 below.

**9.4 Damage or Destruction Due to Act of Owners or Others.** If, due to the act or neglect of an Owner, or a member of the Owner's family or household pet or of a guest or other authorized occupant or visitor of the Owner, damage is caused to the Common Property or maintenance, repair or replacement is required which would otherwise be a common expense, then the Owner shall pay for the damage and such maintenance, repairs and replacements as may be determined by the Board of Directors. The amount shall be an assessment against the Lot and the Owner who caused or is responsible for the damage and is collectable as an Individual Assessment pursuant to Article 10 below.

**9.5 Damage and Destruction by Casualty to Common Property.** In the case of damage or destruction that affects a material portion of the Planned Community, timely written notice shall be given to the Owners and their mortgagees and the following provisions apply:

**(a) Vote Required not to Repair, Reconstruct or Rebuild Damage or Destruction.**

(1) In the event of damage or destruction by casualty of structures erected on Common Property, the damage or destruction shall be repaired, reconstructed or rebuilt unless, within fourteen (14) days of the damage or destruction, the Board of Directors or more than ten percent (10%) of the Owners have requested a special meeting of the Association. The special meeting must be held within sixty (60) of the date of damage or destruction.

(2) Unless at the special meeting Owners holding at least ninety per cent (90%) of the voting rights vote not to repair, reconstruct or rebuild the damaged property, with the subsequent approval of mortgagees to the extent required by the Declaration or the Act, the damage or destruction shall be repaired, reconstructed or rebuilt. The work shall commence as soon as reasonably possible.

(3) If the damage or destruction is not repaired, reconstructed or rebuilt, then the Board of Directors shall develop a proposal for future use of the Common Property.

**(b) Responsibility for Repair, Reconstruction or Rebuilding of Damage or Destruction.**

(1) The Association is responsible for repairing, reconstructing or rebuilding all damage or destruction to the Common Property.

(2) The Association shall perform or cause to be performed all repair, reconstruction or rebuilding of all damage or destruction to the Common Property.

(3) The Association is responsible for cost of repairing, reconstructing or rebuilding all damage or destruction to the Common Property.

**9.6 Condemnation.**

**(a) Common Property.** The Board of Directors has the sole authority to

negotiate with any public or private body or person having the power of eminent domain; and to sue or defend in any litigation, involving such bodies or persons with respect to the Common Property of the Planned Community.

(b) **Lots.** The Board may, but shall not be required to assist an Owner whose property or a part thereof is the subject of any condemnation or eminent domain proceeding.

## **ARTICLE 10** **ASSESSMENTS**

### **10.1 Types and Purpose of Assessments.**

(a) **Types of Assessments.** All Owners are obligated to pay the following types of Assessments imposed by the Board of Directors on behalf of the Association pursuant to this Declaration and the Bylaws:

(1) Association Common Expense Assessments described in Section 10.5 below.

(2) Individual Assessments described in Section 10.7 below.

(b) **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Homes, for the administration, management and operation of the Association and the Planned Community and for any other purposes required or permitted under this Declaration or the Bylaws.

(c) **Assessments Property of Association.** All sums received on account of Assessments, including Assessments paid into a reserve account established under Section 11.4 of the Bylaws, belong to and are the property of the Association for the purposes designated under this Declaration and the Bylaws. The sums are not refundable to Owners.

### **10.2 Obligation of Owners for Assessments.**

(a) **Personal Obligation.** Each assessment, together with interest, late payment charges and collection costs as provided in section 11.6 below are the personal obligation of the Owner of the Lot and subsequent Owners as provided under ORS 94.712.

(b) **Joint and Several Obligations.** In addition to constituting a lien on the Lot as provided under Section 11.3 below and the Act, each assessment is the joint and several obligation of the Owner or Owners of the Lot against which the assessment is levied.

(c) **Offsets Prohibited.**

(1) An Owner may not claim an offset against an assessment for failure

of the Association to perform its obligations. An Owner may not offset amounts owing or claimed to be owed by the Association to the Owner.

(2) An Owner by the Owner's action may not claim exemption from liability for contribution towards common expenses by waiver of Owner's use or enjoyment of any Common Property or by abandonment by the Owner of the Owner's Lot.

(d) **Voluntary Conveyances.** Except as may be limited by a Statement for Prospective Purchasers described under Section 10.8(d) below, in a voluntary conveyance of a Lot, the grantee is jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee.

(e) **Liability When Lot Foreclosed; Deeds in Lieu of Foreclosure.** The liability for Assessments when a purchaser obtains title to a Lot as a result of foreclosure of first mortgage or trust deed, or when a deed in lieu of foreclosure is accepted by the holder of a first mortgage or trust deed is governed by the Act.

