

PROVIDENCE SUBDIVISION HOA PROPOSED DOCUMENTS

Prepared by:
**COMMUNITY ASSOCIATION
LAW GROUP**

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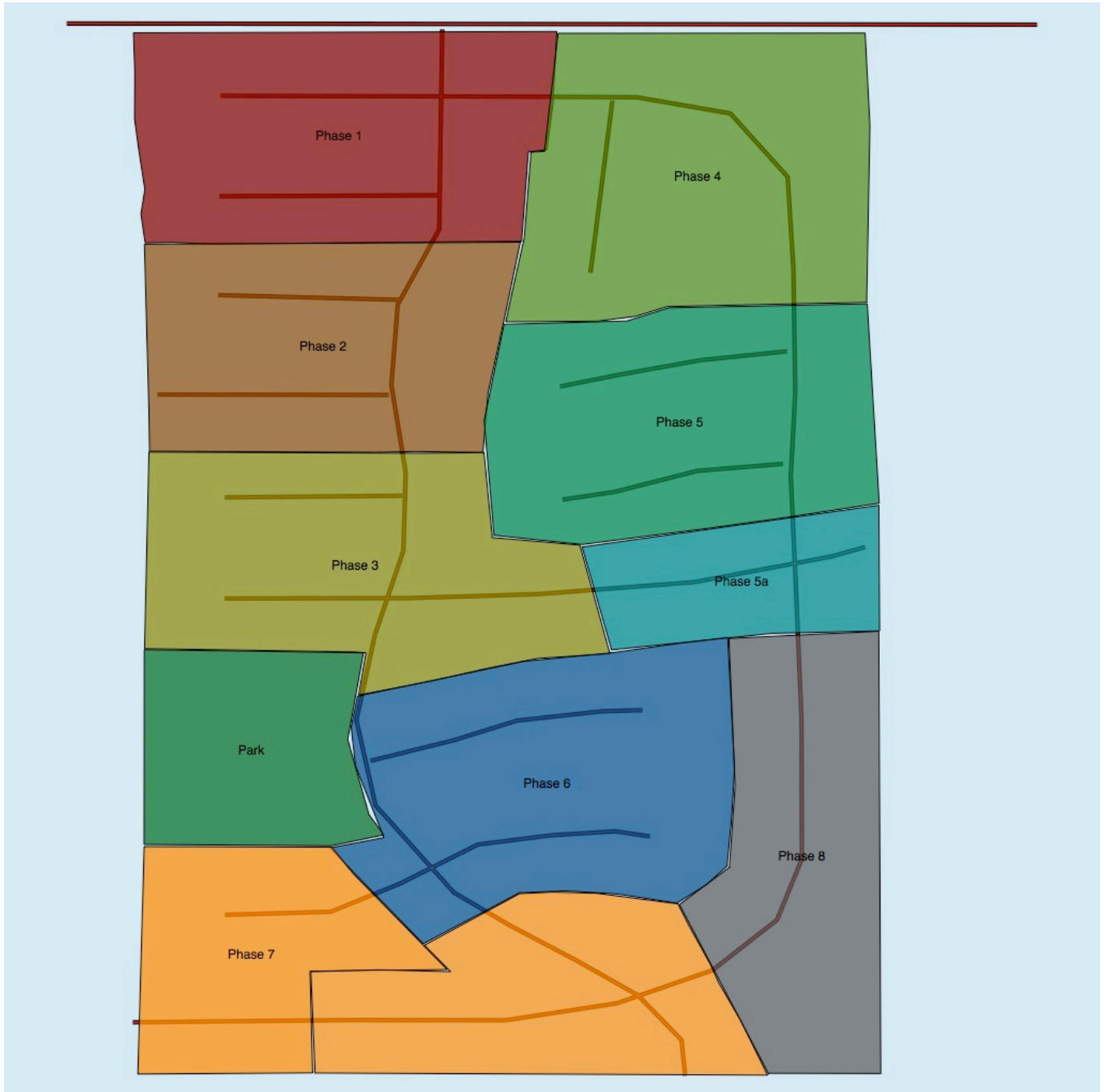
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1. OVERVIEW

Providence Subdivision is located in Deschutes County, Oregon. Providence is subject to the Oregon Planned Community Act (ORS Chapter 94) and the Oregon Nonprofit Corporation Act (ORS Chapter 65). Community Association Law Group has been engaged by the Association to prepare a new Declaration and Bylaws. Drafts of both documents are included below. The subdivision was developed in separate phases, as depicted below.



2. APPLICABLE DOCUMENTS

DOCUMENT	DATE	RECORDING NO.
Declaration of Covenants, Conditions and Restrictions for Providence Subdivision	June 16, 1992	268-2080, re-recorded as 92-19736, 299-2860, 93-16737
Bylaws of Providence Subdivision Homeowners' Association, Inc	June 16, 1992	274-1033, re-recorded as 92-27924
Exhibit B to Declaration of Covenants, Conditions and Restrictions of Providence Subdivision	May 21, 1993	299-2878
Amendment to the Declaration of Covenants, Conditions and Restrictions of Providence Subdivision	January 26, 1994	327-1627, re-recorded as 94-03896
Notice of Homeowners Association	October 25, 1999	1999-51366
Declaration of Covenants, Conditions and Restrictions for Providence Subdivision (Supersedes Originally Recorded Document)	May 10, 2000	2000-18293
Notice of Homeowners Association	May 7, 2002	2002-25104
Declaration of Covenants, Conditions and Restrictions for Providence Subdivision (Supersedes Previously Recorded Document)	September 17, 2007	2007-50373
Plat of Providence Phase 1	December 31, 1991	C-602
Plat of Providence Phase 2	March 18, 1992	C-624
Plat of Providence Phase 3	March 18, 1992	C-626
Plat of Providence Phase 4	May 5, 1993	C-767
Plat of Providence Phase 5	May 5, 1993	C-769
Plat of Providence Phase 6	May 5, 1993	C-771
Plat of Providence Phase 5a	January 4, 1994	D-31
Plat of Providence Phase 7	June 14, 1994	D-54
Plat of Providence Phase 8	September 9, 1994	D-74

3. OVERVIEW OF GOVERNING DOCUMENTS

The term “governing documents” refers to a host of documents, some of which are recorded, some of which are filed with the state, and others which are merely distributed to owners. In general, governing documents include: the Declaration/CC&Rs, Bylaws, Plat, Articles of Incorporation, and Rules/Regulations/Resolutions.

