

# **FINAL Footnoted**

## **PROPOSED 2019 AMENDED AND RESTATED BYLAWS OF WEST HILL ESTATES HOMEOWNERS' ASSOCIATION**

### **Note to owners:**

**To the extent there are any typos, formatting or style errors, the Board may authorize such corrections after the vote and before recording. No substantive changes will be made after the vote.**

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**2019 AMENDED AND RESTATED BYLAWS  
OF  
WEST HILL ESTATES HOMEOWNERS' ASSOCIATION**

These 2019 Amended and Restated Bylaws of West Hill Estates Homeowners' Association ("**Bylaws**") are made by West Hill Estates Homeowners' Association, an Oregon nonprofit corporation ("**Association**").

**RECITALS**

- A. West Hill Estates is a Planned Community located in Polk County, Oregon. West Hill Estates consists of ten phases of development, governed by five separate declarations of covenants, conditions and restrictions as set forth in the *2019 Amended and Restated Declaration of Covenants, Conditions and Restrictions for West Hill Estates*, recorded on \_\_\_\_\_, as document no. \_\_\_\_\_.
- B. The Association is currently governed by the *Bylaws of West Hill Estates Homeowners Association*, recorded on November 16, 2004 as document no. 2004-018380 ("**2004 Bylaws**").
- C. The Association is also governed by the Oregon Planned Community Act, ORS 94.550-94.783 (the "**Act**").
- D. The Association was incorporated as an Oregon nonprofit corporation by *Articles of Incorporation*, filed with the Oregon Secretary of State, Corporation Division, on February 22, 1995.
- E. Under Article 8 of the 2004 Bylaws and ORS 94.625, the members of the Association may adopt amendments to the 2004 Bylaws by vote of a majority of members present in person or by proxy. The members wish to amend the 2004 Bylaws as provided below, which shall be referred to herein as the "**Bylaws**."

**BYLAWS**

**NOW, THEREFORE**, in accordance with Article 8 of the 2004 Bylaws and ORS 94.625, the Association hereby adopts the following as the Bylaws of the Association which shall amend and restate in their entirety the 2004 Bylaws.

**ARTICLE 1  
DEFINITIONS**

When used in these Bylaws, the following terms, whether or not capitalized, have the following meaning:

- 1.1 “**Act**” means the Oregon Planned Community Act, ORS 94.550 to 94.783, as it may be amended from time to time.
- 1.1 “**Articles**” means the Articles of Incorporation of the Association as they may be amended or restated from time to time.
- 1.2 “**Bylaws**” means these 2019 Amended and Restated Bylaws of West Hill Estates Homeowners’ Association, as they may be amended from time to time.
- 1.3 “**Declaration**” means the 2019 Amended and Restated Declaration of Covenants, Conditions and Restrictions for West Hill Estates.
- 1.4 **Additional Definitions.**
- (a) **Incorporation by Reference.** Except as otherwise provided in these Bylaws, unless the context clearly requires otherwise, whether or not capitalized:
- (1) Terms defined in the Declaration have the same meaning in these Bylaws.
- (2) Terms used in these Bylaws that are defined in ORS 94.550 have the meanings set forth in ORS 94.550, unless the term is defined otherwise in the Declaration.
- (b) **Other Definitions.** Terms that are not defined in this article but are defined elsewhere in these Bylaws, whether or not capitalized, have the respective meanings given them in the provisions of these Bylaws.

## **ARTICLE 2**

### **ASSOCIATION IDENTITY, PURPOSES, POWERS AND OFFICES**

- 2.1 **Name and Location.**<sup>1</sup> These are the Bylaws of West Hill Estates Homeowners’ Association, an Oregon nonprofit corporation. West Hill Estates is a planned community located in the Polk County, Oregon. The real property subject to these Bylaws are described in attached **Exhibit A**.
- 2.2 **Purposes; Powers and Governance.**<sup>2</sup>
- (a) **Purposes.** The Association was organized to serve as the means through which the Owners may take action with regard to the administration, management and operation of the Planned Community.

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<sup>1</sup> Compare Old Bylaws Section 1.1.

<sup>2</sup> Compare Old Bylaws Section 1.3.

- (b) **Powers.**<sup>3</sup> The Association has such powers and duties as may be granted to it by the Act, including each of the powers set forth in ORS 94.630, as the statute may be amended to expand the scope of association duties and powers, together with such additional powers and duties afforded by the Declaration, the Articles of Incorporation, these Bylaws and the Oregon Nonprofit Corporation Act, including the following:
- (1) Carry out the program for maintenance, upkeep, repair and replacement of any property required to be maintained by the Association as described in the Declaration and these Bylaws;
  - (2) Determination of the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures;
  - (3) Preparation of a budget for the Association, and assessment and collection of the Assessments;
  - (4) Employment and dismissal of such personnel as necessary for such maintenance, upkeep and repair of the Common Maintenance Area or any Common Property;
  - (5) Employ legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association;
  - (6) Opening of bank accounts on behalf of the Association and designating the signatories;
  - (7) Preparing or causing to be prepared and filed any required income tax returns or forms for the Association;
  - (8) Purchasing Lots at foreclosure or other judicial sales in the name of the Association, or its designee;
  - (9) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with Lots acquired by the Association or its designee;
  - (10) Obtaining insurance or bonds pursuant to the provisions of these Bylaws, and reviewing such insurance coverage at least every two (2) years;
  - (11) Making additions and improvements to, or alterations of, the Common Maintenance Area or any Common Property;

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<sup>3</sup> This list along with the list of Board powers in Article 5 provides a more comprehensive list of powers and duties of the Association as compared to the Old Bylaws. Compare with Old Bylaws Section 3.7.