### **10.3 Method of Allocation of Common Expenses and Surpluses.**

(a) **Association Common Expenses.** Association Common Expenses specified in Section 10.4 below shall be allocated equally among all Lots, *except*:

(1) Pursuant to ORS 94.704, any common expense or any part of a common expense benefitting fewer than all the Lots may be assessed exclusively against the Lots benefitted as an Individual Assessment as provided under Section 10.7 below.

(2) If the Board of Directors determines that any common expense is the fault of any Owner or Owners, the Association may assess the expense exclusively against the Owners and Lots of the Owners as an Individual Assessment determined at fault.

(b) **Surplus Funds.** If the estimated or collected funds exceed the amount necessary to meet the Association's budgetary needs, the Board of Directors may reduce the amount being assessed or may allocate the excess to the operating or reserve accounts as deemed appropriate.

**10.4 Determination of Common Expenses.** Common expenses include, without limitation:

(a) Expenses of administration of the Association and Planned Community.

(b) Expenses of maintenance, repair, or replacement of Common Property and any other portions of the Planned Community required to be maintained by the Association pursuant to this Declaration or the Bylaws.

(c) Cost of insurance or bonds obtained in accordance with the Bylaws.



(d) Funding of the Planned Community Reserve Account in accordance with Section 11.4(a) of the Bylaws.

(e) A general operating reserve if established under Section 11.4 of the Bylaws.

(f) Any deficit in common expenses for any prior period.

(g) Any other items properly chargeable as an expense of the Association.

#### **10.5 Association Common Expense Assessments.**

(a) **Annual Association Common Expense Assessment.** At least annually, the Board of Directors shall levy an Annual Association Common Expense Assessment (“Annual Association Assessment” or “AAA”), based on the budget adopted under Section 10.2 of the Bylaws. The Annual Association Assessment is payable as provided for in Section 10.6 below.

(b) **Amended Annual Budget or Special Budget Common Expense Assessment.** If the Board of Directors adopts an amended annual budget or a special budget under Section 10.2 of the Bylaws, the Board of Directors shall by resolution levy a recomputed Annual Association Assessment or a special budget common expense assessment amount on the lots according to the allocations specified in Section 10.3 above. The recomputed annual association assessment and/or the special budget assessment are payable as provided for in Section 10.6 below.

#### **10.6 Payment of Association Common Expense Assessments.**

(a) **Regular Periodic Payments.** Annual Association Common Expenses Assessments levied under Section 10.5 (a) above are due annually on the first of July. The Board may establish a different assessment schedule. Owners must be given at least thirty (30) days written notice of:

(1) The Annual Association Assessment (AAA).

(2) Any change in the AAA regular payment schedule, due date(s) or amount.

(3) The re-computation of the AAA based on an adopted amended budget.

(4) Any special budget assessment.

(b) **Special Budget Assessments.** Special Budget Assessments levied for common expenses of a special budget are due and payable as prescribed in a resolution adopted by the Board of Directors.

**10.7 Individual Assessments.** The Board of Directors may levy Individual Assessments against one (1) or more Lots and Owners as provided in this section

(a) **Determination of Individual Assessments.** Individual Assessments include:

(1) Any expense that the Board of Directors determines is the fault of the Owner and not paid by Association insurance.

(2) Fines or other charges imposed pursuant to this Declaration, the Bylaws or the Act for violation of this Declaration, the Bylaws or rules and regulations.

(3) Amounts due to the Association from an Owner pursuant to other provisions of this Declaration or the Bylaws.

(b) **Allocation and Payment.** Unless otherwise provided in this Declaration or a resolution adopted by the Board of Directors, Individual Assessments are:

(1) Allocated equally against the Owners subject to the Individual Assessment.

(2) Due thirty (30) days after the Board has given written notice of the assessment to the Owners subject to the Individual Assessment.

(c) **Distribution and Use of Individual Assessments.** Unless otherwise provided by resolution of the Board of Directors, fines, late charges, interest and other fees collected shall be allocated to the General Operating Account described under Section 11.3 of the Bylaws.

(d) **Opportunity for Hearing.** Prior to the imposition of any Individual Assessment, an Owner shall be offered an opportunity to appear before the Board of Directors and be heard on the matter.

**10.8 Budget Summary; Statement of Assessments.**

(a) **Statement of Assessments Payable.** The Board of Directors shall advise each Owner in writing of the amount of Assessments payable by the Owner in accordance with Section 10.5 and 10.7 above. The Board shall promptly provide any Owner who makes a request in writing with a written statement of the Owner's unpaid Assessments.

