

WTE 36501(N)-6

After Recording Return to:  
Landwaves, Inc.  
PO Box 12085  
Portland, Oregon 97212

Lincoln County, Oregon  
07/30/2010 03:58:33 PM 2010-07750  
DOC-DECLAR Cnt=1 Pgs=55 SIn=3  
\$275.00 \$11.00 \$15.00 \$10.00 \$7.00 - Total = \$318.00



I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
WILDER SUBDIVISION

THIS DECLARATION to be effective upon its recording in Lincoln County, Oregon, is made and executed on the date hereinafter set forth by Landwaves, Inc., an Oregon corporation, hereinafter referred to as the "Declarant."

WITNESSETH

Declarant is the owner of certain real property in Lincoln County, Oregon, described on Exhibit "A" attached hereto and incorporated herein by reference.

NOW THEREFORE, Declarant declares to create a planned community pursuant to ORS Chapter 94, and thereby desires that the real property described on the attached Exhibit "A", together with such other real property as may be brought within the jurisdiction of this Declaration, shall be held, sold, hypothecated, and conveyed subject to the Covenants, Conditions, and Restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property, in order to maintain within the Property a pedestrian-friendly coastal village with an emphasis on high environmental standards. The covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof. The Property will be established as Class II planned community under the Oregon Planned Community Act, and shall be subject to Oregon Planned Community Act. Portions of the Property that are established as Subassociations may later become a Class I, Class II or Class III planned community, a condominium, or other real estate common development, as provided in the applicable Subassociation Documents for such Subassociation.

ARTICLE I – DEFINITIONS

Section 1.1 "Architectural Review Committee"

"Architectural Review Committee" shall mean a committee appointed as provided in, and for the purposes stated in, Article VIII.

Section 1.2    “Articles”

“Articles” shall mean the Articles of Incorporation of the Association filed with the Corporation Division of the Oregon Secretary of State incorporating the Association under ORS Chapter 65.

Section 1.3    “Association”

“Association” shall mean Wilder Homeowners’ Association, Inc., an Oregon nonprofit corporation, established for the purposes set forth in this Declaration, the Bylaws and the Articles.

Section 1.4    “Board”

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

Section 1.5    “Bylaws”

“Bylaws” shall mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be adopted pursuant to ORS 94.625 and recorded in the official records of Lincoln, Oregon. A copy of the Bylaws is attached hereto as Exhibit “B.”

Section 1.6    “City”

“City” shall mean Newport, Oregon.

Section 1.7    “Cluster Mailboxes”

“Cluster Mailboxes” shall mean any mailbox facilities located upon a Lot that serve Owners other than, or in addition to, the Owner of such Lot, and/or any mailbox facilities located on property owned by the City of Newport that serve Owners. The Cluster Mailboxes and the concrete pads upon which they are located are common property of the Property and shall be owned by the Association. The location of the Cluster Mailboxes is shown on the Plat.

Section 1.8    “Cluster Pads”

“Cluster Pads” shall mean the concrete pads upon which Cluster Mailboxes are located.

Section 1.9    “Commercial Lots”

“Commercial Lot” shall mean those Lots designated as Commercial Lots on the Plat, if any, and any other Lot designated as a Commercial Lot within property annexed pursuant to Section 2.6, subject to conversion to Residential Lot status as provided herein. As of recordation of this Declaration, the Property includes no Commercial Lots.

Section 1.10 "Commercial Lot Director"

"Commercial Lot Director" shall mean that Director who is elected solely by the Commercial Lot Owners in accordance with the Bylaws; provided, however, there shall be no Commercial Lot Director unless and until a Commercial Lot is designated within the Property or annexed to the Property and subjected to this Declaration.

Section 1.11 "Common Maintenance Areas"

"Common Maintenance Areas" shall mean any portions of the Property owned by the Association, if any, and any portions of the Property, any public rights-of-way or any other 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. Without limiting the generality of the foregoing, "Common Maintenance Areas" shall include all Cluster Mailboxes and Cluster Pads.

Section 1.12 "Conversion Date"

"Conversion Date" shall be the date upon which Class B membership shall cease and be converted to Class A membership. Such date shall be the date which is the earlier of: (i) the date at which Declarant, and all entities controlled by or under common control with Declarant ("Affiliate"), no longer owns any Lot at the Property; or (ii) upon election in writing by Declarant.

Section 1.13 "Declarant"

"Declarant" shall mean Landwaves, Inc., an Oregon corporation, its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by the successor or assign.

Section 1.14 "Declaration"

"Declaration" shall mean this Declaration of Protective Covenants, Conditions and Restrictions for Wilder Subdivision and any amendments and supplements thereto made in accordance with its terms.

Section 1.15 "Declaration of Annexation"

"Declaration of Annexation" shall have the meaning given to such term in Article IV below.

Section 1.16 "Directors"

"Directors" shall mean the duly elected and/or appointed members of the Board of the Association.

Section 1.17 “Entry Sign”

“Entry Sign” shall mean the Property entry sign for Wilder and, unless such sign is located upon an Owner’s lot, the property upon which such sign is located. The Entry Sign shall be a common property of the Property and shall be owned by the Association. The location of the Entry Sign is not yet designated.

Section 1.18 “Lot”

“Lot” shall mean any of the plots of land indicated upon the recorded Plat of the Property or any part thereof, but excluding any tracts, if any, designated as common property of the Association or any Subassociation, and further excluding any areas deeded or dedicated to the public or conveyed to a governmental authority or utility, together with all improvements thereon.

Section 1.19 “Member”

“Member” or “Members” shall mean the members of the Association and shall include every Owner of a Lot (other than Lots that are common property of the Association or a Subassociation). There shall be two (2) classes of membership in the Association, Class A and Class B, as described in Section 2.2 of this Declaration.

Section 1.20 “Nonprofit Corporation Act”

“Nonprofit Corporation Act” shall mean the Oregon Nonprofit Corporation Act (ORS 65.001 to 65.990), as amended from time to time.

Section 1.21 “Owner”

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

Section 1.22 “Phase”

“Phase” shall mean Phase 1 of Wilder, and, if and when annexed, each additional phase of the Property upon annexation of such phase pursuant to Article IV.

Section 1.23 “Plat”

“Plat” shall mean the Plat of Wilder Phase 1 Subdivision being recorded in the Plat Records of Lincoln County, Oregon substantially concurrently herewith, as amended or supplemented, and such other plats of additional Phases of Wilder or re-plats of land as may be brought within the jurisdiction of this Declaration.

Section 1.24 "Property"

"Property" shall mean the real property described on the attached **Exhibit A** and such additions thereto as may be brought within the jurisdiction of this Declaration.

Section 1.25 "Residential Lot"

"Residential Lot" shall mean any of the plots of land indicated upon the recorded plat of the Property or any part thereof reserved for single family home sites, clustered cottages, co-housing units, flex houses, townhomes, residential condominiums, residential cooperatives and other residential parcels, exclusive of apartment buildings or hotels. All Lots that are not dedicated to the public, common property of the Association, or Commercial Lots are Residential Lots.

Section 1.26 "Rules and Regulations"

"Rules and Regulations" shall mean the Rules and Regulations of the Property as adopted and amended from time to time pursuant to Section 2.

Section 1.27 "Subassociation"

"Subassociation" shall mean any subassociation formed as an Oregon nonprofit corporation pursuant to the provisions of this Declaration to administer the provisions of any declaration of covenants and conditions and restrictions for any planned community, condominium, apartment buildings or commercial buildings formed on one or more Lots within the Property.

Section 1.28 "Subassociation Documents"

"Subassociation Documents" shall mean any separate declaration of covenants, conditions and restrictions, bylaws and other governing documents of a Subassociation, and all amendments thereto.

Section 1.29 "Turnover Meeting"

"Turnover Meeting" shall mean the meeting of the Owners called by Declarant pursuant to the Bylaws to turn over control of the Association to the Class A Members.

Section 1.30 "Unit"

"Unit" shall mean any building situated upon any Lot. In the case of multiple living units located upon a Lot (other than apartments, hotels, or accessory units), each such living unit shall be considered a Unit for the purposes of this Declaration.

## ARTICLE II -- OWNERS' ASSOCIATION

### Section 2.1    Membership

Every Owner by virtue of its ownership interest in the Property, including Declarant for so long as Declarant owns a Lot, shall be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. There shall be two (2) classes of membership, Class A and Class B as described in Section 2.2 below.

### Section 2.2    Voting Rights

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

#### 2.2.1 Class A Membership

Prior to the Conversion Date, Class A Members shall be all Owners except for Declarant. On and after the Conversion Date, Class A Members shall be all Owners, including Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned, subject to the following.

(a) Any Lot that consists of a residential condominium or cooperative shall be allocated a number of votes equal to the number of residential condominium units within such condominium or the number of living units within such cooperative, and each unit owner within such condominium, and each member or members in such cooperative who leases or otherwise has occupancy rights in each living unit within such cooperative, shall be entitled to one (1) vote per residential living unit.

(b) In cases where duplex, rowhouse, townhouse, or similar Lots are combined, if the facilities are combined into a single residence with unified occupancy, the resulting facility shall be considered a single Unit; however if the facilities remain separate residences without unified occupancy, each such residence shall be considered a Unit.

(c) When more than one (1) person holds a fee interest in any Lot (or as to condominiums or cooperatives, in a living unit), all such persons shall be Members of the Association. The vote or votes for such a Lot or living unit with multiple owners shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any such Lot or living unit. If the co-Owners of a Lot or living unit entitled to one (1) vote cannot agree upon the vote, the vote of the Lot shall be disregarded in determining the proportion of votes with respect to the particular matter at issue.

(d) At such time as any additional property is annexed to the Property that includes Commercial Lots, the instrument of annexation shall identify the allocation of votes or method of allocating votes to such Commercial Lots, which allocation and

method shall be within the sole discretion of Declarant, and which will include the right of the Commercial Lot Owners to elect the Commercial Lot Director to the board.

### 2.2.2 Class B Membership

Prior to the Conversion Date, Declarant shall be the sole Class B Member. The Class B Member shall be entitled to fifty (50) votes for each Lot that it or its Affiliates own. The Declarant may assign Class B Membership status to any Affiliate so long as such Affiliate owns a Lot. Class B membership shall cease and be converted to Class A membership on the Conversion Date.

### Section 2.3 Suspension

All voting rights of an Owner shall be suspended by the Board during any period in which such Owner is in default under this Declaration, the Bylaws or the Rules and Regulations.

### Section 2.4 Appointment and Election of the Board

The Board shall be appointed or elected as provided in the Bylaws. Without limiting the generality of the foregoing, from and after the Turnover Meeting, there shall be five (5) members of the Board, one position of which shall be reserved for a representative of a Commercial Lot Owner (the "Commercial Lot Director"). Unless and until there is a Commercial Lot subjected to this Declaration, the Commercial Lot Director slot may be filled by any Director elected by all Owners in the same manner that all other Directors are elected. At the first annual meeting of the Members to occur after the first Commercial Lot is subjected to this Declaration, the Commercial Lot Owners shall have the right to elect the Commercial Lot Director. If there is no Board vacancy at the time of such annual meeting, then the newly elected Commercial Lot Director shall replace the Director who was elected most recently, and if more than one Director was elected at the same time, then the Commercial Lot Director shall replace the Director who received the least number of votes at the most recent election. The terms of this Section 2.4 relating to the election of the Commercial Lot Director may not be amended without the written consent of Owners owning at least seventy-five percent (75%) of the Commercial Lots. Prior to the Turnover Meeting, the Declarant shall have no obligation to appoint a Commercial Lot Director.

### Section 2.5 Power and Authority of the Board

The Board may exercise all rights and remedies of a homeowners association under ORS 94.630 or its successor statute.

### Section 2.6 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. The Turnover Meeting shall be conducted in accordance with the Bylaws.

### Section 2.7 Immunity of the Board

No Director shall have any personal liability to any Owner or any other person for the acts or omissions of the Board if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the Association, the Board or any Director arising from such acts or omissions.

### Section 2.8 Clarification of the Association's Role

The Association shall have the general powers and duties of a nonprofit corporation pursuant to the Nonprofit Corporation Act, and of a homeowners' association pursuant to the Planned Community Act. The Association shall also have those specific powers and duties assigned or delegated to the Association pursuant to the Articles, the Bylaws or this Declaration. However, unless otherwise expressly set forth in this Declaration, the Articles or the Bylaws, the Association shall not act in the capacity of settling disputes between Owners or resolving problems that Owners may experience. Disputes or problems experienced by Owners to which the Association has no express authority or role pursuant to this Declaration, the Articles or the Bylaws shall be resolved by private, lawful means chosen by the affected Owners and there shall be no recourse against the Association or the Board.

### Section 2.9 Rules and Regulations

The Board shall have the right to establish reasonable rules and regulations for the Property ("Rules and Regulations"), and to amend them from time to time; provided that any Rule or Regulation adopted by the Board may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Property, by a majority of the Owners in the portions affected.

### Section 2.10 Subassociations

All Subassociations and the terms of Subassociation Documents shall remain subordinate and subject to this Declaration, the Plat, the Articles of Incorporation, and the Bylaws of the Association ("Association Documents"). In the event of any conflict between the terms of the Association Documents and any Subassociation Documents, the terms of the Association Documents shall control. A Subassociation shall have the right to levy assessments separately and apart from any assessments of the Association, provided such Subassociation Assessments shall be binding only upon and apply to the property included within and the members of the Subassociation. The declarant of any Subassociation shall establish such Subassociation in compliance with all applicable local, state and federal laws, rules, codes and ordinances, and shall indemnify, protect and hold harmless Declarant, the Board of Directors, and the members of the Association who are not members of that Subassociation from and against any noncompliance with the same, none of whom shall be responsible for such noncompliance. Notwithstanding any provision herein to the contrary, any decision taken by the Association that would solely or primarily adversely impact a Subassociation or the Subassociation's individual members shall not be taken without the approval of that Subassociation, acting through its board of directors or a vote of its members, as required by law



or the applicable Subassociation Documents. Each Subassociation shall be solely responsible for construction, maintenance and repair and insurance of any common areas within the Subassociation, and such common areas shall not be considered common property or common expense property of any portion of the Association. Each Subassociation shall keep such common areas in good maintenance and repair at all times. Such easements shall not grant any parking rights nor any right to construct improvements on Subassociation property. All improvements within Subassociations shall be subject to the same standards of construction and approval of the ARC of the Association as are Lots that are not within the Subassociation. All original Subassociation Documents shall be subject to the prior written approval of the Board of the Association, which approval shall not be unreasonably withheld. Any amendment to the Subassociation Documents that in any way conflicts with any provision of this Declaration, the Bylaws, or the Rules and Regulations, or that purports to alter the rights or duties of Board or the Members of the Association who are not Subassociation members, also must be approved in writing in advance by the Board of the Association. The Board of the Association shall respond to any request for approval of Subassociation Documents or any amendment thereto within thirty (30) days after request for same delivered to the Association by the declarant or the board of directors of the Subassociation. The Board may require as a condition to its response that the requesting party pay in advance the Board's direct out-of-pocket expenses and attorneys' fees incurred in review of the documents.