- (12) From time to time adopt, modify, or revoke such Policies and Procedures governing the conduct of persons and the operation and use of the Lots, the Common Maintenance Area or any Common Property as the Board of Directors may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property;
  - (13) Enforcement by legal means of the provisions of the Declaration, these Bylaws and any Policies and Procedures adopted thereunder;
  - (14) In the name of the Association, maintain a current mailing address of the Association, file annual reports with the Oregon Secretary of State, and maintain and keep current the information required to enable the Association to comply with ORS 94.670(7); or
  - (15) Enter into management agreements with professional management firms.
- (c) **Governance.** The affairs of the Association shall be governed by the Board of Directors as provided in these Bylaws. Owners have no authority to act on behalf of the Association and may only take action with respect to affairs of the Association as specifically provided under the Declaration, these Bylaws or the Act.

**2.3 Principal Office.<sup>4</sup>** The principal office of the Association shall be at a location within the State of Oregon as determined by the Board of Directors from time to time.

**2.4 Applicability of Bylaws.** The Association, all Owners and all other persons using any part of the Planned Community are subject to these Bylaws and to all rules and regulations.

**2.5 Organization.**

- (a) **Incorporation.** The Association is incorporated under the Oregon Nonprofit Corporation Act. The Articles of Incorporation must be consistent with the Declaration and these Bylaws. These Bylaws constitute the bylaws of the incorporated association.
- (b) **Duration.** Except as otherwise provided under the Act, if the Association is at any time administratively dissolved, whether inadvertently or deliberately:
  - (1) The Association automatically continues as an unincorporated association under the same name.
  - (2) The unincorporated association has all of the property, powers and obligations of the incorporated Association existing immediately prior to dissolution.

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<sup>4</sup> This new section is an example of provisions that are required to be included by statute. There are other provisions that are also required to be included under new revisions to the Oregon Planned Community Act.



- (3) The unincorporated association shall be governed by the Bylaws and, to the extent applicable, the Articles of Incorporation of the incorporated Association.
- (4) The Board of Directors and the officers of the Association serving immediately prior to the dissolution continue to serve as the directors and officers of the unincorporated association.

### **ARTICLE 3 MEMBERSHIP AND VOTING**

#### **3.1 Membership in the Association.<sup>5</sup>**

- (a) **Automatic Membership.** The Owner of each Lot is automatically a member of the Association, including the Association, itself, to the extent it owns a Lot in the Planned Community. The membership commences, exists and continues by virtue of the ownership. Membership under this subsection need not be confirmed or evidenced by any certificate or acceptance of the membership.
- (b) **Determination of Ownership.** Ownership is determined, for all purposes of the Declaration and these Bylaws and the administration of the Planned Community and Association, from the record of ownership maintained by the Association in accordance with Section 11.1 below. The record shall be established and updated by the Owners filing with the Association a copy of the deed or land sale contract for the Lot evidencing the certificate of the recording officer of Polk County, Oregon, a copy of a title insurance policy or other evidence reasonably acceptable to the Board of Directors.
- (c) **Tenants, Lessees and Other Occupants.** Each lessee, renter, or other occupant of a Lot is not eligible for membership in the Association. Owners are responsible for the conduct of tenants, lessees, or other occupants of the Lot.

#### **3.2 Voting.<sup>6</sup>** Each Lot is allocated one vote in the affairs of the Association in accordance with Section 5.3 of the Declaration. The Board of Directors is entitled to vote on behalf of any Lot that has been acquired by or on behalf of the Association, except the Board of Directors is not entitled to vote on behalf of an acquired Lot in any election or removal of directors.

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<sup>5</sup> Compare Old Bylaws Section 2.1. Legal membership in the association will the same as it was under the old Bylaws. The provisions here in Article 3 provide more detail on how and when people become owners and members of the association.

<sup>6</sup> Compare Old Bylaws Section 2.1. Voting allocations remain the same: one vote per lot.

**3.3 Record Date; Owners Entitled to Vote.**<sup>7</sup> Unless otherwise determined by resolution of the Board of Directors, the record date required under ORS 65.221 for determining Owners entitled to vote is as follows:

- (a) **Association Meeting.** For any meeting of members, the record date is the time the meeting is called to order.
- (b) **Action by Written Ballot in Lieu of a Meeting.** For action by written ballot in lieu of a meeting conducted under Section 4.8 below, the record date is the day before written ballots are mailed or otherwise delivered. If the Board specifies a different record date, the date shall be included in the solicitation given under Section 4.8(c) below.
- (c) **Action without a Meeting.** For action taken without a meeting under Section 4.9 below, the date is the date specified in the consent, if any.

**3.4 Proxies.**<sup>8</sup>

(a) **Requirements.**

- (1) Subject to Paragraph (2) of this subsection, a vote may be cast or consent given by proxy. A proxy given by an Owner must:
  - (A) Be in writing, dated and signed by the Owner.
  - (B) Name an individual as the proxy holder.
- (2) A proxy must be filed with the secretary or other person designated by the Board of Directors in accordance with procedures adopted by resolution of the Board of Directors. The Board may not require by resolution or other action that a proxy be on a form prescribed by the Board of Directors.