(b) **Budget Summary.** Within thirty (30) days after adopting the annual budget, an amended budget or a special budget under Section 10.2 of the Bylaws, the Board of Directors shall provide a summary of the budget on which Assessments are based to all Owners and if requested in writing, to the Owner's mortgagee.

(c) **Statement of Assessment Account.**

(1) Subject to Paragraph (2) of this subsection, in accordance with ORS 94.670, within ten (10) business days of receipt of a written request by an Owner, the Board of Directors shall provide a Statement of Assessment Account that contains the following information specified in ORS 94.670:

(A) The amount of Assessments due from the owner and unpaid at the time the request was received, including:

- (i) Regular and special Assessments;
- (ii) Fines and other charges;
- (iii) Accrued interest; and
- (iv) Late payment charges.

(B) The percentage rate at which interest accrues on Assessments that are not paid when due.

(C) The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.

(2) The Association is not required to comply with Paragraph (1) of this subsection if the Association has commenced collection litigation.

(d) **Statement for Prospective Purchasers.** In accordance with ORS 94.712, upon request of an Owner or Owner's agent, for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor or the Lot effective through a date specified in the statement, and the grantee in that case is not liable for any unpaid Assessments against the grantor not included in the written statement.

(e) **Fee for Providing Information.** Pursuant to rules adopted under Section 11.11 of the Bylaws, the Association may charge a fee for providing the information required under subsections (c) and (d) of this section.

## **ARTICLE 11**

### **COMPLIANCE AND ENFORCEMENT**

#### **11.1 Compliance.**

(a) **Owners, Occupants and Tenants.** Each Owner and occupant (including tenants) of a Lot shall comply with the provisions of the Governing Documents. The Owner is responsible for obtaining the compliance by an occupant of the Lot and is liable for any failure of compliance by the persons occupying the Lot in the same manner and to the same extent as if the Owner were occupying the Lot.

(b) **Guests and Other Invitees.** Guests, invitees, family members, contractors and other persons entering the Lot or other part of the Planned Community under rights derived from the Owner shall comply with all the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of Owner's Lot or other part of the Planned Community. The Owner is responsible for obtaining compliance and is liable for any failure of compliance by the persons in the same manner and to the same extent were the noncompliance by the Owner.

(c) **Joint Owners.** When two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of the persons to comply with the Governing Documents is a joint and several responsibility and the act or consent of any one or more of the persons constitutes the act or consent of the entire ownership interest. A disagreement among joint owners as to the manner in which any vote or right of consent held by them is to be exercised with respect to a pending matter is governed by Section 3.6(b) of the Bylaws.

**11.2 Violations of Declaration or Bylaws.** The violation of any provision of the Governing Documents gives the Board of Directors, subject to Section 11.8 below, acting on behalf of the Association, the right in addition to any other rights set forth in the Governing Documents, to do any or all of the following after giving notice to the Owner and an opportunity to be heard:

(a) To enter the Lot in which or as to which the violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions of the documents stated in this section, and the Board of Directors may not thereby be deemed guilty of any manner of trespass.

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

(c) To levy reasonable fines if the fine levied is based on a schedule of fines contained in this Declaration, the Bylaws, or an amendment thereto, or based on a resolution adopted by the Board of Directors or the Association that is mailed or delivered to each Lot in accordance with ORS 94.630(1)(n).

(d) In accordance with ORS 94.630(1)(m), to terminate the right of access to and use of recreational and service facilities of the Planned Community until the correction of the violation has occurred.

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce the Governing Documents.

(f) To suspend an Owner's right to vote in the affairs of the Association.

(g) To do any of the action specified in this section in conjunction with each

other.

**11.3 Default in Payment of Assessments; Enforcement of Lien.** If an Assessment levied by the Association is not paid within thirty (30) days after its due date (which, unless otherwise specified in this Declaration or Bylaws, shall be established by resolution of the Board of Directors), the Assessment is delinquent and is subject to interest, late payment charges and collection costs as set forth in Section 11.6 below. In addition, the Association may exercise any or all of the following remedies:

(a) **Acceleration of Assessment.** If a regular periodic payment of the Annual Association Common Expense Assessment due under Section 10.6(a) above, an installment of a Special Budget Assessment due under Section 10.6(b) above or an installment of any other Assessment is delinquent, the Board may, after ten (10) days written notice to the Owner, declare the defaulting Owner's entire Annual Association Common Expense Assessment, Special Budget Assessment or other Assessment due immediately and interest thereafter accrues as provided under Section 11.6 below on the entire Assessment until paid.