Understand that there is a hierarchy to these documents. For example, the board cannot adopt a rule or regulation that conflicts with provisions in the CC&Rs.

4. DECLARATION

Think of the CC&Rs as the constitution of the community. When you purchase property in a community association, you do so subject to the conditions in the CC&Rs and the other governing documents. The CC&Rs usually include: a description of the property, what you can and can't do on your lot or on common property, the authority to assess regular dues, provisions related to insurance, and who is to maintain, repair, and replace property throughout the community. Like the plat, CC&Rs are also recorded with the county recorder.

4.1. AMENDMENT

The declaration may be amended only with the approval of owners representing at least 75 percent of the total votes in the planned community or any larger percentage specified in the declaration.

4.2. CONTENTS

Declarations for Planned Communities typically contain the following provisions:

1. Name and classification of the planned community;
2. Name of the Association and entity type;
3. Legal description of community, including common property;
4. Number of votes allocated to each lot;
5. The method for determining the allocation of assessments;

6. When the lots become subject to assessments;
7. Provisions governing the Association's reserve account;
8. Restrictions on the use, maintenance, and occupation of common property and lots;
9. Provisions governing the amendment of the Declaration;
10. Restriction on the conveyance of rights or ownership of the common property; and
11. Architectural use restrictions.

5. BYLAWS

The bylaws are the operating guidelines for the association and typically include: meeting requirements, quorum requirements, number of officers and directors, and provisions governing books and records. Usually, the bylaws are recorded in the county recorder's office.

5.1. AMENDMENT

Planned Community Bylaws require a majority of owners to approve any amendments or changes. However, the Bylaws may specify a higher or lower percentage. Providence Subdivision Bylaws requires a majority vote to approve any changes.

5.2. CONTENTS

Bylaws for Planned Communities typically contain the following provisions:

1. Method of calling annual or special meetings of the Association;
2. Quorum requirements;
3. Provisions for electing board members and officers;
4. Qualifications and duties of board members and officers;
5. Method of recalling or removing board members or officers;
6. Provisions governing board meetings;

7. Budget and financial requirements and obligations;
8. Management and employee requirements or restrictions;
9. Authority and right to adopt Rules and Regulations; and
10. Amendment requirements and percentages;

6. PLAT

The plat map is the graphical depiction of the community. For planned community subdivisions, the plat is a bird's-eye view of lot lines, easements, roads, and other property interests. Condominium plats are slightly different. Condo plats include the elevation drawings of the structures and show the boundaries between the units, limited common elements, and general common elements. Often, plats will have notations regarding ownership of common areas, maintenance obligations, and references to the CC&Rs. Plats are recorded with the county recorder's office.

7. RULES & REGULATIONS

This is a broad category, and it refers to those documents that are typically adopted by the board of directors without a vote of the owners (note: some associations may have owner approval requirements). Examples include: architectural guidelines, collections resolutions, enforcement procedures, and house rules. These documents are not recorded, which is why it is critical that owners receive and are on notice of these documents. Keep resolutions simple, be sure to cite to the authority for adopting the rule or regulation, and make sure owners know the reasons for adoption.

PROPOSED AMENDED & RESTATED DECLARATION

AMENDED AND RESTATED COVENANTS, CONDITIONS AND RESTRICTIONS FOR PROVIDENCE SUBDIVISION

ARTICLE 1

1. DEFINITIONS

- 1.1. Architectural Review Committee - Architectural Review Committee, or ARC, refers to the committee constituted and acting under Article 6 of this Declaration.
- 1.2. Articles of Incorporation - Means the Articles of Incorporation of Providence Subdivision Homeowners' Association, Inc., filed with the Oregon Secretary of State on March 20, 1992.
- 1.3. Association - Means the Providence Subdivision Homeowners' Association, Inc., an Oregon nonprofit corporation.
- 1.4. Board - Means the Board of Directors of the Association.
- 1.5. Bylaws - Means the 2016 Amended and Restated Bylaws.
- 1.6. Common Maintenance Area - shall mean the easement areas shown on the Plat that front Neff Road and the entrance onto Providence Avenue from Neff Road.
- 1.7. Days - All references to "days" shall mean calendar days.
- 1.8. Declarant - means Pacific Northwest Development Corporation, the original developer of the Property.
- 1.9. Declaration - means the covenants, conditions, restrictions, and all other provisions set forth in this Declaration.
- 1.10. Home - means and refers to any portion of a structure situated on a Lot and designed and intended for use and occupancy as a residence by a single family or household.
- 1.11. Improvement - means any structure located on the Property.

- 1.12. Lot - refers to the individual lots located and depicted on the Plat.
- 1.13. Member - shall mean any Owner of a Lot in Providence Subdivision.
- 1.14. Occupant - means and refers to the occupant of a Home, whether such person is an Owner, a lessee, or any other person authorized by the Owner to occupy the Home.
- 1.15. Owner - means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, or a purchaser in possession of a Lot under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. For purposes of voting pursuant to this Declaration or the Bylaws, Owner or Owners refers to a single vote allocated to the Lot as described in Section 7.2 of the Declaration.
- 1.16. Plat - refers to the following plats, collectively, recorded in the records of Deschutes County, Oregon:
 1. Providence Subdivision Phase 1
 2. Providence Subdivision Phase 2
 3. Providence Subdivision Phase 3
 4. Providence Subdivision Phase 4
 5. Providence Subdivision Phase 5
 6. Providence Subdivision Phase 5a
 7. Providence Subdivision Phase 6
 8. Providence Subdivision Phase 7
 9. Providence Subdivision Phase 8
- 1.17. Property - means all real property depicted on the Plat.
- 1.18. Rules and Regulations - means and refers to the documents containing rules, regulations, and policies adopted by the Board or the Architectural Review Committee (as adopted or approved by the Board).