(b) **Validity.**

- (1) A proxy:
  - (A) Given to an individual to vote at a specific meeting, unless withdrawn, is also valid at an adjourned meeting called under Section 4.7 below;

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<sup>7</sup> This is new language that clarifies when owners become allowed to vote. This can become an issue if you have a proposed action, like an amendment, that takes place while an owner is selling their lot before voting is completed.

<sup>8</sup> Compare Old Bylaws Section 2.5. This new language contains much more detail on validity and use of proxies.

- (B) Is not valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy. However, a proxy is not valid for more than one (1) year after the date of execution;
  - (C) Is not valid if it purports to be revocable without notice to the Association; and
  - (D) Automatically revokes all previously given proxies.
- (2) A copy of a proxy in compliance with this section provided to the secretary (or other person designated by the Board of Directors) by facsimile, electronic mail or other means of electronic communication utilized by the Board of Directors is valid.
- (c) **Revocation.**
- (1) An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting under Section 4.8 below.
  - (2) A proxy given by an Owner is automatically revoked upon sale of the Lot by the Owner.

**3.5 Absentee Ballots.<sup>9</sup>** At the discretion of the Board of Directors, a vote may be cast or consent given by absentee ballot as provided in this section.

- (a) An absentee ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
- (b) All solicitations for votes by absentee ballot must include:
  - (1) Instructions for delivery of the completed absentee ballots, including the delivery location.
  - (2) Whether or not an absentee ballot may be cancelled if the absentee ballot has been delivered according to the instructions.
  - (3) Any other information required by the Act.
- (c) An absentee ballot shall be counted as an Owner present for the purpose of establishing a quorum.

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<sup>9</sup> The Old Bylaws did not contain procedures on absentee ballots. This is an alternative to proxies that the Association may use.

- (d) Even though an absentee ballot has been delivered to an Owner, the Owner may vote in person at a meeting if the Owner has:
  - (1) Returned the absentee ballot; and
  - (2) Canceled the absentee ballot, if cancellation is permitted in the instructions given under Subsection (b) of this section.

### **3.6 Fiduciaries and Joint Owners.<sup>10</sup>**

- (a) **Fiduciaries.** An attorney-in-fact, executor, administrator, guardian, conservator or trustee may vote or grant approval or consent with respect to any Lot owned or held in such capacity, whether or not the Lot has been transferred to the person's name; provided the person satisfies the secretary that the person is the attorney-in-fact, executor, administrator, guardian, conservator or trustee holding the Lot in the fiduciary capacity.
- (b) **Joint Owners.** Whenever a Lot is owned by two (2) or more persons jointly, according to the records of the Association, the vote (or consent) of the Lot may be exercised by any one of the Owners, in the absence of protest by a co-owner. If a co-owner protests, no one co-owner is entitled to vote without the approval of all co-owners. If there is a disagreement among the co-owners, the vote (or consent) of the Lot must be disregarded completely in determining the proportion of votes given with respect to the matter.

- 3.7 Binding Vote.** At any Association meeting at which a quorum is present, the vote of Owners representing a majority of the voting rights present in person or by proxy is binding upon all Owners for all purposes except when a higher percentage vote is required by law, the Declaration or these Bylaws. Owners submitting an absentee ballot are also counted as present at the meeting.

## **ARTICLE 4 ASSOCIATION OWNER MEETINGS**

- 4.1 Place of Meeting.** All meetings of Property Owner Members shall be held at the Corporation's principal office or at such other place in Polk County or Marion County, Oregon as the Board of Directors designates.

### **4.2 Annual and Special Owner Meetings.<sup>11</sup>**

- (a) **Annual Meetings.**

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<sup>10</sup> Compare Old Bylaws Section 2.6

<sup>11</sup> Compare Old Bylaws Sections 2.2 and 2.3

- (1) The Association shall hold at least one meeting of the Owners each calendar year. The Board shall designate the date, hour and place of the meeting.
  - (2) The annual meeting is for the purpose of electing directors as provided under Section 5.3 below and for the transaction of such other business as may properly come before the meeting.
- (b) **Special Meetings.**
- (1) Special meetings of Owners may be called by the president or by a majority of the Board of Directors and must be called by the president or secretary upon receipt of a written request from at least thirty percent (30%) of the Owners stating the purpose of the meeting. Only matters of business within the purpose or purposes described in the notice given under Section 4.3 below may be conducted at a special meeting.
  - (2) If a notice for a special meeting requested by Owners under this subsection is not given within thirty (30) days after the date the written request is delivered to the president or secretary, a person signing the request may set the date, time and place of the meeting and give notice as specified in Section 4.3 below.
- (c) **Effect of Failure to Hold Meetings as Scheduled.** The failure to hold an annual or other Association Owners meeting stated in or fixed in accordance with these Bylaws does not affect the validity of any actions taken by the Board of Directors at a duly noticed Board meeting.

#### 4.3 Notice of Owner Meetings.<sup>12</sup>

- (a) **Requirements.** Notice of all meetings of the Owners shall be given by the president or secretary or other person authorized by resolution of the Board of Directors. All notices must be in writing and must:
- (1) State the date, time and place of the meeting.
  - (2) State the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes or any proposal to remove a director of the Association.
  - (3) Subject to Section 14.2 below, be delivered to each Owner, and to all mortgagees that have requested notice, not less than ten (10) or more than fifty (50) days before the date of the meeting in accordance with Section 14.1 below.