### **ARTICLE III- EASEMENTS/MAINTENANCE**

#### **Section 3.1    Declarant's Easement to Correct Drainage**

Declarant hereby reserves for the benefit of Declarant a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as Declarant, in its sole discretion, may deem necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

#### **Section 3.2    Reserved Easements**

Easements for installation and maintenance of utilities and storm water retention and/or detention facilities are granted and/or reserved as may be shown on the recorded Plat. Within these easement areas, no improvement, structure, driveway, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, which may hinder or change the direction of flow of drainage channels or slopes in the easements, which would violate the terms of the easements as described in the Plat, or which would be inconsistent with utility company requirements. Owners are responsible for confirming the foregoing requirements with the applicable utility provider and the Association prior to construction of the same. No Owner shall have a claim against Declarant or the Association in the event any improvement in such easement areas is removed or demolished for access to such utilities. The easement area of each Lot and all improvements contained

therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 3.3    Reserved Easements

Easements for installation and maintenance of utilities and/or buffers with adjacent property are reserved for Declarant as may be shown on the Plat or any replat of the Property. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which would violate the terms of the easements as described on the Plat. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible. In addition, the Declarant hereby reserves an easement in favor of the Association to permit maintenance, repair and replacement of pathways, utilities serving Common Maintenance Areas and all other Common Maintenance Areas, as deemed reasonably necessary by the Board.

Section 3.4    Temporary Completion Easement

All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of utilities, roads, dwellings and landscaping within the Property, provided that the easement shall terminate as to any Phase on the tenth (10<sup>th</sup>) anniversary after conveyance of the first Lot in the Phase to a Class A Member. Declarant may assign, in one or more instances, its easement rights under this Section 3.4 to Owners during the course of construction of improvements on their Lots.

Section 3.5    Plat Easements

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

Section 3.6    Access and Entry Easements

An easement is hereby granted and reserved in favor of the Declarant and the Association and their respective successors, assigns, contractors, property managers, agents and employees, over, across, upon, and under the Property (other than the interior of Units) to inspect, maintain, repair or replace any improvement or other component of the Property, for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration and the Rules and Regulations, for the purposes of taking any action necessary to effect compliance with this Declaration and the Rules and Regulations, to implement erosion control or drainage procedures and practices, to do whatever is deemed necessary to comply with federal, state or local laws, and to otherwise exercise and perform their rights and obligations under this Declaration or any other agreement or obligation by which they bound, as determined in their sole discretion. If the inspection, maintenance, repair or replacement requires access to any Lot, such access shall be conditioned upon providing advance

notice to the Lot Owner, as applicable, except in the case of an emergency. The foregoing easement grants the right to perform inspections, maintenance, repairs and replacements, but does not impose any obligation to do so or to perform any such actions. Any decision to perform inspections, maintenance, repairs or replacements on any portion of the Property shall be in the sole and absolute discretion of Declarant or the Association, as the case may be. No entry pursuant to this Section 3.6 shall be deemed a trespass or create any right of action in the Owner. Declarant and the Association shall have the right, but not the obligation, to correct any violation by any Owner of the requirements of this Declaration or the Rules and Regulations. Neither Declarant nor the Association nor their respective successors, assigns, contractors, property managers, agents and employees shall be liable for any damage so created unless such damage is caused by its willful misconduct or gross negligence. Entry upon the Lot as provided herein shall not be deemed a trespass, conversion, or other violation of the Lot owner's rights.

### Section 3.7    Cluster Mailboxes

Cluster Mailboxes may be installed at Cluster Pads on Lots or on City property throughout the Property with prior written approval of Declarant or its designated successor. An easement is hereby granted and reserved in favor of Declarant, the Association, the United States Postal Service ("USPS"), each Owner served by the Cluster Mailboxes, and their successors, assigns, contractors, tenants, agents and employees over, across, upon, and under the Cluster Pads to access, inspect, maintain, repair or replace the Cluster Mailboxes and Cluster Pads as and where installed. The Association shall maintain, repair and replace the Cluster Mailboxes and Cluster Pads in accordance with USPS requirements and such standards as the ARC may determine appropriate. The Association's cost of maintenance, repair and replacement of the Cluster Mailboxes and Cluster Pads shall be a common expense of the Owners who have mailboxes within the Cluster Mailboxes upon which the maintenance, repair or replacement work is performed; provided that (i) if any individual mailbox within the Cluster Mailbox structure becomes damaged or inoperable, the Owner served by that individual mailbox shall be responsible for repairing, or arranging with the USPS for repair, of the individual mailbox at such Owner's expense and (ii) in the event of material damage or destruction to a Cluster Mailbox structure or Cluster Pad as a result of the negligence or willful misconduct of any Owner or its tenant, such Owner shall be responsible for the cost of repair or replacement of the same.

### Section 3.8    Entry Sign

If the Entry Sign is located upon an Owner's Lot, an easement is hereby granted and reserved in favor of Declarant and the Association to access, light, maintain, repair and replace the Entry Sign. The Association's costs of maintenance, repair and replacement of the Entry Sign shall be a common expense of the Association, provided in the event of material damage or destruction to the Entry Sign as a result of the negligence or willful misconduct of any Owner or its tenant, such Owner shall be responsible for the cost of repair or replacement of the same.

Section 3.9 Improvements Generally

Declarant has not agreed to build any particular improvements, and does not choose to limit Declarant's rights to add improvements not described in this Declaration

Section 3.10 Reserves

The Association shall not be obligated to maintain any reserves for the common property of the Association, but may elect to do so, and assess the Owners for the same, in accordance with Oregon law.

**ARTICLE IV ANNEXATION**

Section 4.1 Annexation by Declarant.

At any time within the period ending on the thirtieth (30<sup>th</sup>) anniversary of conveyance of the first Lot to a Class A member, Declarant may, at its sole option, annex additional property into the Property to be subject to the terms of this Declaration 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 shall have no obligation of any kind to annex any additional property to the Property.

4.1.1 Eligible Property

Any real property in Lincoln County located adjacent to ("adjacent" property shall include property on the other side of a street, alley or publicly dedicated land) or contiguous with the Property or located within one (1) air mile of any portion of the Property shall be eligible for annexation. There is no limitation on the number of Lots which Declarant may annex to the Property, except as may be established by applicable ordinances, agreements, or land use approvals.

4.1.2 Declaration of Annexation

Annexation shall be evidenced by a written declaration of annexation ("**Declaration of Annexation**") executed by Declarant and, if different, the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision herein to the contrary, a Declaration of Annexation may with respect to any annexed property:

- (a) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property;
- (b) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect thereto as

Declarant may deem to be appropriate for the development of such annexed property; and/or

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

(d) Upon annexation, additional Lots so annexed shall be entitled to the voting rights set forth herein and the Bylaws.

Section 4.2 Annexation by Action of Members

In addition to Declarant's right to annex under Section 4.1, 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 pursuant to this Section 4.2 shall be effective unless approved by at least seventy-five percent (75%) of the outstanding votes of the Association, and by Declarant so long as Declarant owns a Lot or retains the ability to annex additional property to the Property. Any property that may be annexed pursuant to Section 4.1.1 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 executed by the chairperson of the Board and the owners of the property to be annexed.

Section 4.3 No Duty to Annex

Nothing contained in this Article III shall establish any duty or obligation on the part of Declarant, the Board 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 V – USE, OCCUPANCY, CASUALTY, AND RECONSTRUCTION**

Section 5.1 Residential Use of Residential Lots

All Residential Lots and Units thereon shall be kept and maintained for residential purposes. Such use may include attached Units, cottage units, accessory dwelling units, and other residential occupancies to the extent permitted by the applicable local government authorities and code.

Section 5.2 Business Use of Residential Units.

The Residential Units may be used for home occupancy business to the extent permitted by local government authorities and code. Notwithstanding the foregoing, the Board may, but shall not be obligated to, adopt and enforce reasonable Rules and Regulations governing use of Units for home occupancy businesses, including without limitation Rules and Regulations regarding signage, advertising, nature of business conducted, hours, and parking.

### Section 5.3 Residential Parking

Wilder is intended to be a pedestrian-oriented community, with limited street parking. Each Owner shall, and shall cause all occupants of the residences on its Lot to, park all their motor vehicles in their garage carport or assigned surface space, or if already occupied, in the driveway. To the extent reasonably practical, Owners shall cause any motor vehicles of their guests to be parked either in their garages, carports or driveways. The Association shall have the right, but not the obligation, to enforce City ordinances related to the parking and/or storage of vehicles. No Owner shall cause or allow any vehicle that is damaged, destroyed or inoperable to be parked on any street, driveway or visible area for more than 48 hours in any thirty (30) day period. As used herein, "visible area" shall mean any place that may be seen by anyone other than the occupants of the applicable Lot.

### Section 5.4 Compliance with Code

Each Owner shall comply, and shall cause all occupants of its Unit to comply, with applicable City codes, laws, rules, orders, permits and ordinances. The Board shall have the right, but not the obligation, to enforce this provision as a covenant of this Declaration.

### Section 5.5 Conversion of Lot Designation

5.5.1 To the fullest extent allowed by law, Declarant reserves the right to: (a) change the designation of any Commercial Lots owned by Declarant to one or more Residential Lots; (b) change the designation of any Residential Lots owned by Declarant to one or more Commercial Lots; (c) designate as common property any Lot owned by Declarant that was originally intended for dedication to the public, or so designate any portion thereof; (d) dedicate to the public any Lot owned by Declarant (or any portion thereof) that was originally intended to be common property; (e) replat as Residential Lots or Commercial Lots, or replat as additions to existing Residential or Commercial Lots, any Lot owned by Declarant, or any portion thereof, that was originally designated as common property or as property to be dedicated to the public. If the designation of use of the Lot appears on the Plat, then such redesignation may be by either plat amendment or a written amendment to this Declaration executed by Declarant.

5.5.2 In addition to Declarant's rights under Section 5.5.2, At the written request of any Owner, such Owner's Lot may be changed from Commercial Lot designation to Residential Lot designation, or from Residential Lot designation to Commercial Lot designation (for example, for the purpose of condominium conversions), with the prior written approval of the Board, which approval may be given or withheld in the Board's discretion.

### Section 5.6 Declarant Use

No provision of this Declaration shall apply to or restrict construction upon or use of any Lot, Unit, or any other portion of the Property by the Declarant.

Section 5.7 Casualty and Reconstruction

In the event of damage to or destruction of a Unit, the Owner of the Unit shall repair, reconstruct, and rebuild the damaged or destroyed portions of the Unit to substantially the same condition that existed prior to the damage or destruction. All repair, reconstruction, or rebuilding 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, except to the extent work is delayed by causes beyond the reasonable control of the Owner and except to the extent the Board grants an extension of such time periods in the Board's sole discretion. Prior to reconstruction, the Owner shall clear the lot and keep the lot in a safe, neat and orderly condition.

**ARTICLE VI - PROPERTY RIGHTS**

Section 6.1 Effect of Declaration

Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said Lots as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

Section 6.2 Owner's Use and Occupancy

The Owner of a Lot shall be entitled to the exclusive use and benefit of the Lot, subject to the terms hereof and any other liens or encumbrances as may affect the Lot.

Section 6.3 Rezoning Prohibited

No Owner or its representatives shall take any action to rezone any Lot to any classification that, in the reasonable opinion of the Board, is not consistent with the concept of a pedestrian-oriented new urbanist village. The Board shall, within 30 days after written request of any party seeking such rezoning, advise whether the Board has any objection to such rezoning under such standard, and if no objection is raised by the Board within such time it shall be conclusively presumed the Board has no objection.

Section 6.4 Lot Consolidation and Division; Conversion

No Owner or its representative shall take any action to consolidate its Lot with another Lot and no Lot may be subdivided if, in the reasonable opinion of the Board, such action is not consistent with the concept of a pedestrian-oriented new urbanist village. The Board shall, within 30 days after written request of any party seeking such rezoning, advise whether the Board has any objection to such action under such standard, and if no objection is raised by the Board within such time it shall be conclusively presumed the Board has no objection. This provision shall not apply to any Lot subdivision or consolidation by Declarant. Subject to Board approval and compliance with applicable law, it is anticipated that duplex, rowhouse, townhouse

and similar Lots may be combined to allow unified ownership and occupancy of two or more adjacent dwelling units.

Section 6.5    Drainage Alteration Prohibited

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

Section 6.6    Common Property

Except for (a) the Cluster Mailboxes and Cluster Pads, (b) any common property designated as common property on the Plat or any amendment thereof, and (c) any portion of a Lot intended for dedication that is not accepted for dedication, unless particular property is otherwise designated by Declarant in an amendment to this Declaration, the Property shall have no common property, as defined in ORS Chapter 94. To the extent required under Oregon law, the Plat shows the legal description of any real property within the Property which is or must become common property. This Section 6.6 shall not preclude formation of a condominium, cooperative, co-housing cluster or cottage cluster within one or more Lots at the Property, which may include common areas. Except as otherwise expressly provided herein, the Association may not sell, convey or subject to a security interest any portion of the common property without approval of the Owners. The deed to any land that is common property within a Phase shall be delivered within ten years after that Phase is included in or annexed to the Property encumbered by this Declaration.

**ARTICLE VII- USES**

Section 7.1    Manufactured/Mobile Homes

Except for temporary structures used by Declarant or builders of improvements, no manufactured homes or mobile homes shall be installed, located or used on any Lot. The foregoing shall not prohibit the construction of prefabricated homes and other similar structures built in compliance with all applicable local building codes; such prefabrication is encouraged.

Section 7.2    Non-Passenger Vehicles and Equipment

Campers, boats, recreational vehicles, commercial vehicles, other non-passenger vehicles, equipment, implements, accessories and disabled passenger vehicles may not be kept or stored on the Property, including any street within the Property, except to the extent permitted by applicable codes, as follows:

7.2.1 Campers, boats, boat trailers, recreational vehicles, recreational trailers, and other non-passenger vehicles, equipment, implements, or accessories must be kept within an Owner's garage.