ARTICLE 2

2. PROPERTY SUBJECT TO THIS DECLARATION

The development of Providence Subdivision consists of the Property, which will be held, transferred, sold, conveyed, and occupied subject to this Declaration. The Property is subject to ORS 94, the Oregon Planned Community Act. The affairs and operations of the Property are governed by the Providence Subdivision Homeowners' Association Inc., an Oregon nonprofit corporation.

ARTICLE 3

3. OWNERSHIP AND EASEMENTS

- 3.1. **Nonseverability.** The interest of each Owner in the use and benefit of the Common Maintenance Area is appurtenant to the Lot owned by the Owner. Ownership interests in the Common Maintenance Area and Lots are subject to the easements granted and reserved in this Declaration.
- 3.2. **Ownership of Lots.** Title to each Lot in Providence Subdivision will be conveyed in fee to an Owner. If more than one person or entity owns an undivided interest in the same Lot, such persons or entities will constitute one Owner. No Lot, as depicted on the Plat, may be subdivided.
- 3.3. **Easements.** Individual deeds to Lots may, but are not required to, set forth the easements specified in this Article.
- 3.4. **Easements on Plat.** The Common Maintenance Area and Lots are subject to the easements and rights-of-way shown on the Plat.
- 3.5. **Easements for Common Maintenance Area.** Every Owner has a nonexclusive right and easement of use and enjoyment in and to the Common Maintenance Area, which is appurtenant to and passes with the title to every Lot. The easement is subject to ORS 94.665, as may be amended from time to time.

- 3.6. **Additional Easements.** Notwithstanding anything expressed or implied to the contrary, this Declaration is subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities.
- 3.7. **Association Easements.** The Association shall have easements over the Lots and Common Maintenance Area as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws, and the Articles, as the same may be amended.
- 3.8. **Easements to Governmental Entities.** There shall be a nonexclusive easement over the Common Maintenance Area to all governmental and quasi-governmental entities, agencies, utilities, and their agents for the purposes of performing their duties as utility providers.

ARTICLE 4

4. LOTS AND HOMES

- 4.1. **Residential Use.** Lots may be used only for residential purposes which are defined in this Article 4 and by Rules and Regulations adopted by the Board. This Section does not prohibit home offices or other home businesses which are operated exclusively within the dwelling and do not cause traffic or other nuisances to other Owners. No trailer, van, bus, camper, truck, tent, barn, garage, shack, or storage structure shall be used as a residence upon a Lot.
- 4.2. **Rentals.** Owners may rent or lease the dwelling upon their Lot. All rentals and leases must be for a minimum period of 30 days.
- 4.3. **Landscaping.** Each Owner must keep the landscaped areas of their Lots in a neat and orderly manner and consistent with any Rules and Regulations governing landscaping within the Property.
- 4.4. **Maintenance of Lots and Homes.** Each Owner must maintain the Owner's Lot and all improvements thereon in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard.
- 4.5. **Animals.** No animals, livestock, or poultry of any kind—other than a reasonable number of household pets that are not kept, bred, or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance—may be raised, bred, kept, or permitted within any Lot.

- 4.6. **Nuisance.** No noxious, harmful, or offensive activities may be carried out on any Lot or Common Maintenance Area. Nor may anything be done or placed on any Lot or Common Maintenance Area that interferes with or jeopardizes the enjoyment of, or that is a source of annoyance to, other Owners or other Occupants.
- 4.7. **Parking.** Boats, trailers, commercial vehicles, mobile homes, campers, and other recreational vehicles or equipment, regardless of weight, may not be parked on any part of the Common Maintenance Area. Such vehicles, unless screened from street view, may not be parked on any Lot or adjacent street for more than 72 hours or such other period as may be permitted by the Board of Directors or Association Rules and Regulations. For the purposes of Section 4.10, “screened” shall mean substantially blocked from view by any fence, landscaping, or other improvement.
- 4.8. **Vehicles in Disrepair.** No Owner may permit any vehicle that is in a state of disrepair or that is not currently licensed to be abandoned or to remain parked on any Lot (if visible by other Owners) or street for a period in excess of 48 hours. A vehicle will be deemed in a “state of disrepair” when the Board reasonably determines that its presence offends the occupants of the neighborhood.
- 4.9. **Signs.** No signs may be erected or maintained on any Lot, except no more than one “For Sale” or “For Rent” sign placed by the Owner or by a licensed real estate agent, which may be temporarily displayed on any Lot. Real estate signs must be removed within three days after the sale closing date. Temporary signs advertising garage sales are permitted so long as the signs are removed within 24 hours of the conclusion of the garage sale. The Association shall have an easement upon any Lot for the maintenance, repair, or replacement of any subdivision entrance signs or monuments which were installed at the time of development. This Section does not prohibit reasonably sized or customary signage on Lots adjacent to front entry doors. No signs shall be installed or placed on a Lot which are advertisements or promote business or commercial activities unless approved by the Board of Directors.
- 4.9.1. **Political Signs.** The restrictions contained in Section 4.12 do not prohibit the temporary placement of “political” signs on any Lot by the Owner or Occupant. However, political signs may not be displayed more than 30 days prior to any election and must be removed within three days after the election day pertaining to the subject of the sign. Additional restrictions on political signs may be adopted by Board Rule or Regulation.