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<sup>12</sup> Compare Old Bylaws Section 2.4

- (b) **Proof of Delivery.** The person giving the meeting notice shall give a signed written statement that states notice was given in accordance with these Bylaws. The written statement constitutes proof of delivery of notice.
- (c) **Adjourned Meetings.** When a meeting is adjourned for less than thirty (30) days under Section 4.7 below, no notice of the adjourned meeting need be given other than by announcement at the meeting at which the adjournment takes place.

**4.4 Quorum.**<sup>13</sup> At any Association meeting of Owners, Owners representing twenty percent (20%) of the voting rights constitute a quorum whether present in person, by proxy or absentee ballot. When a quorum is once present to organize a meeting, the quorum cannot be broken by the subsequent withdrawal of an Owner or Owners.

**4.5 Order of Business.**<sup>14</sup>

- (a) The order of business at annual meetings of the Association is:
  - (1) Certifying of proxies and determination of quorum
  - (2) Proof of notice of meeting given under Section 4.3(b) above or waiver of notice.
  - (3) Approval of minutes of preceding meeting.
  - (4) Reports of officers.
  - (5) Reports of committees, if any.
  - (6) Election of directors in accordance with Section 5.3 below.
  - (7) Unfinished business.
  - (8) New business.
  - (9) Adjournment.
- (b) Any new business requested by Members to be considered by the Members at any annual or special meeting shall be a motion concisely stated in writing and signed by the requesters. Such motion shall address only one subject that is not inconsistent with Oregon law, the Articles of Incorporation, the Bylaws, the Rules and Regulations or the Declaration and shall be delivered to the Secretary at the Corporation office for notice and publication at least ten (10) days prior to the date

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<sup>13</sup> Compare Old Bylaws Section 2.7. Oregon statute requires that quorum be at least 20%.

<sup>14</sup> Compare Old Bylaws Section 2.9.

of such meeting. The requested business matter shall then be placed on the agenda of the annual or special meeting under New Business.

**4.6 Meeting Procedure.**<sup>15</sup> Unless other rules of order are adopted by resolution of the Board of Directors or the Owners:

- (a) Except when inconsistent with these Bylaws, Association meetings of Owners shall be conducted according to the latest edition of *Robert's Rules of Order* published by the Robert's Rules Association.
- (b) A decision of the Association may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.
- (c) A decision of the Association is deemed valid without regard to procedural errors related to the rules of order one (1) year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

**4.7 Adjournment of Meetings.**

- (a) **Lack of Quorum.** Subject to Paragraph (b) of this subsection, if any meeting of Owners, except meetings conducted under Section 4.8 below, cannot be organized because of a lack of quorum, the Owners who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum as specified in Section 4.4 above is present. However, the meeting may not be adjourned to a date that is thirty (30) days or more from the date the original meeting was called.
- (b) **Extension of Due Date for Action by Written Ballot.** If a due date for return of ballots has been specified in a solicitation of a meeting by written ballot conducted under Section 4.8(c) below, the Board of Directors may extend the due date as provided under Section 4.8(e) below.
- (c) **Continuation of Business.** In accordance with *Robert's Rules of Order* or other rules of order adopted under Section 4.6 above, a meeting may be adjourned until later the same day or some other day and time pursuant to Section 4.7(a) above.

**4.8 Action by Written Ballot in Lieu of a Meeting.**<sup>16</sup>

- (a) **Action by Written Ballot.** At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of Owners may be taken without a meeting upon compliance with this section and ORS 94.647, except

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<sup>15</sup> Compare Old Bylaws Section 2.10.

<sup>16</sup> This is a new section that tracks the language of the statute on votes by written ballot in lieu of a meeting.

action by written ballot may not be conducted under this section for the following meetings:

- (1) The annual meeting, unless permitted under ORS 94.647.
- (2) A special meeting held at the request of Owners under Section 4.2(b) above.
- (3) A meeting held under Section 5.4(b) below to remove a director.
- (4) Any other meeting ORS 94.647 prohibits from being conducted under this section.

(b) **Delivery, Form and Effect of Ballot.** Subject to Subsection (d) of this section, a written ballot:

- (1) Must be delivered to every Owner entitled to vote on the matter at least ten (10) days before the deadline for return of ballots specified in the solicitation described under Subsection (c) of this section.
- (2) Must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
- (3) May be revoked before the final return date of the ballots unless the vote is by secrecy procedure under Subsection (d) of this section or revocation is prohibited under the solicitation given under Subsection (c) of this section.

(c) **Information Required in Ballot Solicitations.** All solicitations for votes by written ballot must comply with ORS 94.647.

(d) **Secrecy Procedure.** Except as otherwise provided under the Act, unless the vote will be conducted according to secrecy procedure specified in ORS 94.647, the Board of Directors shall provide Owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. The notice must:

- (1) Be delivered in the manner prescribed by the Board.
- (2) Inform the Owners that if at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, which date must be stated, at least ten percent (10%) of the Owners petition the Board of Directors requesting the secrecy procedure, the procedure specified in ORS 94.647 must be followed.