7.2.2 Commercial vehicles bearing commercial insignia or names may be kept or stored on a Lot if the vehicle is: (i) driven by an Owner for Owner's primary job, (ii) temporarily parked on any Lot for the sole purpose of serving the Lot or (iii) kept within an Owner's garage or completely screened from view by a screening structure or landscaping.

### Section 7.3 Structure and Landscape Maintenance

7.3.1 All improvements upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner. Lots shall be maintained by the Owner so as not to be a fire hazard. All landscaping located on any Lot shall be properly maintained at all times by the Owner in accordance with sound environmentally sustainable horticultural practices, and any applicable provisions of the Declaration and the Rules and Regulations. Each Owner shall keep its Lot free of trash and unsightly material.

7.3.2 Any Owner whose Lot fronts any landscaping, rain gardens, or other similar facilities in the public right of way shall keep the landscaping in such facilities in good condition and repair to the same standard as landscaping on such Lot under Section 7.3.1, or if greater, the then-applicable horticultural standards of the City of Newport, including, without limitation, periodic clearing, weeding, raking and plant trimming of rain gardens. However, no Owner shall undertake maintenance, alteration or repair of the storm water drainage infrastructure in such facilities without the prior written approval of the Board, which the Board may withhold in its discretion.

### Section 7.4 Sustainable Construction and Maintenance

7.4.1 Each Owner shall construct, landscape, maintain and operate all structures on its Lot in accordance with this Declaration, the Bylaws, the Rules and Regulations and the Design Guidelines as interpreted and administered by the Board.

7.4.2 The determination of the ARC or the Board, as the case may be, regarding compliance by an Owner with the requirements of this Section 7.4 shall be dispositive, subject to reconsideration of such determination by the Board.

### Section 7.5 Commencement and Completion of Improvements and Landscaping

7.5.1 Each Owner shall commence construction of the residence, hardscape and landscaping on its Lot as approved by the ARC ("Lot Improvements") within six (6) months following the closing of conveyance to such Owner of the Lot by Declarant, and shall diligently pursue the Lot Improvements to completion, including recycling and cleanup of all construction debris and materials, within twelve (12) months following the closing of conveyance to such Owner of the Lot by Declarant. All other construction (including remodels and accessory buildings) shall be completed within six (6) months of commencement of construction.

7.5.2 "Force Majeure" delay shall mean delay caused by acts of God, strikes, actual inability of the owner to procure delivery of necessary materials, or by interference by other persons or forces beyond the control of the Owner to prevent. Financial inability of the

owner or his contractor to secure labor or materials or discharge liens or attachments shall not be deemed a Force Majeure cause.

7.5.3 In the event of failure to commence or complete construction within the required time, or cessation of construction of any building for a period of 120 days, where such interruption is not excused by the provision hereof, the Declarant and the Association shall have the right, in addition to all other rights and remedies, to enter upon said uncompleted property and remove the same or carry such construction work to completion, and the expense incurred in connection with the removal or completion of such building shall become a lien upon the land and improvements thereon upon which such a building is located which may be foreclosed either as a construction lien, as a mortgage made on real property, or as a lien under ORS 94.704 et seq. In addition, the Association may impose and collect against the Owner as an additional assessment against the Lot a reasonable daily fine for failure to timely commence or complete construction.

7.5.4 Each Owner shall complete landscaping on its Lot within 60 days after construction of the dwelling or other main building on their Lot is completed.

7.5.5 The time restrictions in this Section 7.5 shall be extended to the extent (i) Declarant has agreed to a different time period for commencement or completion of the work in its sale agreement with the Owner, (ii) work is delayed by Force Majeure causes beyond the reasonable control of the Owner or (iii) the Board grants an extension of such time periods in the Board's sole discretion.

#### Section 7.6 Construction Activities

No construction activities at the Property shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued during daylight hours in accordance with applicable laws, permits and codes and any applicable Rules and Regulations adopted by the Association.

#### Section 7.7 Unimproved Lot Maintenance

Each Owner shall maintain any vacant Lot it owns in accordance with standards set forth by the Board. At a minimum, all vacant lots shall be maintained in good condition and clear of debris and vegetation or other materials constituting a fire hazard.

#### Section 7.8 Solar Energy Facilities

Installation and use of solar energy facilities is encouraged. Adjacent Owners shall cooperate with each other in the location of solar energy facilities and the preservation of reasonable access to sunlight in the use of such systems, provided the use of the adjacent Lot is not unduly burdened, and provided further this Section 7.8 shall not be construed as placing any limitations on building heights, locations or dimensions.

## ARTICLE VIII- ARCHITECTURAL REVIEW

### Section 8.1 Architectural Review Committee

8.1.1 Upon recordation of this Declaration, a subcommittee of the Board to be known as the Architectural Review Committee (the "ARC") shall be established consisting of from two to four members.

8.1.2 The members of the ARC shall be appointed, terminated and/or replaced exclusively by Declarant, with or without cause; until the earlier of (i) the date Declarant no longer owns any Lot or (ii) the date Declarant delivers to the Board notice in writing granting the Board the right to appoint the members of the ARC (in either case, the "ARC Transition"). Until the ARC Transition, the ARC members may but need not be Owners. Thereafter, at least one member of the ARC shall be a member of the Board; any members of the ARC who are not members of the Board shall serve in an advisory position only. After the ARC Transition, the members of the ARC shall be appointed by a majority vote of the Board. The ARC may engage a licensed architect for consultation regarding any matters requiring ARC approval if and when the ARC determines that it is necessary. During any time the ARC has fewer than two members, the Board shall act as the ARC. Declarant shall have no responsibility or liability for maintaining the active status of the ARC. In the event of the death or resignation of any member of the ARC, a new representative shall be appointed by Declarant or the Board, as applicable. If there are no members serving on the ARC as a result of death or resignation, the Board shall as soon as practicable designate by majority vote members to serve on the ARC. The term of office of ARC members shall run no more than three (3) years, but may be repeated indefinitely if an incumbent member is elected, designated, or appointed as provided in this Section. The ARC shall meet at sufficient intervals to perform its review and approval functions specified in this Article.

8.1.3 The purpose of the ARC is to interpret and apply the architectural and sustainability standards of the community and to approve or disapprove plans for improvements and landscaping proposed for the Lots.

8.1.4 The ARC shall act by simple majority vote of its members who are also members of the Board. In the event an Owner submits plans or specifications to the ARC that are not adequate to permit the ARC to make an informed determination under this Article, the ARC shall have the authority to require the Owner submitting the inadequate plans or specifications to retain, at the Owner's expense, the services of a professional engineer, architect, designer, inspector or other person to assist in the preparation of a sufficient submittal to the ARC.

### Section 8.2 Design Guidelines

Declarant may adopt, and from time to time, amend, modify, or revise Design Guidelines, which may include reasonable exterior design, landscaping and sustainability standards. Adoption, amendment and revision of the Design Guidelines may occur without the consent of anyone other than Declarant prior to conveyance of the last Lot to an Owner other

than the Declarant. Thereafter the ARC shall have the right to amend, modify, or revise the Design Guidelines, subject to the approval of at least fifty percent (50%) plus one of the Owners at a meeting of the Owners held for such purpose, provided (i) no such amendment, modification or revision that adversely affects only one or more Commercial Lots shall bind the Owner(s) of any such Commercial Lot(s) without the approval of such Owner(s); (ii) no such amendments, modifications, or revisions shall affect any prior ARC approval, and (iii) no such amendment shall affect any reconstruction of an improvement constructed under a prior ARC approval (unless the affected Owner elects otherwise).

### Section 8.3    Scope of Review

Except as provided in Section 8.12, no building, fence, wall, patio, deck, outbuilding, landscaping, hardscape, excavation, pool, athletic facility or other structure or improvement (collectively, "Improvements") shall be erected, altered, added onto or repaired upon any portion of the Property without the prior written consent of the ARC; provided, however, ARC approval shall not be required for interior remodels that are not visible from the outside of a Unit. Although interior remodels are not subject to prior review and approval by the ARC, they should be designed and performed in accordance with Earth Advantage standards for sustainable residential construction or other similar environmental/sustainability standards set forth by another similar type of organization.

### Section 8.4    Submission of Plans

Unless the ARC approves otherwise, before the initiation of construction upon any Lot, the Owner thereof shall first submit to the ARC a complete set of plans and specifications for the proposed Improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, sustainability features, and any other information deemed necessary by the ARC for the performance of its approval function. Unless the ARC approves a lesser or alternative submission, such submission shall be pursuant to the requirements and procedures outlined in the Design Guidelines, if any. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. The ARC may, in its discretion, preapprove a particular category or type of Improvement (such as a specific unit floor plan, type of fencing or street tree), in which case it may permit an Owner to proceed without a formal full submission as provided above, if the ARC is satisfied that the contemplated Improvement at issue conforms with such preapproved standards.

### Section 8.5    Plan Review

Upon receipt by the ARC of all of the information required by this Article, it shall have thirty (30) days in which to review said plans or to request any missing information or documentation. The ARC may require as a condition of its review that the submitting Owner remit to the ARC, in advance, a review fee established by the ARC to defray the ARC's anticipated costs of review, including time and expenses incurred by or fees paid to any architectural or engineering professional who is on or engaged by the ARC. The proposed

Improvements will be approved if, in the sole opinion of the ARC: i) the Improvements will be of an architectural style and material that are not incompatible with the other structures in the Property; ii) the Improvements will not violate any restrictive covenant or encroach upon any easement or cross building set back lines; iii) the Improvements will not result in the reduction in use or enjoyment of any of the Property; iv) the individual or company intended to perform the work is acceptable to the ARC; v) the Improvements comply with sustainability standards and the applicable standards of the Design Guidelines; and vi) the Improvements will be substantially completed, including all cleanup, within six (6) months of the date of commencement (twelve (12) months for the construction of a complete building), or such longer time as the ARC may determine. If the ARC fails to issue its written approval, or rejection, within thirty (30) days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ARC's approval shall be deemed to have been granted without further action. In no event shall the ARC's thirty-day review period commence prior to the date on which Owner has submitted the last of any documents or information required to complete the application.

#### Section 8.6    Excavation

Excavation and compaction shall be in accordance with the requirements and standards of the ARC. No excavation materials from a Lot shall be deposited on any other portion of the Property without the prior written approval of the ARC; otherwise all such excavation materials shall be removed from the Property at the time of construction.

#### Section 8.7    Non-conforming Structures

If there shall be a material deviation from the approved plans in the completed Improvements or the construction thereof, such Improvements shall be in violation of this Article VI to the same extent as if erected without prior approval of the ARC. In addition to their other rights, the Board, on behalf of the Association, or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

#### Section 8.8    Immunity of ARC Members

No member of the ARC or Board shall have any personal liability to any Owner or any other person for the acts or omissions of the ARC if such acts or omissions were committed in good faith and without malice. The Association shall defend, indemnify, and reimburse the ARC, the Board and its members from and against any action brought against the ARC, the Board or any member thereof arising from acts or omissions of the ARC committed in good faith and without malice.

#### Section 8.9    Role of ARC

Unless expressly set forth herein, the ARC shall not act in the capacity of settling disputes between Owners or resolving problems that Owners may experience. Disputes or problems experienced by Owners with respect to which the ARC has no express authority or role

as set forth in this Declaration shall be resolved by private, lawful means chosen by the affected Owners and there shall be no recourse to the ARC.

#### Section 8.10 Limited Authority of ARC

The ARC's authority to review and approve plans for construction of improvements on any lots is limited to ensuring compliance with the review standards of Section 8.5. Approval by the ARC of any submittal is not to be construed as compliance with applicable laws, codes or permits, or approval by any governmental agency having jurisdiction over the construction of improvements on any Lot. The applicant is responsible for determining the need, obtaining, and complying with, any governmental agency approval or permit.

#### Section 8.11 Address for Notice

Requests for ARC approval or correspondence with the ARC shall be addressed to Declarant until the ARC Transition, and to the chairperson of the Board thereafter. No correspondence or request for approval shall be deemed to have been received unless in a form satisfactory to the ARC.

#### Section 8.12 Exemption

The provisions of this Article and Article VII do not apply to Declarant or the Association, and construction activities and Improvements erected, altered, added onto or repaired by Declarant or the Association shall be exempt from the requirements of this Article and Article VII. In addition, prior to the Turnover Meeting, Declarant shall have the right to issue written "Exemption Letters" that serve to pre-approve certain Improvements. An Exemption Letter shall specify to what extent Improvement(s) on a Lot have been pre-approved by Declarant and are therefore exempt from further ARC review and approval processes; all other Improvement(s) on the Lot shall remain subject to ARC review and approval. An Exemption Letter may be limited to one particular Improvement or may include several Improvements and may or may not include landscaping. Although an Exemption Letter will serve to relieve an Owner of the obligation to obtain ARC approval of the specific Improvement(s) exempted by the Exemption Letter, the Owner shall remain obligated to comply with all other terms of this Declaration, including, without limitation, all construction deadlines. Unless construction commences sooner, an Exemption Letter shall expire ninety (90) days from the date of issuance. An Exemption Letter issued prior to the Turnover Meeting shall not be invalidated by the subsequent occurrence of the Turnover Meeting.

### **ARTICLE IX FUNDING**

#### Section 9.1 Funding Generally

Subject to the terms of this Article IX, the Declarant hereby covenants for each Lot owned within the Property, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) annual or periodic assessments or charges; and (ii) special assessments for capital improvements to the common elements, such assessments to be established and collected

as hereinafter provided. Such assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special and other assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot(s) at the time when the assessment fell due. The Board shall establish an annual budget for expenses of the Association for distribution to the Owners in accordance with the Bylaws and ORS Chapter 94.

#### Section 9.2    Assessment or Charge for Lots

Subject to the terms of this Article, each Lot is hereby subject to an assessment in an amount not to exceed an amount determined by the Board, for the purpose of creating a fund ("Assessment Fund") (as described in Section 9.5) for matters described herein, or any other fund called for by this Declaration, any amendment hereto, or a Declaration of Annexation. Charges and assessments for funding such funds will be paid by the Owner or Owners of each such Lot in advance in monthly, quarterly or annual installments, as determined by the Board, commencing as provided in this Section 9.2. The rate at which each Lot will be assessed, and whether such assessments shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each assessment period. Said rate may be adjusted from time to time by the Board as the needs of the Association may, in the judgment of the Board, require. The annual assessment (excluding Limited Assessments) for each Lot shall be uniform except that each owner of a Lot within a Subassociation covenants to pay its share of such assessments for common expenses of that Subassociation. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment for the Assessment Fund for a particular Lot has been paid for a particular assessment period. No Lot Owner shall have any right to any common profits of the Association. All Lots become subject to assessment on a date or dates determined by the Board of Directors. Notwithstanding any other terms contained herein, the Declarant shall have the right to abate or pro-rate the initial imposition of assessments for any phase of the Property for a period of time determined by Declarant, in Declarant's reasonable discretion.