- 4.10. **Rubbish, Trash, and Storage.** No Lot or part of the Common Maintenance Area may be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste must be kept in appropriate containers for proper disposal and must be kept out of public view. The storage of unsightly items, which are viewable from adjacent Lots or street view, is prohibited.
- 4.11. **Fences and Hedges.** No fences or boundary hedges may be installed or replaced without authorization of the ARC. Minor repairs of fences which use the same color and type of materials shall be permitted without approval of the ARC.
- 4.12. **Antennas and Satellite Dishes.** Except as otherwise provided by law or this section, no exterior antennas, satellite dishes, microwave, aerial tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic radiation may be erected, constructed, or placed on any Lot. Exterior satellite dishes or antennas with a surface diameter of one meter or less, antennas designed to receive television broadcast signals, and other antennas or devices allowed under federal law, may be placed on any Lot. The ARC may determine the location of the installation of such devices allowed under federal law.
- 4.13. **Exterior Lighting and Noise Making Devices.** Except with the consent of the ARC, no exterior lighting visible from the public streets (except for customary entry, walkway, or landscape lighting) may be installed or maintained on any Lot. No noise-making devices, other than security and fire alarms, may be installed or maintained on any Lot.
- 4.14. **Right of Maintenance and Entry.** If an Owner fails to perform maintenance or repairs to the exterior or landscape improvements that the Owner is obligated to perform under this Declaration, and if the Board determines, after notice, that the maintenance, repair, or both is necessary to preserve the attractiveness, quality, nature, or value of the Property, the Board may cause the maintenance or repair to be performed and may enter any Lot whenever entry is necessary in connection with the performance thereof. Such entry shall not constitute trespass. Under no circumstances may the Association or its agents enter an Owner's dwelling. The Board of Directors may adopt additional Rules or Regulations governing this Section 4.14.
- 4.14.1. **Costs.** The costs of such maintenance, repair, or both are chargeable to the Owner of the Lot as an Assessment, which may

be collected and enforced as any other assessments authorized hereunder.

- 4.15. **Association Rules and Regulations.** The Board from time to time may adopt, modify, or revoke the Rules and Regulations governing the conduct of persons and the operation and use of Lots and the Common Maintenance Area as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property and the administration and operation of the Association.
- 4.16. **Ordinances and Regulations.** The conditions and restrictions set forth in this Article 4 are the minimum required. To the extent that governmental ordinances and regulations are more restrictive or provide for a higher or different standard, the governmental ordinances and regulations will prevail.

ARTICLE 5

5. Common Maintenance Area

- 5.1. **Maintenance of Common Maintenance Area.** The Association will be responsible for maintenance, repair, replacement, and upkeep of the Common Maintenance Area including landscaped areas, perimeter fence, and entrance signs and monuments.
- 5.2. **Fences on or adjacent to the Common Maintenance Area.** The Association shall be responsible for maintaining, repairing, and replacing the perimeter fence of the subdivision.
- 5.3. **Funding.** The costs of maintaining the Common Maintenance Areas shall be a common expense of the Owners.

ARTICLE 6

6. Architectural Review Committee (“ARC”)

- 6.1. **Purpose.** This Article’s purpose, and the purpose of the ARC, is to ensure quality of workmanship and materials and harmony between exterior design and the existing improvements and landscaping and between location and topography and finished-grade elevations.

- 6.2. **Architectural Review.** No material changes, improvements, or maintenance to the exterior of dwellings or landscaped area may be commenced, erected, placed, or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. In the event the Association engages the services of an architect to assist with the review, that expense shall be paid for by the requesting Owner.
- 6.3. **Determination of Compliance.** The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes, or other governmental regulations, all of which are the applicant's responsibility. The procedure and specific requirements for review and approval of construction must be set forth in design guidelines and standards adopted from time to time by the ARC. The provisions of this Article 6 apply in all instances in which this Declaration requires the ARC's consent.
- 6.4. **Appointment and Removal.** The ARC will consist of no fewer than three members and no more than five members, all of which must be Owners and appointed by the Board of Directors, and who may be removed with or without cause by the Board. Each ARC member will serve for one year. The Board may appoint itself as the ARC or any of its members to the ARC. If an ARC has not been appointed, the Board will serve as the ARC.
- 6.5. **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the ARC have the power to act on behalf of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.
- 6.6. **Duties.** The ARC must consider and act on the proposals and plans submitted under this Article 6. The ARC, from time to time and in its sole discretion, may adopt architectural rules, regulations, and guidelines ("Architectural Standards") which must be approved by the Board of Directors.
- 6.7. **Decision.** The ARC must render its written decision approving or denying an application submitted to it within 15 days after its receipt of all materials required with respect to the application. If the ARC fails to render its written decision within 30 days of its receipt of all required materials or if the ARC fails to request an extension, the application will be deemed approved. The ARC is entitled to request one or more extensions of time, not to exceed a total of 45 days. In

the event of any extension requests, if the ARC does not render a written decision within 15 days after the expiration of the extension(s), the application will be deemed approved. However, the applicant may agree to further extensions to allow the applicant to complete or supplement the application.

- 6.8. **Discretion.** The ARC, in its sole discretion, may withhold consent to any proposed work if the ARC finds that the proposed work violates the provisions of this Declaration, would be inappropriate for the particular Lot, or is incompatible with the design standards that the ARC intends for the Property. The ARC may consider siting, shape, size, color, design, height, solar access, or other effects on the enjoyment of other Lots or the Common Maintenance Area, and any other factors that it reasonably believes to be relevant in determining whether to consent to any proposed work.
- 6.9. **Nonwaiver.** Consent by the ARC to any matter proposed to it or within its jurisdiction will not constitute precedent or waiver impairing its right to withhold approval of any similar matter thereafter proposed or submitted to it for consent.
- 6.10. **Appeal.** Any Owner adversely impacted by ARC action may appeal the action to the Board. The Board of Directors may adopt Rules and Regulations relating to the appeal process and procedure.
- 6.11. **Liability.** Neither the ARC nor any member thereof will be liable to any Owner or Occupant for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, as long as the ARC or the member has, in accordance with its or his or her actual knowledge, acted in good faith.

ARTICLE 7

7. Membership in Association

- 7.1. **Members.** Each Owner is a member of the Association. Membership in the Association is appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Without any other act or acknowledgment, Occupants and Owners will be governed and controlled by this Declaration, the Articles, Bylaws, and the Rules and Regulations of the Association and any amendments thereof.
- 7.2. **Voting Rights.** Each Lot shall be entitled to one vote on all Membership matters. Single structures located on two or more Lots shall be deemed to be one Lot.