(e) **Extension of Deadline; Determination of Vote.**



- (1) If a due date for return of ballots has been specified in a solicitation of a meeting by written ballot conducted under Subsection (c) of this section, the Board of Directors may extend the due date in one or more extensions, for up to ninety (90) days after the originally specified return of ballots date by delivering written notice to all Owners of such extension.
  - (2) The outcome of a vote conducted by written ballot in lieu of a meeting must be determined by the Board of Directors within forty-eight (48) hours of the deadline for return of ballots. Matters that may be voted on by written ballot are deemed approved or rejected as provided under ORS 94.647.
- (f) **Counting of Votes.** Unless otherwise provided in ORS 94.647:
- (1) Except as provided in Paragraph (2) of this subsection, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.
  - (2) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

#### **4.9 Action without a Meeting.<sup>17</sup>**

- (a) Any action that may be taken at any Association annual, regular or special meeting of Owners, may be taken without a meeting and without solicitation of written ballots under Section 4.8 above, if the action is taken by all of the Owners entitled to vote on the action.
- (b) The action must be evidenced by one or more written consents describing the action taken, signed by all of the Owners entitled to vote on the action, and delivered to the Association for inclusion in the minutes or filing with the Association records.
- (c) Action taken under this section is effective when the last Owner signs the consent, unless the consent specifies an earlier or later effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

### **ARTICLE 5 BOARD OF DIRECTORS**

#### **5.1 Number and Term.<sup>18</sup>**

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<sup>17</sup> This is also new language that provides for a voting method allowed under the Nonprofit corporation act. It is rarely used but there are times when a vote by written consent can be used to approve certain actions.

<sup>18</sup> Compare Old Bylaws Section 3.1.

- (a) **Number.** The affairs of the Association shall be governed by a Board of Directors composed of not less than six (6) nor more than ten (10) elected as provided in Section 5.3(a) below. The number of members of the Board of Directors will be set by a majority vote of the directors. Changes to the number shall be made a maximum of ninety (90) days and a minimum of sixty (60) days prior to any general or special meeting of the Association at which the election of the members of the Board of Directors is to be held. The filling of any increase in the number of directors will be by election.
- (b) **Term.** The directors shall be elected for a term of three (3) years. The directors shall serve in staggered terms, as determined by the existing Board, so that all terms shall not expire simultaneously. Directors shall hold their offices until the expiration of the terms for which they were elected and are serving, their resignation, or their removal from office, whichever occurs first.

## 5.2 Qualifications.

- (a) **Individuals.**<sup>19</sup> Except as provided in Subsections (b) and (c) of this section, each member of the Board of Directors must be an individual and an Owner or co-owner of a Lot. However, multiple Owners of the same Lot may not serve as directors simultaneously even if one of the multiple Owners has an interest in another Lot.
- (b) **Entities and Trusts.**
  - (1) A trustee may serve on the Board of Directors if the trustee holds legal title to a Lot in trust for the benefit of the Owner of the beneficial interest in the Lot.
  - (2) Prior to an election of members of the Board of Directors, a trustee shall provide the Board of Directors with documentary evidence that the person is qualified to represent the beneficiary owning an interest in the Lot.
- (c) **Fiduciaries.**
  - (1) An executor, administrator, guardian, conservator or other person appointed by a court to serve in a fiduciary capacity for an Owner of a Lot may serve on the Board of Directors.
  - (2) Prior to an election of members of the Board of Directors, an individual described in Paragraph (1) of this subsection shall provide the Board with documentary evidence that the individual is qualified to serve on the Board of Directors.

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<sup>19</sup> Compare Old Bylaws Section 3.1. This section clarifies that owners of the same lot may not serve simultaneously even if they own multiple lots. So this would prevent, say, a husband and wife who are co-owners from serving on the board at the same time.

- (d) **Vacancies.** The position of an individual serving on the Board of Directors under Subsection (b) or (c) of this section becomes vacant if the individual no longer meets the requirements of Subsection (b) or (c) of this section.

### 5.3 **Nomination and Election.**<sup>20</sup>

- (a) **Nomination.** Incumbent Directors shall set the time and prescribe the conditions for nominations of candidates for the Board of Directors.
- (b) **Election.**
  - (1) **Election at Meeting.** Directors shall be elected at the annual meeting of the members. The nominees receiving the greatest number of votes shall be elected.
  - (2) **Election Committee.** The Board of Directors may appoint an Election Committee to conduct the election by written ballot.
  - (3) **Voting.** Voting shall be by written ballot only by Members. Voting may be by absentee ballot provided by the Secretary, if requested, and may be cast at any time prior to a scheduled election.
  - (4) **Ballot.** The ballot shall bear the names of all qualified candidates for Directors. The Election Committee or Secretary shall tally the ballots cast, while the remaining committee members view the tallying to verify accuracy. The committee will then certify to the Board of Directors in writing the names of the candidates receiving the three highest numbers of votes from members entitled to cast votes. The Board may allow for write in candidates who are nominated from the floor at the annual meeting.

### 5.4 **Resignation; Removal of Directors.**

- (a) **Resignation.** Any director may resign at any time by giving written notice to the Board of Directors, president or secretary. A resignation is effective upon receipt of the notice or at any later time specified in the notice. Unless otherwise specified in the notice, acceptance of the resignation is not necessary. Any director who fails to qualify as a voting member shall be automatically deemed to have resigned without a right of reinstatement.
- (b) **Removal of Directors by Owners.**<sup>21</sup> At any annual or special meeting, other than a meeting by written ballot conducted under Section 4.8 above, any one or more of

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<sup>20</sup> This Section 3.2 contains some new provisions on conducting an election with an Election Committee. The Election Committee, however, is optional.