#### Section 9.3    Additional Assessments

In addition to the periodic assessments otherwise described in this Article IX, the Association shall have the authority to assess an Owner's Lot(s) for costs and expenses incurred by the Association for corrective and enforcement action that is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees, or any breach of this Declaration or the Bylaws. Each such additional assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land, a continuing lien upon the Lot, and the personal obligation of the Owner.

Section 9.4 Limited Assessments

In addition to the other assessments set forth herein, the Association shall have the authority to levy assessments to satisfy the common expenses of a particular project or effort undertaken by the Association (such assessments, "Limited Assessments"), as determined by the Board of Directors in its reasonable discretion. The Board shall have authority, on behalf of the Association, to borrow funds for the purpose of funding such special projects or efforts, which borrowing shall be repaid through subsequent assessments. Limited Assessments shall be levied against the Owners of those Lots that benefit from the project or effort undertaken by the Association, as determined by the Board. An example, for illustrative purposes only and not as a limitation, of a project or effort giving rise to a Limited Assessment, is capital repair or replacement of a Cluster Mailbox.

Section 9.5 Establishment of Assessment Fund

The Association shall establish a fund composed of annual assessments and shall use the proceeds of such fund in providing for the operating expenses, insurance expenses and normal, recurring maintenance and repair expenses of the Association.

Section 9.6 Non-payment of Assessments: Remedies of the Association

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate set by the Board by resolution from time to time but in no event greater than the highest rate of interest allowed by Oregon law at the time of the non-payment. The Association shall have the authority to impose late charges to compensate for the administrative, legal (if any) and processing costs of late payments on such terms as it may establish by duly adopted resolutions, and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of Owner's Lot and/or Residence.

Section 9.7 Subordinated Lien to Secure Payment and Other Obligations

To secure the payment of the maintenance charge and all other assessments (including for reserves, if any) established hereby and to be levied on individual Lots as provided in this Article IX and the payment of interest, late charges, attorneys' fees or other charges against Owners provided for in this Declaration and/or the Bylaws and all other obligations of a Lot Owner under this Declaration and the Bylaws, there is hereby reserved a lien for the benefit of the Association on each Lot, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to any first position recorded deed of trust securing payment for the subject Lot and/or the residence on such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage lien holder by prepaid U.S. registered



mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. The provisions of ORS 94.704 et seq. (or applicable successor provisions) shall apply to the Association's lien. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a first mortgage foreclosure shall extinguish the lien of such assessment as to payments that became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No sale, foreclosure or transfer shall extinguish the personal obligation of the Owner who owned the Lot at the time the delinquent assessment and/or payment became due. The lien described herein shall include not just assessments but also interest, late charges, attorneys' fees, costs or other amounts imposed hereunder or under the Bylaws, regardless of whether the same are characterized as assessments.

#### Section 9.8 Reallocation Upon Annexation of Property

If additional property is annexed to the Property, the Association shall, during the next annual budget cycle, recompute the budget based upon the additional Lots and any common areas and Common Maintenance Areas and recompute all applicable assessments for each Lot. New Lots shall be subject to assessment from the time of annexation of such Lots to the Property even though such assessment may not be levied for several months, pending the reallocation during the next annual budget cycle. The Association shall send notice of any applicable assessment to the Owners of new Lots not later than the next occurring annual assessment. 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 additional property is annexed to the planned community of Wilder during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots that were within the Property prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners with the next occurring annual assessment. 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.

### **ARTICLE X -- REMEDIES**

#### Section 10.1 Remedies

10.1.1 If any default by any Owner under the provisions of this Declaration, the Bylaws or the Rules and Regulations shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws or the Rules and Regulations, and those which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or

injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, but in all cases subject to the limitations and requirements of the Planned Community Act.

10.1.2 Notwithstanding the foregoing, to the fullest extent allowed by law, the Board shall have the sole right and authority to adopt, interpret, amend, enforce, and waive enforcement of the Rules and Regulations.

10.1.3 After written notice to a defaulting Owner (provided no notice shall be required in the case of emergency), the Association through the Board or its designee may, but shall not be obligated to, take action to remedy any Owner default and assess the defaulting Owner the cost of such action together with a reasonable administrative fee.

10.1.4 To the extent allowed by law, notwithstanding any other provision of this Declaration or the Bylaws, the Association shall not expend in excess of Ten Thousand Dollars (\$10,000) for attorneys' fees and costs for any reason unless such expenditure is first approved by either Declarant or the Owners holding at least seventy-five percent (75%) of the total voting power of the Association. The foregoing limitation shall not apply to: (i) actions for delinquent assessments or other charges under this Declaration, the Bylaws or the Rules and Regulations, or to enforce or foreclose liens therefor; (ii) actions to appoint a receiver; (iii) actions to summarily abate, enjoin and remove an Improvement or condition that violates this Declaration or the Bylaws; or (iv) for the defense of the Association or the Board of an action or proceeding brought against the Association or the Board (except for non-mandatory counterclaims). No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy.

10.1.5 All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law (or, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency), from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Lot and upon all of his additions and Improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise; by the Association or any Owner.

#### Section 10.2 Fines Imposed by the Association

In addition to any other remedies available to the Association hereunder and subject to the requirements of applicable law, the Association shall have the right to establish, impose and collect reasonable fines upon an Owner who violates this Declaration, the Bylaws or the Rules and Regulations in the manner and amount the Board deems appropriate in relation to the violation.

Section 10.3 No Duty to Enforce

Neither Declarant, the Association, the Board nor the ARC has any duty to enforce any provision of this Declaration, nor to continue any enforcement action once initiated. The Declarant and the Board on behalf of the Association may settle any dispute with an Owner on such terms as they determine appropriate, in their sole discretion.

**ARTICLE XI - GENERAL**

Section 11.1 Consent and Approval

Any consent or approval of the Association or the Board required or permitted to be given under this Declaration shall be in accordance with this section. The Owner requesting consent shall deliver a notice requesting consent to the chairperson of the Board. The Board shall provide written notice of consent or disapproval within thirty (30) days of receipt of the request. Failure to provide written notice of consent or disapproval within such 30-day period shall be deemed to constitute consent. Unless provided otherwise in this Declaration, and except for approvals of the ARC or Declarant, the Board shall not unreasonably withhold its consent. Notwithstanding any other provision in this Declaration, Declarant shall not be required to obtain consent for any action where consent is required under this Declaration, and Declarant may take all such actions without the consent of any other Owner, the Board, or the ARC.

Section 11.2 Notices

Any notice or demand required under this Declaration shall be sent to each Owner in care of the street address of such Owner's Lot, or in the event the Owner does not reside on the said property, in care of the current property tax notification address of the Lot; provided, however, that an Owner can change their notification address by written notice to the Association in accordance with this Section 11.2. Any required notice or demand shall be made by hand delivery or certified mail, and shall be deemed received on actual receipt or two (2) days after being mailed, whichever first occurs.

Section 11.3 Term and Amendments

11.3.1 The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless terminated by a vote of not less than 75% of the Owners by executing and properly recording a notice of termination of this Declaration in the Deed Records of Lincoln County, Oregon.

11.3.2 This Declaration may be amended at any time during the first thirty (30) year period or any extension thereof, by the agreement (either in writing or at a properly noticed meeting) of not less than 75% of the Owners, which shall then be effected by the president and secretary executing and properly recording an instrument amending this Declaration and certifying the requisite Owner approval; provided, however, that so long as Declarant owns any Lot that is subject to this Declaration, any such amendment shall require the written consent of Declarant, which may be granted or withheld in Declarant's sole and absolute discretion. In the

event of an amendment that would materially, negatively impact a particular subgroup of Owners, such as Commercial Lot Owners, such amendment must also be approved by a majority of such affected Owners.

11.3.3 Notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of anyone, modify, amend or repeal this Declaration (i) at any time before the closing of the sale on the first Lot, and (ii) at any time prior to conveyance of the last Lot owned by Declarant in order 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 or to comply with the Oregon Planned Community Act or the requirements of the County of Lincoln County or the City of Newport, if applicable. Said amendment, modification, or repeal shall be in writing and recorded in the Deed Records of Lincoln County, Oregon. Declarant further reserves the right at any time to amend this Declaration, or any amendment thereto, in order to correct scrivener's errors.

#### Section 11.4 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

#### Section 11.5 Rights and Obligations

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

#### Section 11.6 Dispute Resolution.

11.6.1 General. Declarant and the Owners each agree that to the fullest extent allowed by law, all claims, controversies, or disputes, whether they are statutory, contractual, and/or tort claims or counterclaims between or among Declarant, Declarant's successors and assigns, the Association, Board, ARC and/or Owner(s) (collectively, the "Parties" and individually, a "Party") which arise out of or are related to this Declaration ("Claims") shall be resolved in accordance with the procedures specified herein. The following matters are excluded from this dispute resolution clause and do not constitute claims: (i) judicial or non-judicial foreclosure or any other action or proceeding to enforce or collect liens for amounts owed hereunder or a trust deed, mortgage, or land sale contract; (ii) a forcible entry and detainer

action; (iii) actions by the abatement and removal of a structure or other condition that violates this Declaration (iv) actions for the appointment of a receiver; (v) provisional remedies such as injunctions or the filing of a lis pendens; (vi) the filing or enforcement of a mechanic's lien; (vii) proceedings for which another dispute resolution method is specified in this Declaration or required by law; or (viii) proceedings against an Owner for enforcement of the Declaration, the Bylaws or the Rules and Regulations. 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, 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.

11.6.2 Negotiation. The Parties will seek a fair and prompt negotiated resolution of Claims and shall meet at least once to discuss and seek to resolve such claims, but if this is not successful, all claims shall be resolved in small claims court, by mediation or by binding arbitration as set forth in this Section 11.6.

11.6.3 Mediation. All Claims that are not resolved within thirty (30) days by the process described in Section 11.6.2 shall be subject to mediation as a condition precedent to arbitration or small claims litigation. The request for mediation may be made concurrently with the filing of a demand for arbitration as set forth in Section 11.6.5 below, but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties. All mediation shall be in Lincoln County, Oregon with any dispute resolution program available that is in substantial compliance with the standards and guidelines adopted under ORS 36.175, as it may be amended. The foregoing requirement does not apply to circumstances in which irreparable harm to a Party will occur due to delay or litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

11.6.4 Small Claims. All Claims that have not been resolved by mediation and which are within the jurisdiction of the Small Claims Department of the Circuit Court of the State of Oregon shall be brought and determined there, and all Parties shall be deemed to have waived their right to a jury trial with respect to such claims.

11.6.5 Arbitration. All Claims that have not been resolved by the processes set forth above shall be resolved by binding arbitration. Such arbitration shall be conducted by a single arbitrator in Lincoln County, Oregon pursuant to the then effective arbitration rules of the Arbitration Service of Portland ("ASP"). If the ASP has ceased to exist, the arbitration service shall be selected jointly by the affected parties. Any judgment upon the award rendered pursuant to such arbitration shall be final and may be entered in any court having jurisdiction thereof.

11.6.6 Attorneys' Fees. Except as specifically provided for in this Declaration or the Bylaws, no party in the arbitration, mediation or other proceeding shall be entitled to recover costs or attorneys' fees in connection therewith. This provision does not apply to enforcement actions by the Association or the ARC, for which prevailing party attorney fees and costs shall be recoverable.

Section 11.7 Pronouns

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

Section 11.8 Headings

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

Section 11.9 Application of Planned Community Act

The applicable provisions of the Oregon Planned Community Act, ORS 94.550 to 94.783, shall apply to the Property and this Declaration.



EXHIBIT "A"

PROPERTY SUBJECT TO DECLARATION

Lots 1 through 40, inclusive, Tracts C, D, E and F, and the streets, as shown on the duly recorded plat of Wilder, Phase 1, located in the City of Newport, Lincoln County, Oregon, according to the plat thereof recorded in the official plat records of Washington County, Oregon on June 21, 2010 at Book 18, Page 46, 46A-B.



EXHIBIT "B"

BYLAWS

**BYLAWS  
OF  
WILDER HOMEOWNERS' ASSOCIATION, INC.**

After Recording Return to:  
Landwaves, Inc.  
PO Box 12085  
Portland, Oregon 97212

**BYLAWS  
OF  
WILDER HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I  
NAME AND LOCATION**

The name of the Association is Wilder Homeowners' Association, Inc., hereinafter referred to as the "Association." The initial registered office of the Association shall be located at 1733 NE 7<sup>th</sup> Avenue, Portland, Oregon 97212, but meetings of the Members and Board may be held at such places within the State of Oregon as provided in these Bylaws.

**ARTICLE II  
DEFINITIONS**

2.1 "Articles" mean the Articles of Incorporation of the Association filed with the Corporation Division of the Oregon Secretary of State incorporating the Association under the Oregon Nonprofit Corporation Act and all amendments thereto.

2.2 "Association" shall have the meaning given in the introductory paragraph to these Bylaws.

2.3 "Board" means the Board of Directors of the Association constituted in accordance with Article IV of these Bylaws.

2.4 "Bylaws" mean these Bylaws of Wilder Homeowners' Association, Inc., as amended from time to time. The Bylaws were adopted pursuant to ORS 94.625 and shall be recorded in the official records of Lincoln County, Oregon.

2.5 "Common Property" means those portions of the Property which are owned by the Association for the common benefit of the Owners, as designated as such in the Declaration or depicted as such on the Plat or any amendment thereof.

2.6 "Conversion Date" means the date upon which Class B membership in the Association shall cease and be converted to Class A membership, as identified in the Declaration.

2.7 "Declarant" shall mean Landwaves, Inc., an Oregon corporation, its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by the successor or assign.

2.8 "Declaration" means the Declaration of Protective Covenants, Conditions and Restrictions for Wilder being recorded concurrently with these Bylaws and any amendments or supplements thereto made in accordance with its terms.

2.9 “Director” means each member of the Board as described in and appointed or elected in accordance with Article IV or Article VI of these Bylaws.

2.10 “Lot” shall have the meaning given in the Declaration.

2.11 “Member” means each member of the Association, which shall include every Owner of a Lot. There shall be two (2) classes of membership in the Association, Class A and Class B, as described in Section 3.3 of these Bylaws.