ARTICLE 8

8. Funds and Assessments

- 8.1. **Purpose of Assessments.** The assessments levied by the Association will be used exclusively to promote the recreation, health, safety, aesthetics, and welfare of the Owners at Providence Subdivision, for the improvement, operation, and maintenance of the Common Maintenance Areas, for the administration and operation of the Association, and for property and liability insurance.
- 8.2. **Covenant to Pay.** Each Owner covenants and agrees to pay the Association the assessments and any additional charges levied under this Declaration or the Bylaws.
- 8.3. **Offsets.** No offsets against any assessment will be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.
- 8.4. **Annual Assessments.** Annual assessments for each fiscal year will be established when the Board approves the budget for that fiscal year. For proration purposes, any portion of a month will count as a full month. Annual assessments will be payable on a periodic basis, not more frequently than monthly, as determined by the Board. The fiscal year will be determined by a majority vote of the Board of Directors.

- 8.5. **Budgeting.** Each year the Board will prepare, approve, and make available to each Member the budget of the Association.
- 8.6. **Allocation of Assessments.** The total amount in the budget will be charged equally against all Lots as annual assessments. Single structures located on two or more Lots shall be deemed to be one Lot for the purposes of assessments. In the event an Owner or Owners cause the Association to incur expenses, which are not ordinary expenses, because of their acts or omissions, the Board may levy those expenses against those Lots.
- 8.7. **Special Assessments.** The Board shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes: 1) correct a deficit in the operating or reserve account or budget; 2) capital improvements; 3) other unforeseen expenses.

8.8. Accounts

8.8.1. **Types.** Assessments collected by the Association will be deposited into at least two separate accounts with a bank, which accounts will be clearly designated as (a) the Operating Account and (b) the Reserve Account.

8.8.1.1. **Operating Account.** All costs other than those to be paid from the Reserve Account may be paid from the Operating Account.

8.8.1.2. **Reserve Account.** The Association will pay out of the Reserve Account only those costs that are attributable to the maintenance, repair, or replacement of Common Maintenance Area that normally requires replacement, in whole or in part, within one to 30 years and not for regular or periodic maintenance and expenses. No funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes. Funds collected may not be refunded to the Owners. The reserve account and requirements are more particularly described in the Bylaws.

8.9. Default in Payment of Assessments

8.9.1. **Personal Obligation.** Any assessment properly imposed under this Declaration or the Bylaws is the joint and several personal obligation of all Owners of the Lot to which the assessment pertains. In a voluntary conveyance (i.e., one other than through foreclosure or a deed in lieu of foreclosure), the grantees will be jointly and severally liable with the grantors for all Association assessments imposed through the recording date of the

instrument effecting the conveyance. A suit for a money judgment may be initiated by the Association to recover the assessments without either waiving or foreclosing the Association's lien.

- 8.9.2. **Association Lien.** The Association has a lien against each Lot for any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof that is delinquent. The lien will accumulate all future assessments or installments, interest, late fees, penalties, fines, attorney fees (whether or not suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Recording of the Declaration constitutes record notice and perfection of the lien. The lien may be foreclosed at any time in accordance with the Oregon Planned Community Act.
- 8.9.3. **Recording of Association Lien.** The Association must record a notice of a claim of lien for assessments and other charges in the deed records of Deschutes County, Oregon, before any suit to foreclose may be filed. The lien of the Association will be superior to all other liens and encumbrances except property taxes and assessments; any first mortgage, deed of trust, or land sale contract recorded before the Association's notice of lien; and any mortgage or deed of trust granted to an institutional lender that is recorded before the Association's notice of lien.
- 8.9.4. **Interest, Fines, Late Fees.** The Board, in its reasonable discretion, may from time to time adopt Rules and Regulations to set the rate of interest and to impose late fees, fines, and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, Architectural Standards, and the Rules and Regulations adopted by the Board or the ARC.
- 8.9.5. **Adoption of Penalties.** The adoption of such impositions must be communicated to all Owners in writing not less than 30 days before the effective date by a notice mailed to the assessment billing address of each Owner. The impositions will be considered assessments that are lienable and collectible in the same manner as any other assessments; however, fines or penalties for violation of this Declaration, the Bylaws, or the Rules and Regulations, other than late fees, fines, or interest arising from an Owner's failure to pay regular, special, or reimbursement assessments may not be imposed against an Owner or the Owner's Lot until the

Owner is given an opportunity for a hearing as elsewhere provided herein.

- 8.9.6. **Acceleration of Assessments.** If an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, on not less than 10 days' written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

ARTICLE 9

9. General Provisions

- 9.1. **Records.** The Board must preserve and maintain minutes of the annual and special meetings of the Association and the Board. The Board must also keep detailed and accurate financial records, including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts must designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid on the account, and the balance due on the assessments. A reasonable charge may be imposed by the Association for providing copies.
- 9.2. **Enforcement.** The Association, the Owners, and any mortgagee holding an interest on a Lot have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens, and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition, or restriction herein contained will in no event be deemed a waiver of their right to do so thereafter.
- 9.3. **Attorney Fees.** If suit or action is commenced to enforce the terms and provisions of this Declaration (including without limitations, suit or action for the collection of assessments), the prevailing party will be entitled to its actual administrative costs incurred because of a matter or event that is the subject of the suit or action, attorney fees and costs in the suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association will be entitled to its reasonable attorney fees and

costs incurred in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed.

- 9.4. **Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order will not affect the other provisions hereof and the same will remain in full force and effect.
- 9.5. **Amendment.** This Declaration may be amended at any time by an instrument approved by not less than 75 percent of the total votes allocated to the Lots.

PROPOSED AMENDED & RESTATED BYLAWS

BYLAWS OF PROVIDENCE SUBDIVISION HOMEOWNERS' ASSOCIATION, INC.

ARTICLE 1

1. Definitions; Plan of Lot Ownership

- 1.1. **Definitions.** The terms in these Bylaws shall have the same meaning and definitions as the Declaration, unless otherwise stated.
- 1.2. **Bylaws Applicability.** These Bylaws apply to the Lots within Providence Subdivision, a planned community in Deschutes County, Oregon.
- 1.3. **Lots; Property.** The Lots and the Common Maintenance Area may be collectively referred to in these Bylaws as the “Property” or “Project” and the Lots individually as a “Lot” or collectively as the “Lots.”
- 1.4. **Oregon Planned Community Act.** The Property, all Lots and Owners, and the Association and all Members, are subject to the Oregon Planned Community Act, ORS 94.550–94.783 (the “PCA”) and the Oregon Nonprofit Corporation Act, ORS Chapter 65.