<sup>21</sup> Compare Old Bylaws Section 3.9. The section retains the same voting threshold to remove a director, which is a majority of owners present in person or proxy at a meeting.

the directors may be removed, with or without cause, by a vote of a majority of Owners present in person or by proxy, and a successor shall be elected at that meeting to fill the vacancy created by the removal. The notice of the meeting must state the name of the director and that the director's removal from the Board will be considered. Any director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. The agenda of the meeting called under this subsection must include the election of a successor to fill the vacancy created as provided under Section 5.5(b) below.

- (c) **Removal by Board for Failure to Attend Board Meetings.**<sup>22</sup> A director who fails to attend three (3) successive meetings of the Board of Directors that have been properly called, or who has failed to attend more than one-third (1/3) of the Board of Directors meetings during a twelve (12) month period that have been properly called, may be removed by a majority of the remaining directors. The vacancy created by the removal shall be filled as provided in Section 5.5(a) below.

#### **5.5 Filling of Vacancies on Board; Term.**<sup>23</sup>

- (a) **Filling of Vacancies by Board of Directors.** Except as provided in Subsection (b) of this section, vacancies on the Board of Directors shall be filled by vote of a majority of the remaining directors even though they may constitute less than a quorum.
- (b) **Filling of Vacancies Created by Removal of Director by Owners.** A vacancy created by the removal of a director by the Owners at a meeting held under Section 5.4(b) above, shall be filled by the Owners at the meeting in accordance with the meeting notice. However, if the Owners fail to elect a director at the meeting, any unfilled director position shall be filled by the Board of Directors in the same manner as a vacancy under Subsection (a) of this section.
- (c) **Term of Director Elected to Fill Vacancy.** Each person elected to fill a vacancy under this section serves for the remainder of the term of the vacated director position.

**5.6 Powers and Duties.** The Board of Directors has all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or these Bylaws may not be delegated to the Board of Directors by the Owners.

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<sup>22</sup> This is an alternative removal section for the Board. The Board may remove directors who fail to attend Board meetings without a vote of the owners.

<sup>23</sup> Compare Old Bylaws Section 3.1. This is the same procedure for filling vacancies under the Old Bylaws, but provides more detailed guidance in the event owners fail to replace a removed director.

**5.7 Specific Powers and Duties.** <sup>24</sup> The powers and duties to be exercised by the Board of Directors include, without limitation, the following:

- (a) **Maintenance of Common Property.** Operation, care, upkeep, maintenance, repair and replacement of Common Property in accordance with the Declaration and these Bylaws.
- (b) **Maintenance Plans.** Preparation and update, as necessary, of the maintenance plan described in ORS 94.595.
- (c) **Borrowing Funds.** Borrowing of funds for unexpected expenses.
- (d) **Bank Accounts.** Opening and maintenance of accounts on behalf of the Association in accordance with Section 11.3 below and designating the signatories required therefor in accordance with these Bylaws.
- (e) **Budgets and Reserve Studies.** Preparation and adoption of Association budgets and preparation, review and update of reserve studies, all in accordance with these Bylaws.
- (f) **Reserves.** Establishment and maintenance of reserve accounts as may be required by the Declaration, these Bylaws or the Act and such other reserve accounts, including a general operating reserve account described in Section 11.3 below, as are permitted under these Bylaws.
- (g) **Maintenance, Repairs, and Improvements.** Disbursement of funds for maintenance, repairs, and improvements.
- (h) **Assessment Collection.** Designation and collection of assessments from the Owners in accordance with these Bylaws, the Declaration and the Act.
- (i) **Personnel.**
  - (1) Designation, employment and dismissal of such personnel as necessary for the efficient maintenance, upkeep and repair of the Common Property and any other property for which the Association has maintenance, repair or replacement responsibility in accordance with the Declaration and these Bylaws.
  - (2) Employment of legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association. The Board of Directors may employ or

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<sup>24</sup> Compare Old Bylaws Section 3.7. This list of powers and duties is longer than that provided in the Old Bylaws. The idea here is to give each incoming board a comprehensive list of its powers and duties in the Association. It will help to review this list regularly so that the Board does not miss any issues it should be addressing.

enter into a contract with a management agent as provided under Section 5.9 below.

- (j) **Insurance.**
  - (1) Obtaining and maintaining the insurance required or permitted under Article 12 below.
  - (2) At least annually, the review of the insurance coverage of the Association as provided in Article 12 below.
- (k) **Purchase of Lots.** Purchasing Lots of the Planned Community at foreclosure or other judicial sales in the name of the Association, or its designee, on behalf of all Owners as provided in these Bylaws.
- (l) **Annual Financial Statement.** The preparation and distribution of an annual financial statement of the Planned Community to each Owner in accordance with Section 11.6 below.
- (m) **Annual Report with Secretary of State.** The filing of the Annual Report with the Oregon Secretary of State in accordance with ORS Chapter 65.
- (n) **Income Tax Returns.** Causing any required income tax returns or forms to be prepared by a certified public account or other professional licensed in Oregon to prepare income tax returns or forms and filed as required by law.
- (o) **Association Records.** Compliance by the Association with ORS 94.670 relating to maintenance of Association records and maintenance of copies suitable for duplication of the documents specified in ORS 94.670 and Section 11.7 below.
- (p) **Association Mailing Address.** Maintenance of a current mailing address for the Association.
- (q) **Rules and Regulations.** Promulgation, adoption, amendment and repeal of rules and regulations, as provided in the Declaration, these Bylaws and the Act.
- (r) **Enforcement.** Enforcement by legal means of the provisions of the Act, the Declaration, these Bylaws and any rules and regulations.
- (s) **Committees.** Establishment, by Board resolution, of committees and appointment of members thereof as the Board of Directors, in its sole discretion, deem necessary or appropriate to assist the Board in its duties. Unless otherwise provided by the Act, authority of the Board of Directors may only be granted to a committee in accordance with ORS 65.354.