(b) **Association Lien.**

(1) Whenever the Association levies any Assessment against a Lot, the Association automatically has a lien upon the Lot for any unpaid Assessments as provided in ORS 94.709. No further recording of a claim of lien for Assessments or notice of a claim of lien is required to perfect the Association's lien.

(2) At any time any Assessment or installment thereof is delinquent, the Association, by and through the Board of Directors or any management agent, may record a notice of lien in the Deed Records of Clackamas County, Oregon. The notice of lien shall be in the form and include the information specified in ORS 94.709. The Association must record a notice of lien before any suit to foreclosure may proceed as provided in Subsection (c) of this section.

(c) **Foreclosure of Lien.** The Association, by and through the Board of Directors may file a suit to foreclose the lien, notice of which was recorded as provided in Subsection (b) of this section, as provided in ORS 94.709.

(d) **Suit or Action.** Subject to Section 11.8 below, the Association may bring an action to recover a money judgment for unpaid Assessments under this Declaration or the Bylaws without foreclosing or waiving the lien described in Subsection (b) of this section. Recovery on any such action, however, operates to satisfy the lien, or the portion thereof, for which recovery is made.

(e) **Other Remedies.** The Association has any other remedy available to it by law or in equity.

**11.4 Priority of Lien; Prior Mortgages.** The priority of the lien of the Association against a Lot for Assessments is governed by the Act.

**11.5 Deeds in Lieu of Foreclosure.** A deed in lieu of foreclosure accepted by the holder of a first mortgage or beneficiary of a first deed of trust in respect to a Lot has the effect specified in the Act.

**11.6 Interest, Late Payment Charge and Collection Costs.** If any Assessment imposed or levied by the Association pursuant to the provisions of this Declaration, the Bylaws or the Act is not paid within thirty (30) days after its due date, the Assessment is delinquent and the Owner is obligated to pay:

(a) Interest from the due date of the Assessment, or such other date as may be specified by resolution of the Board, at the rate of twelve percent (12%) per annum or at such greater rate, not to exceed the maximum lawful rate, if any, as may be established by a resolution of the Board of Directors, from time to time, after a copy of any adopted resolution has been delivered to Owners.

(b) A late charge for each Assessment not paid when due as may be established by a resolution of the Board of Directors, not to exceed ten percent (10%) of the unpaid Assessment, after a copy of the resolution has been delivered to Owners.

(c) All expenses incurred by the Association in collecting unpaid Assessments including, without limitation:

(1) Attorney fees (whether or not an action is brought against the Owner or whether or not a suit to foreclose the lien upon the Lot granted by the Act is instituted, and at trial or any appeal therefrom).

(2) If a notice of lien is recorded under Section 11.3(b) above, the costs associated with the preparation and recording of the notice of lien.

**11.7 Costs and Fees.** An Owner determined liable under this article is responsible to the Association for any reasonable administrative fee as established by the Board of Directors, and all costs and attorney fees incurred by the Association, whether or not legal proceedings are instituted and including attorney fees at trial, in arbitration or on appeal, or petition for review, together with any expense incurred by the Association in remedying the default, damage incurred by the Association or Owners, or fines so levied. The sums shall be levied against the Lot determined liable as an Individual Assessment under Section 10.7 above and enforced as provided in this article.

**11.8 Disputes Between Association and Owners.** Litigation and administrative proceedings in which the Association and an Owner have an adversarial relationship are subject to ORS 94.630(4).

**11.9. Action by Owners.** Subject to Section 11.8 above, an aggrieved Owner may bring an action to enforce the terms of the Governing Documents against another Owner or the Association to recover damages or to enjoin, abate or remedy such thing or condition by appropriate legal proceedings.

**ARTICLE 12**  
**AMENDMENT AND DURATION**

**12.1 How Proposed.** Amendments to the Declaration may only be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights delivering the proposed amendment to the Board for presentation to the Owners. The proposed amendment must be reduced to writing and included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment.

**12.2 Approval Required.** Except as otherwise provided in Section 12.3 below or by other provisions of this Declaration or by the Act, this Declaration may be amended if the amendment is approved by Owners holding at least seventy-five percent (75%) of the voting rights of the Planned Community.

**12.3 Additional Approval Requirements.**

(a) Unless the Owners of the affected Lots unanimously consent to the amendment, no amendment may change:

- (1) The boundaries of any Lot or the use to which any Lot is restricted.
- (2) The method of determining liability for Association Common Expenses or right to collect Assessments under Section 10.3 above.
- (3) The method of determining voting rights for Association matters.