2.12 “Officer” means each officer of the Association as described in and elected in accordance with Article X of these Bylaws.

2.13 “Owner” shall have the meaning given in the Declaration.

2.14 “Plat” means the Plat for Wilder recorded in the subdivision plat records of Lincoln County, Oregon on June 21, 2010 at Book No. 18, Pages 46, 46A-B and all amendments thereto.

2.15 “Property” shall have the meaning given in the Declaration.

2.16 “Rules and Regulations” shall have the meaning given in the Declaration.

2.17 “Turnover Meeting” means the meeting of the Owners called by Declarant pursuant to these Bylaws to turn over control of the Association to the Class A Members.

2.18 Other Terms. Any other capitalized term used in these Bylaws and not otherwise defined herein shall have the meaning given to such term in the Declaration.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner of a Lot, including Declarant, shall be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Such membership shall commence, exist, and continue simply by virtue of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership. There shall be two classes of membership, Class A and Class B, as described in the Declaration.

3.2 Suspension. All voting rights of a Member shall be suspended during any period in which the Member is delinquent in the payment of any assessment duly established pursuant to the Declaration or is otherwise in default under these Bylaws, the Declaration or the Rules and Regulations. The Board may also suspend a Member’s right to use of any of the Common Property during such period of default.

**ARTICLE IV**  
**BOARD OF DIRECTORS; ELECTION; TERM OF OFFICE**

4.1 Number and Qualifications. The affairs of the Association shall be managed by the Board. The Board shall consist of one (1) to three (3) Directors prior to the Turnover Meeting and five (5) Directors after the Turnover Meeting. All Directors must be individuals. The Directors need not be Members prior to the Turnover Meeting, but shall be Members after the Turnover Meeting; 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 4.1 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 4.1. An individual serving on the Board as a representative or fiduciary of a Member in accordance with this Section 4.1 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 4.1.

4.2 Appointment by Declarant Prior to 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 4.3 and Article VI, subject, however, to the terms of the Declaration. Voting for Directors shall not be cumulative.

4.3 Election of Directors.

4.3.1 At the Turnover Meeting, the Members shall elect two (2) Directors for a term of one (1) year, two (2) Directors for a term of two (2) years, and one (1) Director for a term of three (3) years, with each Member entitled to the votes specified in Article III above. The candidate receiving the highest vote total shall serve the 3-year term, the candidates receiving the second and third highest vote totals shall serve the 2-year terms and the candidates receiving the fourth and fifth highest vote totals shall serve 1-year terms. In the event of a tie in the number of votes, Declarant shall determine which candidates shall serve which terms. Notwithstanding the foregoing, in the event that the Commercial Lot Director is to be elected at the Turnover Meeting, the Commercial Lot Director shall serve one of the 1-year terms. At each annual meeting of the Association following the Turnover Meeting, the Members shall elect a number of

Directors equal to the number whose terms are then expiring, each to serve a term of two (2) years. Any Director may serve more than one (1) term.

**4.3.2** From and after the Turnover Meeting, one Director slot shall be reserved for Commercial Lot Owners. After the Turnover Meeting, and unless and until there is a Commercial Lot subjected to this Declaration, the Commercial Lot Director slot may be filled by any Director elected by all Owners in the same manner that all other Directors are elected pursuant to Section 4.3.1. At the first annual meeting of the Members to occur after the first Commercial Lot is subjected to the Declaration, the Commercial Lot Owners shall have the right to elect the Commercial Lot Director. If there is no Board vacancy at the time of such annual meeting, then the newly elected Commercial Lot Director shall replace the Director who was elected most recently, and if more than one Director was elected at the same time, then the Commercial Lot Director shall replace the Director who received the least number of votes at the most recent election. Prior to the Turnover Meeting, Declarant shall have no obligation to appoint a Commercial Lot Director.

**4.4** Term of Office. On the date of the Turnover Meeting, the Directors appointed by Declarant or its appointee shall submit their resignations effective as of the date of the Turnover Meeting. A Director elected at any meeting held for the purpose of election of Directors shall assume all of the duties of office effective as of the date of the meeting at which he or she is elected, at which time the resignation of the Directors in office prior to such meeting shall become effective, and they shall have no further powers as Directors.

**4.5** Removal. Any Director, other than a Director appointed by Declarant, may be removed, with or without cause, by the affirmative majority vote of the Members present and 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 was 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; provided, however, if the removed Director is the Commercial Lot Director, then the Commercial Lot Members shall elect the replacement Commercial Lot Director to serve the remainder of the removed Director's term.

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

**4.7** 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, except that a vacancy in the position of Commercial Lot Director must be filled by a Commercial Lot Owner or an owner, member, officer, director, partner or employee of a Commercial Lot Owner. 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 4.5 above shall be filled in accordance with the procedures set forth in Section 4.5 above.

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

## ARTICLE V MEETINGS OF BOARD

5.1 Annual Meetings. The Board shall meet at least annually within thirty (30) days after each annual meeting of the Members. At each annual meeting, in addition to the actions required by the Declaration, 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.

5.2 Special Meetings. 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 at least two (2) but not more than 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 pursuant to Section 10.2 or to consider removal of the secretary pursuant to Section 10.5, 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.

5.3 Place of Meetings. Meetings of the Board shall be held at the principal office of the Association or at such other suitable and convenient place within the general vicinity of Newport, Oregon as may be designated from time to time by the Board.

5.4 Notice of Meetings. 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 such meeting, stating the purpose, time, and place of the meeting. All notices to Directors shall be given in accordance with the notice provisions set forth in Section 18.1. Notice of any meeting may be waived by a 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. All meetings of the Board shall be open to the Members, except for matters allowed by law to be considered in executive session. Except in emergencies, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the president shall state the general nature of the action to be considered and when and under what circumstances the deliberations can be disclosed to 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. For other than

emergency meetings, notice of Board meetings shall be: (i) sent to the Members not less than ten (10) days before the meeting; (ii) posted at a place or places on the Property at least three (3) days prior to the meeting; or (iii) provided by a method otherwise reasonably calculated to inform the Members of the meeting. Emergency meetings may be held without notice, if the reason for the emergency is stated in the minutes of the meeting. Only emergency meetings of the Board may be conducted by telephonic communication or by the use of a means of communication permitted by ORS 94.640(8). For a period of ten (10) years following the Turnover Meeting, notice of each Board meeting (other than emergency meetings) shall also be given to Declarant at least ten (10) days prior to the meeting in accordance with the notice provisions set forth in Section 18.1 and Declarant and/or its representatives shall have the right to attend and participate in all such Board meetings.

5.5 Voting by the Board. Each Director shall have one (1) vote. All voting rights of a Director shall be suspended during any period in which the Director, or the Member for which the Director serves in a representative or fiduciary capacity in accordance with Section 4.1 above, is delinquent in the payment of any assessment, charge or other amount duly established pursuant to the Declaration or is otherwise in default under the Declaration, these Bylaws or the Rules and Regulations. So long as a quorum is constituted, the vote of Directors together holding more than fifty percent (50%) of the total votes of the Board entitled to be cast shall be a binding vote of the Board for all purposes, unless a greater percentage is required by the Declaration, these Bylaws or any other applicable law or regulation. 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.

5.6 Quorum. 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 and reconvene a meeting in accordance with Section 5.5 above even if less than a quorum is present.

5.7 Action of Board 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 minutes of the Association.

## ARTICLE VI NOMINATION AND ELECTION OF DIRECTORS

6.1 Nomination. At and following the Turnover Meeting, nomination for election to the Board shall be made by a nominating committee (the "Nominating Committee"). Nominations may also be made from the floor at the annual meeting. The Nominating



Committee shall consist of a chairman, who need not be a Director prior to the Turnover Meeting, but who shall be a Director following the Turnover Meeting, and two (2) or more Members or Directors. The Nominating Committee shall be appointed by the Board prior to the Turnover Meeting to nominate Directors to be elected at the Turnover Meeting. Thereafter, a Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members to make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

6.2 Election. Election to the Board shall be by secret written ballot cast at the annual meeting of the Members. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles and these Bylaws. The person(s) receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VII POWERS AND DUTIES OF THE BOARD**

7.1 Powers. The Board shall have the power:

(a) To adopt and publish the Rules and Regulations governing the use of the Lots and Common Property and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) To exercise for the Association all power, duties and authority vested in or delegated to the Association and not reserved for the Members by other provisions of these Bylaws, the Articles or the Declaration;

(c) To declare the office of a Director to be vacant if the Director is absent from three (3) consecutive regular meetings of the Board without just cause having been furnished to and accepted by the Board;

(d) To establish, disburse and maintain such funds as necessary to carry out the functions of the Association pursuant to these Bylaws, the Declaration and the Articles;

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

(f) To exercise those powers delegated to the Board under the Declaration and the Articles;

(g) To exercise the powers of a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act and the powers of an Association pursuant to the Oregon Planned Community Act, as such laws may be amended from time to time; and

(h) To exercise any additional or different powers necessary or desirable for the purpose of carrying out the functions of the Association pursuant to these Bylaws, the Declaration or the Articles or otherwise promoting the general benefit of the Members.

7.2 Duties. It shall be the duty of the Board:

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

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

(c) To establish assessments and to assess the Members for the same, in accordance with the Declaration and these Bylaws;

(d) To procure and maintain adequate liability and hazard insurance with respect to the Common Property owned and/or maintained by the Association as described in Article XIV and, if deemed appropriate, insurance on the behalf of any Director, Officer, employee, or agent of the Association against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such;

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

(f) To cause the Common Property, if any, to be maintained;

(g) To the extent the Declaration obligates the Association to do the same or the Board deems it to be in the best interests of the Association, to cause the Common Maintenance Areas to be maintained;

(h) To maintain a current mailing list of the Association;

(i) To annually adopt a budget for the Association with respect to the management and operation of the Property. Within thirty (30) days after adopting the annual budget, the Board shall provide a summary of the annual budget to all Owners; and

(j) To perform all duties of the Association and the Board as set forth in the Declaration, the Articles, or these Bylaws.

## **ARTICLE VIII COMMITTEES**

8.1 Committees. In addition to the Architectural Review Committee required to be established pursuant to the Declaration, the Nominating Committee and the Transitional Advisory Committee (as defined in Section 8.3 below), the Board may appoint such additional committees as deemed appropriate in carrying out its purposes.

8.2 Committee Function. It shall be a function of each committee to receive complaints from the Members 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.

8.3 Transitional Advisory Committee. Declarant or the Members shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition of administrative responsibility for the Association from Declarant to the Members. Not later than the sixtieth (60th) day after Declarant has conveyed to the Members other than a successor Declarant, Lots representing fifty percent (50%) or more of the Lots in the Property, Declarant shall call a meeting of the Members for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three (3) or more committee members. The Members, other than Declarant, shall select two (2) or more committee members. Declarant may select no more than one (1) committee member. The Transitional Advisory Committee shall have reasonable access to all information and documents that Declarant is required to turn over to the Association under the Oregon Planned Community Act. If Declarant does not call a meeting of the Members for the purpose of selecting the Transitional Advisory Committee, any Member may do so. If the Members do not select committee members for the Transitional Advisory Committee, Declarant shall have no further obligation to form the Transitional Advisory Committee. The requirement for a Transitional Advisory Committee shall not apply once the Turnover Meeting has been held.

## **ARTICLE IX MEETINGS OF MEMBERS**

9.1 Annual Meetings. A meeting of the Members shall be held annually. The first annual meeting of the Members shall be held within one (1) year from the date of adoption of these Bylaws 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. Subject to the foregoing, the date and time of the annual meeting shall be set by the secretary. If the date set for the annual meeting is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday. 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. The first annual meeting of the Members held for the purpose of electing Directors shall be the Turnover Meeting.

9.2 Special Meetings. Special meetings of the Members may be called at any time by the president, by a majority of the Board, 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 the 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.

9.3 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 the general vicinity of Newport, Oregon as may be designated in the notice for the meeting.

9.4 Notice of Meetings. Except as otherwise provided in these Bylaws, written notice of each meeting of the Members shall be sent by, or at the direction of, the secretary or person authorized to call the meeting, to each Member entitled to vote at the meeting at least ten (10) days but not more than fifty (50) days before the meeting. The notices shall be given in accordance with the notice provisions set forth in Section 18.1 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 a 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. For a period of ten (10) years following the Turnover Meeting, notice of each meeting of the Members shall also be given to Declarant at least ten (10) days prior to the meeting in accordance with the notice provisions set forth in Section 18.1 and Declarant and/or its representatives shall be entitled to attend and participate in all such meetings.

9.5 Quorum. The presence at any Member meeting (other than the Turnover 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. For purposes of the Turnover Meeting, the presence 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-fifth (1/5) of the outstanding votes of the Association shall constitute a quorum. 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.

9.6 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 of the Association and in compliance with all other proxy requirements of the Oregon Planned Community Act. Proxies may only be revoked upon the giving of actual notice of revocation to the person presiding over the meeting of the Members 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.

9.7 Majority Vote; Withdrawal of Quorum. The vote of (i) 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 or (ii) more than fifty percent (50%) of the votes cast by written or electronic ballot pursuant to Section 9.9 below shall be binding upon all Owners 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. 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.

9.8 Turnover Meeting. Declarant shall call a Turnover Meeting within ninety (90) days following the Conversion Date for the purposes of turning over control of the Association to the Class A Members. The Turnover Meeting shall be conducted in accordance with Article XVII of these Bylaws.

9.9 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 ballot if the procedures set forth in ORS 94.647 are followed. For votes of the Members by written ballot, the Board shall provide the Members with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. The notice shall state the general subject matter of the vote by written ballot, the right of Members to request secrecy procedures as specified in 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 written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Members petition the Board requesting secrecy procedures, a written ballot must be accompanied by a

secrecy envelope, a return identification envelope to be signed by the Member, and instructions for mailing and returning the ballot. The secrecy procedures and the requirement to provide a secrecy envelope and return identification envelope shall not apply to the written ballot of a Member if the consent or approval of that particular Member is required under these Bylaws, the Declaration or the Oregon Planned Community Act. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed. All written 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 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 written ballots for counting. Any vote that may be conducted by written ballot may also be conducted by electronic ballot subject to the procedures and requirements set forth in the Oregon Planned Community Act for electronic ballots. An electronic ballot shall mean any ballot 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 was 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 was held to authorize the action. Notwithstanding the foregoing, action by written or electronic ballot may not substitute for: (i) the Turnover Meeting; (ii) the annual meeting of the Association; (iii) a meeting of the Association if the agenda includes a proposal to remove a Director; or (iv) a special meeting of the Association called at the request of the Members under ORS 94.650(2).