- 5.8 Standards of Conduct.** Unless otherwise provided in the Act, in the performance of their duties, members of the Board of Directors are governed by ORS 94.640, 65.357, 65.361 and 65.369.
- 5.9 Managing Agent or Manager.** On behalf of the Association, the Board of Directors may employ or enter into a contract with a management agent to perform such duties and services as the Board of Directors authorizes, including, without limitation, the duties listed in Section 5.7 above. The Board shall establish the compensation of any employee or management agent to be paid under a contract.
- 5.10 Compensation of Directors.** A director may not be compensated in any manner, except for actual expenses incurred in the performance of the director's duties.

## **ARTICLE 6 MEETINGS OF THE BOARD OF DIRECTORS<sup>25</sup>**

### **6.1 Annual Organization Meeting of Board.**

- (a) **Location, Date and Time.** Unless otherwise agreed by the Board, within fourteen (14) days following the annual meeting of the Association, the Board of Directors shall hold an organization meeting on such date and at such time and place as is determined by the directors. No further notice of the organization meeting to the directors is necessary. If the date, time and place of the organization meeting are announced at the annual meeting, no further notice to Owners is necessary.
- (b) **Procedure and Business.** Until the election of new officers, the organization meeting shall be chaired by the outgoing president, or, in the absence of the outgoing president, the outgoing secretary, unless the Board has elected a vice-president, regardless of whether the outgoing president, secretary or vice-president is a member of the newly constituted Board. At the organization meeting, the Board of Directors shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

### **6.2 Calling of Board Meetings; Notice to Directors, Notice to Owners.**

- (a) **Calling of Meetings.**
- (1) **Regular Meetings.** The Board of Directors may determine to hold regularly scheduled meetings at such place, date, and time as may be fixed by resolution of the Board.

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<sup>25</sup> This is a new article that gives the Board more guidelines on how to conduct meetings. The provisions in this Article 6 are taken from the Oregon Planned Community Act or are generally accepted practices in HOAs.

- (2) **Special Meetings.** Special meetings (including emergency meetings) of the Board of Directors may be called by the president or any two directors. The secretary or other person designated by the Board of Directors shall cause notice to be given in accordance with Subsection (b) of this section.

(b) **Notice to Board of Directors.**

- (1) **Regular Meetings.** Requirements for notice to directors of regular meetings of the Board of Directors shall be determined, from time to time, by a majority of the directors.
- (2) **Special Meetings.** Subject to Paragraph (3) of this subsection, unless otherwise determined, from time to time, by a majority of the directors, notice of any special meeting shall be given to each director at least ten (10) days prior to the day named for the meeting. The notice must state the date, time, place and purpose of the meeting.
- (3) **Emergency Meetings.** Notice requirements to directors for emergency meetings of the Board of Directors shall be as determined, from time to time, by a majority of the directors.
- (4) **Waiver of Notice.** Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.
- (5) **Form of Notice.** The Board shall determine the method of notice to directors, but in any event shall be reasonably calculated to provide each director with actual notice of the date, time and place of each meeting.

- (c) **Notice to Owners.** Notice of all Board meetings, other than emergency meetings, shall be posted at a place or places in the Planned Community at least three (3) days prior to the meeting or shall be provided by a method otherwise reasonably calculated to inform lot owners of such meetings.

**6.3 Quorum and Acts.** Except as provided in Section 5.5(a) above, at all meetings of the Board of Directors, a majority of the existing directors constitutes a quorum for the transaction of business and the acts of the majority of the directors present are the acts of the Board of Directors.

**6.4 Meeting Definition; Mode of Board Meetings.**

- (a) **Definition.** As used in this article, “meeting” has the definition given the term in ORS 94.640 or other applicable provision of the Act.



(b) **Mode of Board Meetings.**

- (1) Subject to Paragraph (2) of this subsection, meetings of the Board of Directors shall be by a gathering of directors in person at a designated location.
- (2) Emergency meetings and other meetings of the Board of Directors may be conducted in any other manner permitted under the Act as it may be amended from time to time.

- (c) **Circumvention Prohibited.** As provided under ORS 94.640, the meeting and notice requirements of ORS 94.640 may not be circumvented by chance or social meetings or by any other means.

**6.5 Board Meeting Procedure.**

- (a) **Director Assent Presumed.** Unless otherwise provided under the Act, a 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.

- (b) **Recording of Votes; Proxies and Secret Ballots Prohibited.** A vote or abstention for each director present must be recorded in the minutes. Directors may not vote by proxy or by secret ballot at Board meetings, except officers may be elected by secret ballot.