**12.4 Execution and Recording.** An amendment is not effective until the amendment is:

- (a) Executed and acknowledged by the president and secretary of the Association;
- (b) Certified by the president and secretary of the Association as being adopted in accordance with this Declaration and the applicable provisions of the Act; and
- (c) Recorded in the office of the recording officer of Clackamas County, Oregon.

**12.5 Duration.** This Declaration perpetually runs with the land and is and remains in full force and effect at all times with respect to all property in the Planned Community and the Owners.

**ARTICLE 13**  
**MORTGAGEES**

**13.1 Mortgagee Rights.** Each mortgagee has the following rights:

(a) **Right to Examine Books and Records.** All mortgagees have the right to examine the books and records of the Association or the Planned Community upon reasonable notice and at reasonable times.

(b) **Right to Annual Reports.** All mortgagees, upon written request, are entitled to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

(c) **Right to Receive Written Notice of Meetings.** The Association shall give all mortgagees, upon written request, written notice of all meetings of the Association, and mortgagees are permitted to designate a representative to attend all meetings.

(d) **Notice in Event of Loss or a Taking.** Upon written request of a mortgagee, the Association shall provide such mortgagee written notice of any loss to, or taking of, the Common Property in the Planned Community if such loss or taking exceeds the value of Ten Thousand Dollars (\$10,000.00).

**13.2 Request for Approval of Mortgagees.** Any mortgagee that receives a written request to approve amendments to the Declaration or Bylaws, or any other action to be taken by the Board of Directors, the Association or Owners, is considered to have given the approval unless the mortgagee delivers or posts a negative response within thirty (30) days after receipt of the request.

## **ARTICLE 14** **GENERAL PROVISIONS**

**14.1 Invalidity; Number; Construction; Captions.**

(a) **Invalidity.** The invalidity of any part of this Declaration by judgment or court order does not impair or affect in any manner the validity, enforceability or effect of the balance of this Declaration.

(b) **Number; Construction.** As used in this Declaration:

(1) The singular includes the plural and the plural the singular as the context requires.

(2) “May not” and “shall not” are equivalent expressions of an absolute prohibition.

(3) The masculine and neuter each include the masculine, feminine, and neuter, as the context requires.

(c) **Captions.** All captions used in this Declaration are intended solely for



convenience of reference and in no way limit any of the provisions of this Declaration.

**14.2 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration, the Bylaws or rules and regulations may be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same may not be deemed to constitute precedent or estoppel impairing the right of the Association or Owner as to any similar matter.

**14.3 Effect of Municipal Ordinances.** Police, fire and other public safety ordinances of any municipal corporation having jurisdiction over any portion of the Properties govern where more restrictive than the provisions of this Declaration.

**14.4 Conflicts.** Subject to ORS 94.770, if a conflict arises between or among the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and any rules and regulations, the provisions of the Declaration are paramount to those of the Articles, the Bylaws, and the rules and regulations; the Articles of Incorporation are paramount to the Bylaws and the rules and regulations and those of the Bylaws are paramount to the rules and regulations, except to the extent the Declaration, Bylaws and Articles of Incorporation are inconsistent with the Act.

**IN WITNESS WHEREOF,** the President and Secretary of W.C.E. Homeowners Association, Inc., an Oregon nonprofit corporation hereby certify that the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Willow Creek Estates was approved by the required percentage of Owners.

**W.C.E. HOMEOWNERS ASSOCIATION, INC.,**  
an Oregon nonprofit corporation

By: [Signature]  
Its President

By: [Signature]  
Its Secretary

STATE OF OREGON )  
County of Clackamas ) ss. March 03, 2013

Personally appeared before me the above-named David J. Koch and who, being duly sworn, did say that he is the President of W.C.E. HOMEOWNERS ASSOCIATION, INC., and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and they acknowledged said instrument to be its voluntary act and deed.



[Signature]  
Notary Public for Oregon

STATE OF OREGON            )  
  ) ss. March 03, 2013  
County of Clackamas )

Personally appeared before me the above-named Viki Carlin and who, being duly sworn, did say that \_\_\_ is the Secretary of W.C.E. HOMEOWNERS ASSOCIATION, INC., and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and they acknowledged said instrument to be its voluntary act and deed.

  
\_\_\_\_\_  
Notary Public for Oregon



EXHIBIT A

Legal Description of Property

All lots and tracts shown in that certain plat of Willow Creek Estates I recorded in the plat records of Clackamas County, Oregon at book 96, page 25 as document number 91-55842. All lots and tracts shown in that certain plat of Willow Creek Estates II recorded in the plat records of Clackamas County, Oregon at book 99, page 22 as document number 93-43483.