ARTICLE 2

2. Association Membership & Voting

- 2.1. **Membership in the Association.** Each Owner shall be a Member of the Association. Lot ownership will be determined from the records maintained by the Association.
- 2.2. **Voting Rights.** Each Lot shall be entitled to one vote on all Membership matters. Single structures located on two or more Lots shall be deemed to be one Lot.
- 2.3. **Majority of Owners.** As used in these Bylaws, the term “majority” means those Owners holding over 50 percent of the voting rights allocated to the Owners. “Majority of Owners present” means Owners holding over 50 percent of the votes present at any legal meeting.

- 2.4. **Quorum.** In accordance with ORS 94.655, the presence in person or by proxy of Owners holding 20 percent or more of the outstanding votes in the Association, will constitute a quorum.
- 2.5. **Voting.** Owners may cast votes in person, by written ballot, by proxy, or—if allowed by the Board of Directors—by electronic ballot in accordance with ORS 94.661. Proxies must be filed with the Secretary of the Association before or during the appointed meeting. A proxy will expire one year after the date it was signed unless a shorter period is specified in the proxy. The proxies may require the holder to cast a vote for or against any special proposal set forth in the notice calling the meeting.
- 2.6. **Authority to Vote.** All Owners, including those who have leased their Lot to a third party, will be entitled to vote. An Owner's right to vote may not be revoked. A purchaser under a land sale contract entitled to immediate possession of the Lot will be deemed the Owner thereof, unless otherwise provided in the contract.
- 2.7. **Fiduciaries and Joint Owners.** An executor, administrator, guardian, or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any Lot owned or held by the person in such capacity, whether or not the Lot has been transferred to the person's name, as long as the person has satisfied the Secretary (in the Secretary's reasonable discretion) that the person is the executor, administrator, guardian, or trustee holding the Lot in such capacity. Whenever any Lot is owned by two or more persons jointly according to the records of the Association, the vote of the Lot may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner will be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Lot will be disregarded for all purposes, except for determining whether a quorum is present.

ARTICLE 3

3. Administration

- 3.1. **Membership.** The Owners constitute the Members of the Association.
- 3.2. **Place of Meetings.** Formal meetings of the Association must be held at suitable places reasonably convenient to the Owners, as may be designated by the Board of Directors.
- 3.3. **Annual Meetings.** The Association shall have an annual meeting on a date determined by the Board of Directors. At the meeting, the Owners must elect board members to replace those Directors whose terms have expired. The Owners may also transact any other Association business. In the event quorum is not achieved, the current Directors of the Association shall remain on the Board until resignation, removal or a subsequent election.
- 3.4. **Special Meetings.** The President must call a special meeting of the Owners if so directed by a resolution of the Board or a petition, presented to the Secretary and signed by 30 percent or more of the Owners. All meetings called because of petition of Owners must be held at a formal gathering, and not by written ballot, within 60 days after the Secretary's receipt of the petition. The notice of any special meeting must state the time and place of the meeting and the purpose thereof. No business other than that stated in the notice may be transacted at a special meeting.
- 3.5. **Notice of Meetings.** The Secretary must mail a notice of each annual and special meeting, stating the purpose thereof and the time and place where the meeting is to be held, to each Owner of record at least 10 but not more than 50 days before the meeting or the date on which ballots for a ballot meeting are required to be returned. The Board of Directors may propose that the Owners take an action by written ballot without a meeting or by electronic ballot as provided by ORS 94.661, according to the provisions of the PCA and the Oregon Nonprofit Corporation Act. The notice must be mailed to the Owner's address last given to the Secretary in writing by the Owner or the Owner's vendee. If Lot ownership is split or the Lot has been sold on a contract, notice will be sent to a single address, of which the Secretary has been notified in writing by the parties. If no address has been given to the Secretary in writing, then mailing to

the Lot will be sufficient. The mailing of a notice in the manner provided in this Section 3.7 will be considered notice served.

- 3.6. **Adjourned Meetings.** As permitted by ORS 65.214, if any gathering of Owners is not a legal meeting because a quorum has not attended, the Owners who are present, either in person or by proxy, may adjourn the meeting and recall to a time not less than 48 hours nor more than 10 days from the time of the original meeting.
- 3.7. **Written Ballot in Lieu of a Meeting.** Any action that may be taken at any annual or special meeting of the Owners may be taken without a meeting if the Association delivers a written ballot to each Owner entitled to vote on the matter as provided in ORS 94.647 or delivers an electronic ballot to each Owner entitled to vote on the matter as provided in ORS 94.661.

ARTICLE 4

4. Board of Directors

- 4.1. **Number and Qualifications.** The Board will be composed of five persons, all of whom must be an Owner or a co-owner of a Lot; however, if a Lot is owned by more than one owner, only one owner of that Lot may serve on the Board of Directors at any one time. An officer or employee of a corporation, the trustee of a trust, the personal representative of an estate, or an employee of a trust or estate may serve on the Board if the corporation, trust, or estate owns a Lot.
- 4.2. **Powers and Duties.** The Board has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things that are not by law or by these Bylaws directed to be done by the Owners.
- 4.3. **Other Duties.** In addition to duties imposed by these Bylaws or by resolutions of the Association, the Board has authority to carry out and be responsible for the following matters:
 - 4.3.1. **Upkeep of Common Maintenance Areas.** Maintenance, repair and replacement of landscaping, planted areas or other improvements for which the Association is obligated under the Declaration.