## **ARTICLE X OFFICERS AND THEIR DUTIES**

10.1 Enumeration and Qualification of Officers. The Officers shall be a president and a vice-president, who shall at all times be Directors, a secretary, and a treasurer. All Officers must be individuals. The Officers need not be Members prior to the Turnover Meeting, but shall be Members after the Turnover Meeting; 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 10.1 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 10.1. Any Officer serving in a representative or fiduciary capacity of a Member in accordance with this Section 10.1 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 10.1.

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

10.3 Term. The Officers shall be elected annually by the Board and shall hold office for one (1) year unless an Officer shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

10.4 Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

10.5 Resignation and Removal. Any Officer may be removed from office, with or without cause, by the Board and a successor may be elected at a special meeting of the Board called for such purpose. Any Officer may resign at any time by giving notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified in the resignation notice. Acceptance of the resignation shall not be necessary to make it effective.

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

10.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 10.4 above.

10.8 Duties. The duties of the Officers are as follows:

(a) President. The president shall be a Director and shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds, and other written instruments and shall co-sign (together with either the vice-president or treasurer) all checks in an amount over Five Thousand Dollars (\$5,000), payment vouchers, and promissory notes of the Association.

(b) Vice-President. The vice-president shall be a Director and shall act in the place and stead of the president in his or her absence or inability or refusal to act, shall co-sign (together with either the president or treasurer) all checks in an amount over Five Thousand Dollars (\$5,000), payment vouchers, and promissory notes of the Association and shall exercise and discharge such other duties as may be required of him or her by the Board.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, keep the corporate seal of the

Association and affix it on all papers requiring said seal, serve notice of meetings of the Board and of the Members, keep appropriate current records identifying the Members together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board, shall co-sign (together with either the president or vice-president) all checks in an amount over Five Thousand Dollars (\$5,000), payment vouchers, and promissory notes of the Association, keep proper books of account, cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year in accordance with Section 12.3 if required by ORS 94.670(4) and shall prepare an annual budget and a statement of income and expenditures to be adopted by the Board and presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

10.9 Check-Signing Authority. The Officers may delegate the signing of checks in an amount less than Five Thousand Dollars (\$5,000) each to a professional property manager, if the Association has a contract with such property manager for professional management of the Association. Otherwise, all checks in an amount less than Five Thousand Dollars (\$5,000) shall be signed by the president, vice-president or treasurer.

10.10 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.

10.11 Suspension of Powers and Duties. All powers and duties of an Officer shall be suspended during any period in which the Officer, or the Member for which the Officer serves in a representative or fiduciary capacity in accordance with Section 10.1 above, is delinquent in the payment of any amount duly established pursuant to the Declaration or is otherwise in default under the Declaration, these Bylaws or the Rules and Regulations.

## ARTICLE XI ASSESSMENTS

The Association shall levy, collect, and enforce the payment of assessments in accordance with Article III of the Declaration and other relevant provisions of the Declaration. The amount of the annual assessments shall be based on an annual budget adopted by the Board after consideration of the current and future maintenance, repair and replacement costs and other needs of the Association. The Board shall have the authority to amend the budget and adjust the amount of the regular annual assessments during any assessment period upon not less than thirty (30) days written notice to the Members. Additionally, the Board may increase the amount of the regular annual assessments from year to year based on the needs of the Association.



## ARTICLE XII BOOKS AND RECORDS

12.1 Books and Records. The books and records of the Association required to be maintained by the Oregon Planned Community Act (except for those items which are exempt from disclosure under ORS 94.670) shall at all times, during reasonable business hours, be subject to inspection by any Member. The Articles, the Declaration and these Bylaws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

12.2 Financial Records. The Association shall keep correct and complete books and records of account 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 giving the names and addresses of the Directors. All books and records of the Association may be inspected by any Member or Director, or his or her agent or attorney, for any proper purpose at any reasonable time (except for those items which otherwise may be exempt from disclosure under ORS 94.670).

12.3 Financial Statements. Within ninety (90) days after the end of each fiscal year, the Board shall distribute to each Member and, upon request, any mortgagee 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 the annual assessments of the Association exceed Seventy-Five Thousand Dollars (\$75,000) for the year (or such other thresholds as may be established by Oregon law from time to time), then the Board shall cause such 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, *provided, however*, the Board need not cause such a review to be performed if so directed by an affirmative vote of at least sixty percent (60%) of the Members, not including votes of Declarant with respect to Lots owned by Declarant. If the annual assessments of the Association are Seventy-Five Thousand Dollars (\$75,000) or less (or such other thresholds as may be established by Oregon law from time to time), then the Board shall cause such review to be performed within one hundred eighty (180) days after receipt of a petition requesting such review signed by at least a majority of Members. The terms of this Section 12.3 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.

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

12.5 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

regular 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 need not provide the amount of assessments due as provided herein (i) if the Association has commenced litigation by filing a complaint against the Member and (ii) the litigation is pending when the statement would otherwise be due.

12.6 Declarant Review and Inspection Rights. For a period of ten (10) years following the date of the Turnover Meeting, Declarant shall have the right to inspect and make copies of all books and records of the Association, including without limitation: (i) these Bylaws, the Declaration, the Articles, the Rules and Regulations and all amendments thereto; (ii) all operating budgets, financial statements, reserve studies and maintenance plans; and (iii) all inspection and maintenance records.

### **ARTICLE XIII FISCAL YEAR**

The fiscal year of the Association shall begin on the first (1<sup>st</sup>) day of January and end on the thirty-first (31<sup>st</sup>) day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

### **ARTICLE XIV INSURANCE**

14.1 By the Association. The Board shall cause the Association to obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, (i) public liability insurance with respect to all Common Property, and, if deemed appropriate by the board, with respect to any Common Maintenance Areas or Improvements maintained by the Association, in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons, and property damage, whether caused by the negligence of the Association or otherwise; provided, however, that such policy(ies) shall not be for an amount of less than One Million Dollars (\$1,000,000.00) per person, per occurrence, and that such policy(ies) shall provide that the coverage thereunder cannot be canceled or substantially modified without at least ten (10) days' written notice to the Association; and (ii) hazard insurance for all insurable Improvements in the Common Property or otherwise owned by the Association sufficient to cover the full replacement costs or any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost. The insurance coverage obtained by the Association may not be brought into contribution with insurance obtained by any of the Members or their mortgagees. Any insurance policy obtained by the Association shall identify the Association as the named insured. The insurance policies obtained by the Association may contain reasonable deductibles, provided that, except as otherwise allowed by law, no such deductible shall exceed the greater of: (i) the maximum deductible acceptable to the Federal National Mortgage Association; or (ii) Ten

Thousand Dollars (\$10,000), and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals at least the required full replacement cost.

14.2 By the Members. Each Member is encouraged to 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 the Member's Lot and fire and extended coverage casualty insurance with respect to all Improvements located on the Member's Lot in an amount equal to one hundred percent (100%) of the replacement cost thereof. Each Member shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to the Member's personal property, if such Member elects to do so. No Member shall be obligated to obtain any of the insurance coverages described in this Section or in Section 14.1 above, nor shall any insurance coverage obtained by a Member (or such Member's mortgagee) be brought into contribution with insurance obtained by the Association.

14.3 Director and Officer 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.

14.4 General Provisions. The Board may obtain any other policies of insurance that it deems reasonable or necessary. Premiums for insurance obtained by the Board on behalf of the Association pursuant to this Article XIV shall be a common expense of the Association. Allocation of responsibility for the payment of any deductibles on the insurance policies obtained on behalf of the Association shall be prescribed by resolution adopted by the Board. At least every two (2) years, the Board shall review the insurance coverage of the Association. If available on commercially reasonable terms, the Board shall obtain insurance policies with the provisions specified in ORS 94.690 and with an "inflation guard" endorsement.

## **ARTICLE XV RULES AND REGULATIONS**

The Board shall have power to adopt and publish Rules and Regulations governing the conduct of persons and the operation and use of the Lots and Common Property as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property, and to establish penalties for the infraction thereof. The Rules and Regulations may be adopted upon a majority vote of the Board at a meeting called for such purpose. Notice of the meeting shall be given in accordance with Section 5.4 above and shall include a verbatim copy of all proposed Rules and Regulations. Upon the adoption of any Rules and Regulations, the Board shall cause copies thereof to be delivered to each Member in accordance with the notice provisions of Section 18.1. All Rules and Regulations adopted by the Board shall be binding on the Members and all other occupants of the Lots upon the effective date of delivery of a copy of

the adopted Rules and Regulations to the Members as provided herein. Rules and Regulations that conflict with these Bylaws or the Declaration shall be null and void.

## **ARTICLE XVI 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 Members. Notwithstanding the foregoing, the Association may reimburse the Directors and Officers for certain out-of-pocket expenses incurred on behalf of the Association as provided elsewhere in these Bylaws, but the Directors and Officers shall not be entitled to any other form of compensation.

## **ARTICLE XVII TRANSFER OF CONTROL; TURNOVER MEETING**

17.1 Turnover Meeting. On a date that is not later than ninety (90) days following the Conversion Date, Declarant shall call the Turnover Meeting. Declarant shall give notice of such meeting to each Member in accordance with Section 9.4 above. 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 and the election of new Directors by the Members. If Declarant does not call the Turnover Meeting required by this Section 17.1 within the required period, any Member may call the Turnover Meeting and give notice of the Turnover Meeting as required by this Section 17.1. At the Turnover Meeting: (a) Declarant shall relinquish control of the administration of the Association 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.

17.2 Estoppel Certificate. Within ninety (90) days after the date of the Turnover Meeting, the Board shall execute, acknowledge and deliver to Declarant on behalf of the Association and its Members a certificate certifying that Declarant has fulfilled all of its obligations under these Bylaws, the Declaration, the Oregon Planned Community Act and any other applicable law, or if the Board believes that Declarant has not fulfilled certain obligations, specifying those obligations which the Board believes Declarant has not fulfilled. If the Board fails to deliver the certificate within ninety (90) days following the date of the Turnover Meeting, then Declarant shall be deemed to have fulfilled all such obligations.

## **ARTICLE XVIII NOTICES**

18.1 Notices. All notices given to a Member or a Director under these Bylaws, the Declaration, the Articles, the Oregon Planned Community Act or any other applicable law or

statute 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 Oregon Planned Community Act. Notices delivered by messenger service (or hand delivery), overnight courier service or regular U.S. Mail shall be sent to each Member's mailing address last appearing on the books of the Association. Notices delivered by facsimile or email shall be sent to the Member's 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 or Director 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.

18.2 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.

## **ARTICLE XIX AMENDMENTS**

Except as expressly provided in the Declaration, these Bylaws may be amended or repealed and new Bylaws may be adopted by a majority of the Board present at any regular meeting or at any special meeting without the approval of the Members, if at least two (2) days' prior written notice is given to the Members of the Board's 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 or terms of Directors without the approval of a majority of the Members given at a special meeting called for such purpose. In addition, except for the amount of assessments and level of maintenance, any amendment that imposes an additional disproportionate burden upon or takes away or impairs an existing right particular to any one Lot or group of like-affected Lots shall require the vote of seventy-five percent (75%) of the Members who own the affected Lots. An amendment shall not be 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 acknowledgement of deeds, and recorded in the office of the recording officer of Lincoln County, Oregon.

## **ARTICLE XX GENDER AND GRAMMAR**

The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

## **ARTICLE XXI ENFORCEMENT**

If the Association institutes legal action to enforce any restrictive covenant or other condition of the Declaration, the Articles or these Bylaws, and the violator voluntarily corrects or abates such violation after litigation has been filed, the Association shall not dismiss or abandon such legal action until it has been reimbursed all of its expenses, including reasonable attorneys' fees and court costs.

## **ARTICLE XXII LOANS TO DIRECTORS AND OFFICERS PROHIBITED**

22.1 No Loans to Directors or Officers. The Association shall not make any loans to the Directors or Officers. The Directors who vote for or assent to the making of a loan to a Director or Officer, and any Officer or 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.

22.2 Contribution; Subrogation. Any Director against whom a claim is asserted under or pursuant to this Article XXII 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.

## **ARTICLE XXIII DISPUTE RESOLUTION**

Before initiating litigation or an administrative proceeding in which the Association and a Member have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to resolve the problem through a dispute resolution program pursuant to ORS 94.630(4).

## **ARTICLE XXIV CONFLICTS AND PARTIAL INVALIDITY**

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



WTE ACCO 20141104



I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



AFTER RECORDING, RETURN TO:  
Wilder Homeowners' Association, Inc.  
2712 SE 20th Avenue  
Portland, OR 97202

**FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR WILDER SUBDIVISION**

**THIS FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR WILDER SUBDIVISION** (this "Amendment") is executed as of May 15, 2014, by Landwaves, Inc., an Oregon corporation ("Declarant"), and Wilder Homeowners' Association, Inc., an Oregon nonprofit corporation (the "Association").

**RECITALS**

- A. Declarant recorded the Declaration of Protective Covenants, Conditions and Restrictions for Wilder Subdivision in the official records of Lincoln County, Oregon on July 30, 2010 as Document No. 2010-07750 (the "Original Declaration").
- B. The Original Declaration benefits and burdens certain real property located in the City of Newport, Lincoln County, Oregon and legally described on the attached Exhibit A.
- C. The Original Declaration provides for the formation of separate projects within the Property, but only if separate subassociations are formed for the projects and separate subassociation governing documents are adopted for the projects.
- D. A separate subassociation was formed and separate subassociation governing documents were adopted for Lots 8 through 17, inclusive, and Tracts C, D, E and F, as shown on the plat of Wilder Phase 1 recorded in the official plat records of Lincoln County, Oregon on June 21, 2010, in Book 18 at Pages 46, 46A and 46B ("Wilder Phase 1 Cottages").
- E. The Owners of the Lots within Wilder Phase 1 Cottages wish to dissolve the separate subassociation formed for Wilder Phase 1 Cottages and to terminate the separate subassociation governing documents for Wilder Phase 1 Cottages, but to have Wilder Phase 1 Cottages remain as a separate project within the Property to be known as the "Ellis Street Cottages."
- F. Declarant and the Association desire to amend the Original Declaration to: (i) allow for the formation of separate projects within the Property without the formation of separate subassociations or the adoption of separate subassociation governing documents; (ii) to confirm the creation of the Ellis Street Cottages as a separate project within the Property; and (iii) to clarify certain other matters regarding the establishment, management, administration and governance of separate projects within the Property.