- 4.3.2. **Reserves.** In accordance with ORS Chapter 94, the establishment and maintenance of replacement Reserve Accounts that the Board deems prudent for replacement or repair of the Common Maintenance Area.
- 4.3.3. **Assessment Collection.** Designation and collection of assessments from the Owners, in accordance with these Bylaws and the Declaration.
- 4.3.4. **Budget.** Establishment and adoption of an annual budget, in accordance with ORS 94.645, and payment of all common expenses of the Association.
- 4.3.5. **Insurance.** Procurement and maintenance of insurance policies and payment of premiums therefor out of the common expense funds.
- 4.3.6. **Rules and Regulations.** Adoption and amendment of administrative Rules and Regulations governing the details of operation and use of the Common Maintenance Area and administration of the Association, including a fine schedule for violations of these Bylaws, the Declaration, or any Rules or Regulations promulgated thereunder.
- 4.3.7. **Copies of Documents; Bank Accounts.** Causing the Association to comply with ORS 94.670 relating to maintenance within the state of Oregon of documents delivered to the Association by Declarant, depositing all assessments in a separate bank account in the name of the Association, payment of all expenses of the Association from the Association's bank accounts, maintenance and distribution of financial statements, and maintenance of copies suitable for duplication of the following: the Declaration, the Articles of Incorporation, the Bylaws, the Association Rules and Regulations and any amendments thereto, the most recent annual financial statement, and the current operating budget of the Association. Furthermore, the Board of Directors must cause to be maintained and kept current the information required to enable the Association to comply with ORS 94.670.
- 4.3.8. **Tax Returns.** Causing the Association to file the necessary tax returns of the Association.
- 4.3.9. **Mailing Address.** Establishing and maintaining a current mailing address for the Association.
- 4.3.10. **Professional Services.** Employment of legal, accounting, and other personnel or consultants for reasonable compensation to

perform such services as may be required for the proper administration of the Association, and preparing and filing the required income tax returns or forms.

- 4.4. **Election and Term of Office.** Directors shall serve staggered terms. Three Directors shall serve a 1 year term. Two Directors shall serve a 2 year term: one elected in odd years; one elected in even years. The candidate who receives the most number of votes shall serve the 2 year term. Any tie vote for directors shall be resolved by coin flip.
- 4.5. **Vacancies.** Vacancies on the Board caused by any reason other than the removal of a Director by a vote of the Owners will be filled for the balance of the term of each directorship by vote of a majority of the remaining Directors, even though they may constitute less than a quorum. The existing Board members must use their best efforts to fill any vacancies in a timely manner. Each person so elected will be a Director until a successor is elected upon expiration of the term.
- 4.6. **Removal of Directors.** At any legal annual or special meeting (not including actions proposed to be taken by written ballot without a meeting), any one or more of the Directors may be removed with or without cause, by a majority vote of the total voting power of the Owners in attendance, and a successor may be then and there elected to fill the vacancy thus created; however, the notice of meeting must specifically indicate that the removal of one or more named Directors is an agenda item for the meeting. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting.
- 4.7. **Regular Board Meetings.** Regular meetings of the Board may be held at such time and place as determined by a majority of the Directors. To the extent authorized under ORS Chapter 94, directors may attend meetings via telephone or similar means. Any director who is present at a meeting of the Board of Directors 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.
- 4.8. **Special Meetings.** Special meetings of the Board may be called by the President or Secretary or on the written request of at least two Directors. Special meetings of the Board may be called on at least three days' notice to each Director, given personally or by mail, telephone, e-mail, or facsimile, which notice must state the time, place (as hereinabove provided), and purpose of the meeting.

- 4.9. **Board of Directors Quorum.** At all meetings of the Board, 3 Directors shall constitute a quorum for the transaction of business, and the acts of at least 3 Directors will be the acts of the Board. If quorum requirements are not met at any meeting of the Board, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice. No Director may grant a proxy or otherwise delegate their duties as a Board member.
- 4.10. **Open Meetings.** In accordance with ORS 94.640, except for executive sessions, all meetings of the Board will be open to any and all Members of the Association; however, no Association Member will have a right to participate in the Board's meetings unless the Member is also a member of the Board. The President will have authority to exclude any Association Member who disrupts the proceedings at a meeting of the Board.
- 4.10.1. **Executive Session.** At the discretion of the Board, the following matters may be considered in executive sessions: (a) consultation with legal counsel concerning rights and duties of the Association regarding existing or potential litigation or criminal matters; (b) personnel matters, including salary negotiations and employee discipline; (c) negotiations of contracts with third parties; (d) collection of assessments; and (e) any other matters permitted by the PCA. Except in the case of an emergency, the Board must vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the presiding officer of the Board must state the general nature of the action to be considered, as precisely as possible, and when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion, or decision to meet in executive session must be included in the minutes of the meeting. A contract or an action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.
- 4.11. **Notice of Board Meetings.** For other than emergency meetings, notice of Board meetings must be provided to each Owner at least three days before the meeting.
- 4.12. **Compensation of Directors.** No Director may be compensated in any manner, except for reasonable out-of-pocket expenses.

ARTICLE 5

5. Officers

- 5.1. **Designation.** The principal officers of the Association will be a President, a Secretary, and a Treasurer, all of whom must be elected by the Directors and who must be Owners.
- 5.2. **Election of Officers.** The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter, and will hold office at the pleasure of the Board.
- 5.3. **Removal of Officers.** Upon an affirmative vote of at least 3 Directors, any officer may be removed, either with or without cause, and the officer's successor may be elected at any regular or special meeting of the Board.
- 5.4. **President.** The President is the chief executive officer of the Association and will preside at all meetings of the Association and of the Board. The President has all of the general powers and duties that are usually vested in the office of president of an association. The duties and obligations of the President may be defined by a resolution of a majority of the Board of Directors. The President may not also serve as Treasurer or Secretary.
- 5.5. **Secretary.** The Secretary, who must not also be the Treasurer, must keep the minutes of all meetings of the Board and the minutes of all meetings of the Association and will have charge of such books and papers as the Board may direct. The Secretary will, in general, perform all the duties incident of the office of secretary.
- 5.6. **Treasurer.** The Treasurer, who must not also be the Secretary, has responsibility for Association funds and securities not otherwise held by the managing agent and is responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer is responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board.
- 5.7. **Directors as Officers.** Any Director may be an officer of the Association.

- 5.8. **Compensation.** No officers may receive any compensation other than reimbursement of reasonable out-of-pocket expenses.