**Recorded by Western Title as an accommodation only. No liability accepted for condition of title or validity, sufficiency or affect of document.**



## AMENDMENT

NOW, THEREFORE, the Original Declaration is hereby amended as follows:

1. Definitions. The following definitions shall apply when used in this Amendment:
  - 1.1 “Declaration” means the Original Declaration, as amended by this Amendment and any further amendments or supplements to the Original Declaration made in accordance with the terms thereof.
  - 1.2 “Project” means any portion of the Property comprised of discrete types of development, use or ownership and designated as a “Project” by Declarant in the Declaration or a Declaration of Annexation.
  - 1.3 “Project Assessments” means assessments levied against the Units within a Project by the Association to fund Project Expenses pursuant to the Declaration or a Declaration of Annexation.
  - 1.4 “Project Association” means an owners association formed pursuant to Section 2.3 below for the management, administration and governance of a Project in accordance with the Project Documents for the Project.
  - 1.5 “Project Committee” means a committee appointed or elected for a Project pursuant to Section 2.4 below.
  - 1.6 “Project Common Areas” means the areas within a Project restricted, in whole or in part, to common use primarily by or for the benefit of the Owners of the Units within the Project and their families, tenants, employees, guests and invitees.
  - 1.7 “Project Common Maintenance Areas” means the Project Common Areas and any other portion of a Project which the Association is required to maintain, repair, replace, operate and insure pursuant to the Declaration or a Declaration of Annexation.
  - 1.8 “Project Documents” means any separate declaration of covenants, conditions and restrictions, bylaws, articles of incorporation and other governing documents for a Project, and all amendments thereto.
  - 1.9 “Project Expenses” means those costs and expenses incurred by the Association in connection with the ownership, administration, management, maintenance, repair, replacement, improvements, insurance and other activities for the Project Common Maintenance Areas, together with any other expenses designated as such in the Declaration or a Declaration of Annexation, and including such reserves as the Board may deem appropriate from time to time.
  - 1.10 Other Defined Terms. Other capitalized terms used in this Amendment and not defined herein shall have the meanings given to such terms in the Original Declaration.

## 2. Creation and Administration of Projects.

2.1 Creation of Projects. The Property may contain one or more Projects, each of which may contain areas that have common development, uses or ownership, have access to certain Project Common Areas, or share other common characteristics as determined by Declarant. Declarant reserves the right to designate which portions of the Property shall constitute a Project. Projects need not comprise the entirety of the Property, nor must all Units be part of a Project. A Project may be comprised of more than one housing or building type. Projects may include noncontiguous portions of the Property. The designation of any portion of the Property as a Project shall be approved by all of the Owners of the Property to be included in the Project and Declarant and shall be confirmed in the Declaration or a Declaration of Annexation. As long as Declarant owns any portion of the Property, Declarant shall have the right, at its sole option, but no obligation, to annex additional portions of the Property into any Project. The annexation shall be approved by Declarant and the Owner(s) of the additional portions of the Property to be annexed into the Project. The annexation shall be evidenced by a Declaration of Annexation. If additional property is annexed into a Project, then the Project Assessments shall be reallocated among all of the Lots within the Project that are subject to assessment from the date of annexation.

2.2 Project Documents. Project Documents may be adopted for a Project at any time upon the affirmative vote of at least seventy-five percent (75%) of the Owners of Units within the Project and the approval of the Board. Additionally, the written consent of Declarant shall be required for the adoption of any Project Documents prior to the Turnover Meeting. The Project Documents for a Project may impose additional or different covenants, conditions, restrictions, easements, rules or regulations with respect to the Property included within the Project, which may supplement, but not supersede, the provisions in the Association Documents (as defined in Section 2.7 below).

2.3 Project Associations. The establishment of a Project may be accompanied by the formation of a Project Association. Project Associations shall be Oregon nonprofit corporations with memberships comprised of the Owners of the Units within the Project. A Project Association may be established for a Project at any time upon the affirmative vote of at least seventy-five percent (75%) of the Owners of Units within the Project and the approval of the Board. Additionally, the written consent of Declarant shall be required for the formation of any Project Association prior to the Turnover Meeting. At the time a Project Association is formed, or at any time thereafter, Declarant or the Board may delegate to the Project Association certain of their respective rights and obligations under the Declaration or any applicable Declaration of Annexation with respect to the portion of the Property included in the Project. Such rights and obligations may include, without limitation, the obligation to maintain the Project Common Maintenance Areas within the Project, establish and enforce Rules and Regulations pertaining to the Project, levy and collect Project Assessments, and hold title to and administer, manage, operate and insure property and/or easements located within the Project. Certain rights and obligations with respect to matters affecting more than one Project may be delegated by Declarant or the Board to the Project Associations for each of the affected Projects.

2.4 Project Committees. With respect to any Project that does not have a Project Association, the Board may appoint a committee for the Project composed of up to three

(3) Owners of Units within the Project (the "Project Committee"). The Project Committee shall be responsible for recommending to the Board any Rules and Regulations exclusively pertaining to the Project Common Areas within the Project, advising the Board on decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of the Project Common Maintenance Areas within the Project, and for such other matters pertaining to the Project as the Board may elect to delegate to the Project Committee.

## 2.5 Project Common Areas and Project Common Maintenance Areas.

2.5.1 Initial Designation and Ownership of Project Common Areas. Any Project Common Areas shall be designated as such in the Declaration, a Declaration of Annexation or the Project Documents. The Project Common Areas within a Project may be owned in common by the Owners of the Units within the Project, the Project Association or the Association. The manner of ownership of the Project Common Areas shall be confirmed in the Declaration, a Declaration of Annexation or the Project Documents. The Project Common Areas shall constitute "common property" as that term is defined in ORS Chapter 94 and used in the Original Declaration.

2.5.2 Use and Enjoyment of Project Common Areas. Project Common Areas within a Project shall be reserved, in whole or in part, for the common use primarily by or for the benefit of the Owners of the Units within the Project and their families, tenants, employees, guests and invitees. Notwithstanding the foregoing and subject to the prior approval of a majority of the voting rights of the Owners of Units within the Project in which the Project Common Areas are located, the Association may permit the Owners of Units not located within the Project to use all or a portion of such Project Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Project Expenses incurred in connection with the Project Common Areas.

2.5.3 Maintenance of Project Common Maintenance Areas. The Association shall be responsible for maintaining, repairing, replacing, operating and insuring the Project Common Maintenance Areas on behalf of the Owners of the Units within the Project unless such responsibility is delegated to the Project Association for the Project. The Project Common Maintenance Areas shall be maintained in a good and workmanlike manner such as to render them fit for the purposes for which they are intended and in compliance with all applicable laws. The Project Common Maintenance Areas shall constitute Common Maintenance Areas as that term is defined in the Original Declaration.

## 2.6 Project Assessments.

2.6.1 Authority of Association to Levy and Collect Project Assessments. The Association is authorized to levy Project Assessments against all of the Lots within a Project to fund the Project Expenses for the Project. Project Assessments shall be paid by Owners of the Lots within a Project in advance in monthly, quarterly or annual installments, as determined by the Board. The rate at which each Lot within a Project will be assessed for Project Expenses, and whether the Project Assessments shall be payable monthly, quarterly or annually, shall be determined by the Board at least thirty (30) days in advance of each assessment period. The rate of the Project Assessments may be adjusted from time to time by the Board as the needs of the

Association may, in the judgment of the Board, require, subject to the restrictions set forth in Section 2.6.2 below. The Project Assessments levied against each Lot within a Project shall be uniform unless the Board determines that a particular Project Expense benefits some, but not all, of the Lots within the Project, in which case the Board may levy Project Assessments for that particular Project Expense uniformly against the Lots benefiting from the Project Expense. Each Lot within a Project shall first become subject to Project Assessments on the earlier to occur of: (a) the date on which the Lot is conveyed to an Owner other than Declarant or a successor Declarant or (b) the date on which the Unit on the Lot is first occupied for residential use, as to a Residential Lot, or for commercial use, as to a Commercial Lot. All Project Assessments collected by the Association for a particular Project shall be separately accounted for by the Association and shall be used exclusively for the payment of Project Expenses for the Project. The right of the Association to levy and collect Project Assessments is in addition to the right of the Association to levy and collect all other assessments and charges in accordance with the Declaration and the Association shall have all of the same rights and remedies for the collection of Project Assessments as it has for the collection of all other assessments and charges under the Declaration or pursuant to applicable law. The Association may delegate all or some of its rights to levy and collect Project Assessments for a Project to a Project Association for the Project. Notwithstanding any other terms contained herein, Declarant shall have the right to abate or prorate the initial imposition of Project Assessments for any Project for a period of time determined by Declarant, in Declarant's reasonable discretion.

2.6.2 Project Budgets. The Board shall adopt an annual budget for each Project from which the Association levies and collects Project Assessments which estimates the Project Expenses for the Project (the "Project Budget"). The Project Budget may be a separate budget or a separate component of the Association's overall budget. The amount of the Project Assessments for a Project shall be based on the Project Budget adopted by the Board after consideration of the current and future maintenance, repair, replacement and insurance costs of the Project Common Maintenance Areas and other needs of the Project. The initial Project Budget for each Project shall be established by the Board. The Board shall have the authority to amend the Project Budget and adjust the amount of the Project Assessments upon not less than thirty (30) days prior written notice to the Owners of Units within the Project. Additionally, the Board may increase the amount of the Project Assessments from year to year based on the needs of the Project; provided, however, that any increase of more than ten percent (10%) in a Project Budget over the Project Budget for the prior fiscal year must be approved by the Owners of the Units within the Project, which approval shall be deemed given unless at least seventy percent (70%) of the Owners of the Units within the Project sign a written petition disapproving the proposed increase and deliver the written petition to the Board no later than thirty (30) days after the notice of the increase is mailed to the Owners of the Units within the Project. If the Owners of the Units within a Project reject a Project Budget in accordance with this section, then the last adopted Project Budget for the Project shall remain in effect until a new Project Budget is adopted in accordance with this section.

2.6.3 Project Association's Obligation to Pay Project Assessments. A Project Association shall be jointly and severally obligated with the Owners of Units subject to its jurisdiction for all assessments, including without limitation, Project Assessments, levied by the Association against the Units within the Project. Each Project Association shall include as a line item in its common expense budget, and shall be responsible for collecting and paying to the

Association, the total amount of all assessments levied by the Association against the Units within its jurisdiction and such amount shall have priority for payment out of the income of the Project Association. The obligation of each Project Association for the collection and payment of assessments to the Association shall be enforceable by the Association, and the Association may bring suit against the Project Association to collect delinquent assessments for the Units within the Project, in addition to any other rights or remedies that it may have under the Declaration or at law or in equity. The obligation of each Project Association to collect and pay such assessments to the Association pursuant to this section shall not relieve any Owner of liability for its pro rata share of any amounts not paid by the Project Association and is in addition to all other rights and remedies of the Association for the collection of assessments under the Declaration or at law or in equity.

## 2.7 Relationship Between the Association and Projects.

2.7.1 All Project Documents and Project Associations shall remain subordinate and subject to the Declaration, the Plat, the Bylaws and the Articles (the "Association Documents"). In the event of any conflict between the terms of the Association Documents and any Project Documents, the terms of the Association Documents shall control. Without limiting the foregoing, all improvements within any Project shall be subject to the same standards of construction and approval of the Architectural Review Committee of the Association as are the Lots that are not within a Project.

2.7.2 The Association may assist the Project Associations in the performance of their duties and obligations under their respective Project Documents, and the Association shall cooperate with each Project Association so that each Project Association can most efficiently and economically provide its services to the Owners within its Project. The Association or a Project Association may use the services of the other in furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Project Assessment levied against the Unit Owners within the Project. If a Project Association fails or is unable to perform a duty or obligation required by the Project Documents, then the Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duty or obligation until such time as the Project Association is able to resume such functions, and the Association may charge the Project Association a reasonable fee for the performance of such functions.

2.7.3 Each Project Committee shall be a committee of the Association. The Board shall have all of the power and control over a Project Committee that it has under applicable law over other committees of the Association. The Association shall have the power to veto any action taken or contemplated to be taken by any Project Committee or Project Association which the Board reasonably determines to be adverse to the interests of the Association or the Owners or inconsistent with any community-wide standards for the Property. The Association also shall have the power to require specific action to be taken by any Project Association in connection with its obligations and responsibilities, such as requiring maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. A Project Association shall take appropriate action required by the Association in a written notice within a reasonable time frame

set by the Association in the notice. If the Project Association fails to comply, the Association shall have the right to effect such action on behalf of the Project Association and levy Project Assessments to cover the costs thereof.

2.8 Amendments. Any amendment to the Declaration that exclusively pertains to or impacts a particular Project or Projects shall be approved by at least seventy-five percent (75%) of the Owners of Units within the affected Projects in addition to all other approval requirements set forth in Section 11.3 of the Original Declaration.

3. Ellis Street Cottages.

3.1 Project Designation. Lots 8 through 17, inclusive, and Tracts C, D, E and F as shown on the plat of Wilder Phase 1 recorded in the official plat records of Lincoln County, Oregon on June 21, 2010, in Book 18 at Pages 46, 46A and 46B (the "Wilder Phase 1 Plat") are hereby designated as a Project within the Property to be known as the "Ellis Street Cottages."

3.2 Land Classifications within Project. The land within the Ellis Street Cottages shall consist of the following classifications:

3.2.1 Residential Lots, which shall consist of Lots 8 through 17, inclusive, as shown on the Wilder Phase 1 Plat;

3.2.2 Project Common Areas, which shall consist of Tracts C, D, E and F, as shown on the Wilder Phase 1 Plat, as may be amended, or as reconfigured by property line adjustment; and

3.2.3 Project Common Maintenance Areas, which shall consist of the Project Common Areas, including all landscaping, lighting and other improvements located thereon (except as otherwise provided in Section 3.4 below with respect to the Garages), and the landscaping located on that portion of each Lot within the Ellis Street Cottages between the front of the Unit located on the Lot and the Project Common Areas, including the front planting beds (the "Front Yards"). Subject to the prior written consent of the Board, a Lot Owner may elect, at its sole cost and expense, to assume responsibility for the maintenance of the front planting bed situated in the Front Yard of the Owner's Lot. However, if a Lot Owner makes such an election and the Board grants permission, the Lot Owner shall not be entitled to any reduction in Project Assessments for having assumed such maintenance responsibility. Subject to the prior written consent of the Board, and upon the approval of seventy percent (70%) of the Owners of the Lots within the Ellis Street Cottages, the Front Yards of all Lots within the Ellis Street Cottages may be removed from the Project Common Maintenance Areas and, upon such removal, each Lot Owner shall assume responsibility for the maintenance and repair of the Front Yard of the Owner's Lot. If the Front Yards are removed from the Project Common Maintenance Areas in accordance with this Section 3.2.3, the Board is authorized to record a supplement to the Declaration confirming such removal.