ARTICLE 6

6. Obligations of Owners

- 6.1. **Assessments.** All Owners must pay assessments, fines, and penalties imposed by the Association to meet all the Association's general common expenses, as more particularly set forth in the Declaration. Assessments will be payable on a periodic basis, not more frequently than monthly, as determined by the Board.
- 6.2. **Default.** Failure by an Owner to pay any assessment of the Association is a default by the Owner under these Bylaws and the Declaration. The Association will be entitled to the remedies set forth in the Declaration.
- 6.3. **Maintenance and Repair**
- 6.3.1. **Lots.** Except as otherwise specifically provided in the Declaration and these Bylaws, every Owner must promptly perform all maintenance and repair work to the Owner's Lot and the exterior of the improvements thereon and keep the same in good repair and sanitary and neat condition.
- 6.4. **Mailing Address.** Each Owner is responsible to provide and update the Association of their current mailing address.

ARTICLE 7

7. Use and Occupancy

- 7.1. **Additional Rules.** In addition to the rules set forth in the Declaration, the Board may promulgate and amend, from time to time, Rules and Regulations concerning other use of the Property and must furnish copies of the Rules and Regulations to any Owner or Occupant requesting such copies. Owners may rescind Rules and Regulations by an affirmative vote of 30% of all votes allocated to the membership.

- 7.2. **Enforcement.** The Association, through its Board of Directors, has the power to enforce the provisions in these Bylaws and in the Declaration. Owners, by private right of action, have the right to bring actions or suits regarding covenants and restrictions against other Owners.
- 7.3. **Fines.** The Board of Directors may, after giving the Owner written notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations of the Association, as long as fines levied are based on a schedule previously adopted by Board resolution that is mailed to the mailing address of each Lot or mailed to the mailing address designated in writing by the Owner(s).

ARTICLE 8

8. Insurance

- 8.1. **General.** The Board may maintain any necessary insurance policies required by law or the Declaration or deemed necessary or prudent by the Board, including liability insurance, directors and officers liability insurance, fidelity coverage or property insurance for any improvements which the Association is obligated to maintain, repair or replace.
- 8.2. **Owner Insurance.** The Association will have no responsibility to procure or to assist Owners or Occupants in procuring property loss insurance or liability insurance. Owners and Occupants must procure all other insurance coverage that they deem necessary or prudent for their protection.

ARTICLE 9

9. Records

- 9.1. **General Records.** The Board and the managing agent or manager, if any, must preserve and maintain minutes of the meetings of the Association, the Board, and any Board committees as required by ORS 94.670. The Board must maintain a list of Owners entitled to vote at meetings of the Association. The minutes of the Association,

the Board, and the Association's financial records must be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies. Proxies and ballots must be retained by the Association for one year from the date of determination of the vote.

- 9.2. **Assessment Roll.** The Board and the managing agent or manager, if any, must maintain the assessment roll in a set of accounting books in which there must be an account for each Lot. Each account must designate the name and address of the Owner or Owners, the amount of each assessment against the Owner, the dates on which and the amounts in which the assessment comes due, the amounts paid on the account, and the balance due on the assessments.

ARTICLE 10

10. Compliance with ORS 94; Conflicts

- 10.1. These Bylaws are intended to comply with the provisions of the PCA. In case of any conflict among the provisions of the PCA, the Articles, the Declaration, or these Bylaws, the provisions of the PCA will control over those of the Articles and Declaration, and the provisions of the Declaration will control over those of the Articles and these Bylaws.

ARTICLE 11

11. Indemnification of Directors and Officers

- 11.1. The Association must indemnify any current or previous Director, officer, employee, or agent who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding. Indemnification will be made regardless of whether the action is civil, criminal, administrative, or investigative (other than an action by the Association) by reason of the fact that such person is or was a Director, officer, employee, or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts

paid in settlement actually and reasonably incurred by the person in connection with the suit, action, or proceeding.

ARTICLE 12

12. Assessment Collection

- 12.1. An Owner must pay reasonable fees and costs (including, but not limited to, attorneys' fees) and actual administrative costs incurred in connection with efforts to collect any delinquent unpaid assessments from the Owner, whether or not suit or action is filed. Assessments against Owners may include fees, late charges, fines, and interest imposed by the Board, in addition to amounts owed toward operating expenses and the funding of reserves.

ARTICLE 13

13. Litigation.

- 13.1. If the Association brings against any Owner or Owners a suit or action for the collection of any amounts due under or for the enforcement of any provisions of the Declaration, the Articles, or these Bylaws, the Owner or Owners, jointly and severally, must pay, in addition to all other obligations, the costs of the suit or action, including actual administrative expenses incurred by the Association because of the matter or act that is the subject of the suit, reasonable attorneys' fees to be fixed by the trial court, and, in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees in the appellate court to be fixed by the appellate court.

ARTICLE 14

14. Miscellaneous

- 14.1. **Notices.** All notices to the Association or to the Board must be sent in care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the

Board hereafter may designate from time to time. All notices to any Owner must be sent to such address as may have been designated by the Owner from time to time, in writing, to the Board, or if no address has been designated, then to the Owner's Lot.

- 14.2. **Electronic Notice.** In the discretion of the Board of Directors, any notice, information, or other written material required to be given to an Owner or Director may be given by electronic mail, facsimile, or other form of electronic communication acceptable to the Board of Directors. Notwithstanding the foregoing sentence, electronic communication may not be used to give notice of (a) failure to pay an assessment; (b) foreclosure of an association lien; (c) an action the Association may take against an Owner; or (d) an offer to use the dispute resolution program. An Owner or Director may decline to receive notice by electronic communication and may direct the Board of Directors to provide notice as required elsewhere in these Bylaws, the Declaration, or ORS Chapter 94.
- 14.3. **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws will be deemed to have been abrogated or waived by reason of any failure to enforce it, irrespective of the number of violations or breaches thereof that may have occurred and the number of times that the pertinent restriction, condition, obligation, or provision was not enforced.
- 14.4. **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws will not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws.

ARTICLE 15

15. Adoption and Amendment

- 15.1. These Bylaws have been approved by a majority of the Owners in accordance with ORS 94.625.