3.3 Ownership and Use of the Project Common Areas. The Project Common Areas within the Ellis Street Cottages shall be owned by the Owners of the Lots within the Ellis Street Cottages. Each Owner of a Lot within the Ellis Street Cottages shall own an undivided one-tenth (1/10<sup>th</sup>) interest in the Project Common Areas. Ownership of the Project Common

Areas shall be appurtenant to and shall not be separated from ownership of a Lot within the Ellis Street Cottages. The Project Common Areas shall be reserved for the use and benefit of the Owners of the Lots within the Ellis Street Cottages and their families, tenants, employees, guests and invitees. The Project Common Areas shall be used for the purposes for which they are intended and their use, operation and maintenance shall not be obstructed, damaged or unreasonably interfered with by any Owner. The Association shall have the right to establish Rules and Regulations governing the use and operation of the Project Common Areas. The Project Common Areas shall not be partitioned or subdivided into parcels or lots for residential use. The Association shall not sell, transfer or convey the Project Common Areas within the Ellis Street Cottages without the approval of all of the Owners of Lots within the Ellis Street Cottages.

3.4 Garages and Surface Parking Spaces. Portions of the Project Common Areas within the Ellis Street Cottages are or will be improved with ten (10) garages (each, a “Garage” and collectively, the “Garages”) and with ten (10) surface parking spaces (each, a “Parking Space” and collectively, the “Parking Spaces”). The Owners of each Lot within the Ellis Street Cottages shall have the exclusive right to use one (1) Garage and one (1) Parking Space. Use of the Garages and Parking Spaces shall be assigned by the Association. The Owner of a Lot to which a Garage is assigned shall be responsible for the maintenance, repair and replacement of the garage door and openers for the Garage and all interior paint, repair, maintenance and interior electrical. The Association shall be responsible for the structural and exterior maintenance of the Garages as follows: paint, repair, replace, care and insurance for roofs, gutters, downspouts, exterior building surfaces, exterior lights and other exterior improvements. Such exterior maintenance shall include repair and replacement of man doors. The Association shall also be responsible for the maintenance and repair of the Parking Spaces.

4. Subassociations. Sections 1.27, 1.28 and 2.10 of the Original Declaration are deleted in their entirety. All other references in the Original Declaration to “Subassociation” or “Subassociations” are replaced with “Project” or “Projects,” as applicable.

5. Approval. By execution of this Amendment on behalf of the Association, the President and Secretary of the Association hereby certify that this Amendment has been adopted in accordance with Section 11.3 of the Original Declaration and the applicable provisions of ORS 94.590 and may be executed and recorded as set forth in ORS 94.590.

6. Effect of Amendment. To the extent any provision of the Original Declaration conflicts with or is in any way inconsistent with this Amendment, the Original Declaration shall be deemed to conform to the terms and provisions of this Amendment. Except as specifically set forth herein, the Original Declaration is unmodified and remains in full force and effect.

*(Remainder of Page Intentionally Left Blank;  
Signature Page Follows)*

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first set forth above.

ASSOCIATION:

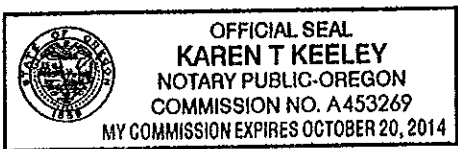
WILDER HOMEOWNERS' ASSOCIATION, INC., an Oregon nonprofit corporation

By: [Signature]  
Bonnie Serkin, President

By: [Signature]  
William Emery, Secretary

STATE OF Oregon )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me on May 15, 2014, by Bonnie Serkin and William Emery who are the President and Secretary, respectively, of Wilder Homeowners' Association, Inc., an Oregon nonprofit corporation, on behalf of the nonprofit corporation.



[Signature]  
Notary Public for Oregon  
My Commission Expires: Oct 20, 2014

*(Signatures Continued on Following Page)*





## **EXHIBIT A**

### Legal Description of Property

Lots 1 through 40, inclusive, and Tracts C, D, E and F of Wilder, Phase 1, located in the City of Newport, Lincoln County, Oregon, according to the plat thereof recorded in the official plat records of Lincoln County, Oregon on June 21, 2010 in Book 18, at Pages 46, 46A and 46B.

WTE ACCO 2014104

AFTER RECORDING, RETURN TO:  
Wilder Homeowners' Association, Inc.  
2712 SE 20th Avenue  
Portland, OR 97202

Lincoln County, Oregon  
05/22/2014 02:00:33 PM  
DOC-AM/DECLAR  
\$25.00 \$11.00 \$20.00 \$10.00 \$7.00 - Total =\$73.00

2014-04271

Cnt=1 Pgs=5 Stn=19



I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



**FIRST AMENDMENT TO BYLAWS OF WILDER HOMEOWNERS' ASSOCIATION, INC.**

**THIS FIRST AMENDMENT TO BYLAWS OF WILDER HOMEOWNERS' ASSOCIATION, INC.** (this "Amendment") is executed as of May 15, 2014 by Wilder Homeowners' Association, Inc., an Oregon nonprofit corporation (the "Association").

**RECITALS**

A. Landwaves, Inc., an Oregon corporation, as declarant, adopted and executed the Bylaws of Wilder Homeowners' Association, Inc. (the "Bylaws") effective as of July 29, 2010. The Bylaws are attached as Exhibit B to the Declaration of Protective Covenants, Conditions and Restrictions for Wilder Subdivision which was recorded in the official records of Lincoln County, Oregon on July 30, 2010 as Document No. 2010-07750 (together with any amendments thereto, the "Declaration").

B. The Bylaws and the Declaration benefit and burden certain real property located in the City of Newport, Lincoln County, Oregon and legally described on the attached Exhibit A.

C. The Association desires to amend the Bylaws to clarify certain matters regarding the establishment, management, administration and governance of separate projects within the Property.

**AMENDMENT**

NOW, THEREFORE, the Bylaws are hereby amended as follows:

1. Definitions. Any capitalized terms used in this Amendment and not defined herein shall have the meanings given to such terms in the Bylaws or Declaration, as applicable.

2. Common Property and Common Maintenance Areas. The term "Common Property" as used in the Bylaws shall include any "Project Common Areas" as that term is defined in the Declaration. The term "Common Maintenance Areas" as used in the Bylaws shall include any "Project Common Maintenance Areas" as that term is defined in the Declaration.

3. Budget. The Board shall annually adopt of budget for the Association with respect to the Property (the "Association Budget"). The Board shall also annually adopt a budget for each Project within the Property from which the Association levies and collects Project Assessments, which budget shall estimate the Project Expenses for the Project (the "Project Budget"). Each Project Budget may be a separate budget or a separate component of the

Recorded by Western Title as an accommodation only. No liability accepted for condition of title or validity, sufficiency or affect of document.

Association Budget. Within thirty (30) days after adopting the Association Budget, the Board shall provide a summary of the Association Budget to all Owners. Within thirty (30) days after adopting each Project Budget, the Board shall provide a summary of the Project Budget to all Owners of Lots within the applicable Project. The initial Project Budget for each Project shall be established by the Board. Any increase of more than ten percent (10%) in a Project Budget over the Project Budget for the prior fiscal year must be approved by the Owners of the Units within the Project, which approval shall be deemed given unless at least seventy percent (70%) of the Owners of the Units within the Project sign a written petition disapproving the proposed increase and deliver the written petition to the Board no later than thirty (30) days after the notice of the increase is mailed to the Owners of the Units within the Project. If the Owners of the Units within a Project reject a Project Budget in accordance with this section, then the last adopted Project Budget for the Project shall remain in effect until a new Project Budget is adopted in accordance with this section.

4. Project Committees. With respect to any Project that does not have a Project Association, the Board may appoint a committee for the Project composed of up to three (3) Owners of Units within the Project (the "Project Committee"). The Project Committee shall be responsible for recommending to the Board any Rules and Regulations exclusively pertaining to the Project Common Areas within the Project, advising the Board on decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of the Project Common Maintenance Areas within the Project, and for such other matters pertaining to the Project as the Board may elect to delegate to the Project Committee. Each Project Committee shall be a committee of the Association. The Board shall have all of the power and control over a Project Committee that it has under the Bylaws or any applicable law over other committees of the Association. The Association shall have the power to veto any action taken or contemplated to be taken by any Project Committee which the Board reasonably determines to be adverse to the interests of the Association or the Owners or inconsistent with any community-wide standards for the Property.

5. Assessments. The Association shall levy, collect and enforce the payment of assessments, including without limitation, Project Assessments, in accordance with the relevant provisions of the Declaration. The amount of the regular annual Association assessments and the Project Assessments shall be based on the Association Budget and/or Project Budget adopted by the Board after consideration of the current and future maintenance, repair and replacement costs and other needs of the Association or the Project, as applicable. Subject to the limitations set forth in Section 3 above with respect to Project Budgets, the Board shall have the authority to amend the Association Budget and any Project Budget and adjust the amount of the regular annual Association assessments and/or Project Assessments during any assessment period upon not less than thirty (30) days written notice to all Owners or the Owners within the affected Project, as applicable, and to increase the amount of the regular annual Association assessments and/or Project Assessments from year to year based on the needs of the Association or the applicable Project.

6. Amendments. Any amendment to the Bylaws that exclusively pertains to or impacts a particular Project or Projects shall be approved by at least seventy-five percent (75%) of the Owners of Units within the affected Projects in addition to the other approval requirements set forth in Article XIX of the Bylaws.

7. Approval. By execution of this Amendment on behalf of the Association, the President and Secretary of the Association hereby certify that this Amendment has been adopted in accordance with Article XIX of the Bylaws and the applicable provisions of ORS 94.625 and may be executed and recorded as set forth in ORS 94.625.

8. Effect of Amendment. To the extent any provision of the Bylaws conflicts with or is in any way inconsistent with this Amendment, the Bylaws shall be deemed to conform to the terms and provisions of this Amendment. Except as specifically set forth herein, the Bylaws are unmodified and remain in full force and effect.

*(Remainder of Page Intentionally Left Blank;  
Signature Page Follows)*



## **EXHIBIT A**

### Legal Description of Property

Lots 1 through 40, inclusive, and Tracts C, D, E and F of Wilder, Phase 1, located in the City of Newport, Lincoln County, Oregon, according to the plat thereof recorded in the official plat records of Lincoln County, Oregon on June 21, 2010 in Book 18, at Pages 46, 46A and 46B.

ACCO 2015134  
AFTER RECORDING, RETURN TO:  
Wilder Homeowners' Association, Inc.  
2712 SE 20th Avenue  
Portland, OR 97202

Lincoln County, Oregon  
10/29/2015 03:23:55 PM 2015-10894  
DOC-AM/CR Cnt=1 Pgs=3 Str=29  
\$15.00 \$11.00 \$20.00 \$10.00 \$7.00 - Total=\$63.00



00111878201500108940030035

I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



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## SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR WILDER SUBDIVISION

THIS SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR WILDER SUBDIVISION (this "Amendment") is made by Wilder Homeowners' Association, Inc., an Oregon nonprofit corporation (the "Association"), and is effective upon recording in the official records of Lincoln County, Oregon.

### RECITALS

A. Declarant recorded the Declaration of Protective Covenants, Conditions and Restrictions for Wilder Subdivision in the official records of Lincoln County, Oregon on July 30, 2010 as Document No. 2010-07750, which was further amended by that certain First Amendment to Declaration of Protective Covenants, Conditions and Restrictions for Wilder Subdivision that was recorded on May 22, 2014 in the official records of Lincoln County, Oregon as Document No. 2014-04270 (collectively, the "Declaration").

B. The Original Declaration benefits and burdens certain real property located in the City of Newport, Lincoln County, Oregon and legally described on the attached Exhibit A.

C. The Association desires to amend the Declaration to prohibit short-term rentals in Lots 1 through 40 of the recorded plat of Wilder, Phase 1, located in the City of Newport, Lincoln County, Oregon.

### AMENDMENT

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Definitions. The following definitions shall apply when used in this Amendment:

1.1 "Short-Term Rentals" means rentals of all or any portion of a Unit for a term of less than 30 days.



1.2 Other Defined Terms. Other capitalized terms used in this Amendment and not defined herein shall have the meanings given to such terms in the Declaration.

2. Prohibition on Short-Term Rentals. Short-Term Rentals are prohibited for all or any portion of a Unit or Units located on Lots 1 through 40 of the recorded plat of Wilder, Phase 1, located in the City of Newport, Lincoln County, Oregon.

3. Approval. By execution of this Amendment on behalf of the Association, the President and Secretary of the Association hereby certify that this Amendment has been adopted in accordance with Section 11.3 of the Declaration and the applicable provisions of ORS 94.590 and may be executed and recorded as set forth in ORS 94.590.

4. Effect of Amendment. To the extent any provision of the Declaration conflicts with or is in any way inconsistent with this Amendment, the Declaration shall be deemed to conform to the terms and provisions of this Amendment. Except as specifically set forth herein, the Declaration is unmodified and remains in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first set forth above.

ASSOCIATION:

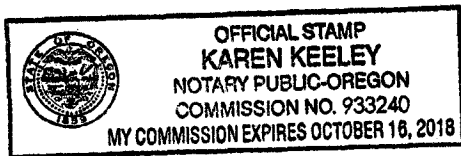
WILDER HOMEOWNERS' ASSOCIATION, INC., an Oregon nonprofit corporation

By: [Signature]  
Bonnie Serkin, President

By: [Signature]  
William Emery, Secretary

STATE OF Oregon )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me on October 19, 2015, by Bonnie Serkin and William Emery who are the President and Secretary, respectively, of Wilder Homeowners' Association, Inc., an Oregon nonprofit corporation, on behalf of the nonprofit corporation.



[Signature]  
Notary Public for Oregon  
My Commission Expires: Oct 16, 2018

EXHIBIT "A"

PROPERTY SUBJECT TO DECLARATION

Lots 1 through 40, inclusive, Tracts C, D, E and F, and the streets, as shown on the duly recorded plat of Wilder, Phase 1, located in the City of Newport, Lincoln County, Oregon, according to the plat thereof recorded in the official plat records of Washington County, Oregon on June 21, 2010 at Book 18, Page 46, 46A-B.