- (c) **Rules of Procedure.** Unless other rules of order are adopted by resolution of the Board of Directors:

- (1) Meetings of the Board of Directors must be conducted according to the latest edition of *Robert's Rules of Order* published by the Robert's Rules Association.
- (2) A decision of the Board of Directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting at which the right to be heard was denied.
- (3) A decision of the Board of Directors is deemed valid without regard to procedural errors related to the rules of order one (1) year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

## 6.6 Open Meetings; Executive Sessions.<sup>26</sup>

- (a) **Open Meetings.** Unless otherwise provided under the Act, except as provided in Subsection (c) of this section, all meetings of the Board of Directors are open to Owners for observation. An Owner has no right to participate in the meeting of the Board unless the Owner is also a member of the Board. The president or presiding officer has the authority to exclude an Owner who disrupts the proceedings at a Board meeting. At each regular Board meeting, an open microphone or Community Forum meeting may be opened to the members to interact directly with the Board.
- (b) **Executive Sessions.** Unless otherwise provided under the Act, in the discretion of the Board of Directors, the Board may close the meeting to Owners other than Board members and meet in executive session to:
  - (1) Consult with legal counsel regarding matters permitted under the Act.
  - (2) Consider the following:
    - (A) Personnel matters, including salary negotiations and employee discipline.
    - (B) The negotiation of contracts with third parties.
    - (C) Collection of unpaid assessments.
    - (D) Any other matters permitted under the Act as it may be amended from time to time.
- (c) **Executive Session Procedure.** Unless otherwise provided under the Act:
  - (1) Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, 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.
  - (2) A contract or an action considered in executive session is not effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action. The contract or action must

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<sup>26</sup> This is a new section which explains the open meeting requirement and when the Board may go into executive session (a closed meeting).

be reasonably identified in the open meeting and included in the minutes of the meeting. No minutes shall be taken of the discussion had in executive session.

## **ARTICLE 7<sup>27</sup> OFFICERS**

### **7.1 Designation and Qualifications.**

- (a) **Designation.** The principal officers of the Association are a president, a secretary and a treasurer. The Board may establish any other offices such as vice president or assistant secretary as in their judgment may be appropriate.
- (b) **Qualifications.**<sup>28</sup> The president must be a member of the Board of Directors. Any other officers need not be members of the Board, but all officers must be Owners. Any two offices may be held by the same person except the offices of president and secretary.

### **7.2 Election of Officers; Term; Vacancies.**

- (a) **Election; Term.** The principal officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board held in accordance with Section 6.1 above to serve until their respective successors are elected at the next organization meeting. Other officers may be elected at any meeting of the Board. There is no limit on the number of successive Terms anyone one person can serve as long as they are duly reelected for each term.
- (b) **Vacancies.** If any office becomes vacant, the Board shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

### **7.3 Removal; Resignation.**

- (a) **Removal.** Officers hold office at the pleasure of the Board of Directors. When in the judgment of the Board of Directors the best interest of the Association will be served, by an affirmative vote of a majority of the members of the Board, any officer may be removed with or without cause.
- (b) **Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, president or secretary. A resignation is effective upon receipt

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<sup>27</sup> Compare Old Bylaws Article 4.

<sup>28</sup> I added here that the President must be a member of the Board of Directors and that the Secretary must be an owner (but does not need to be a member of the Board). In general, the Board will select officers from among those serving as Board members. It is important, however, to keep the two roles separate. The owners elect the Board, then the Board appoints officers (generally from among themselves).

of the notice or at any later time specified in the notice. Unless otherwise specified in the notice, acceptance of the resignation is not necessary.

**7.4 President.** The president is the chief executive officer of the Association; shall preside at all meetings of the Association and of the Board of Directors; has all of the general powers and duties that are usually vested in the chief executive officer of an association; and has such other powers and duties as may be prescribed by these Bylaws or resolution of the Board of Directors.

**7.5 Secretary.** The secretary shall keep or cause to be kept the minutes of all proceedings of the Board of Directors and the minutes of all meetings of the Association; shall give or cause to be given such notice of meetings of the Association and the Board of Directors; is responsible for all books, records and papers of the Association except those that are in the care of the treasurer or other person designated in a resolution of the Board of Directors; and shall act as vice-president, taking the place of the president and performing the duties of the president, whenever the president is absent or unable to act, unless the Board has elected a vice president.

**7.6 Treasurer.** The treasurer:

- (a) Has responsibility for the Association's funds and securities not otherwise held by the managing agent, if any.
- (b) Shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements.
- (c) 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 of Directors in accordance with Section 11.3 below. The treasurer shall disburse the funds of the Association in accordance with these Bylaws.
- (d) Shall perform all other duties incident to the office of treasurer of an association.
- (e) Has such other powers and duties as may be prescribed by these Bylaws or resolution of the Board of Directors.

**7.7 Execution of Documents; Checks.<sup>29</sup>**

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<sup>29</sup> Compare Old Bylaws 7.4. The general rule was that all checks require signature of the treasurer or president (if over \$1,000). If the Association hires a manager, this rule will not be practical. With a manager it is best to have the manager sign checks and require the manager to provide regular accounting to the Board so that the Board can oversee all payments.

- (a) **Documents.** All agreements, contracts, deeds, leases and other instruments of the Association, except checks and other evidences of indebtedness, shall be executed by such person or persons as may be required by law or designated by resolution of the Board of Directors. In the absence of a law or resolution applicable to any instrument, then the instruments shall be executed by the president.
- (b) **Checks, Drafts and Other Evidences of Indebtedness.** The Treasurer shall pay all vouchers up to one thousand dollars (\$1,000) signed by the President, managing agent, manager or other person authorized by the Board of Directors. Any voucher in excess of one thousand dollars (\$1,000) shall require the signature of the President. However, the Board of Directors may authorize a professional manager to sign checks, vouchers and other payments. The manager shall provide monthly reports to the Board of all payments made.

**7.8 Standards of Conduct.** Unless otherwise provided in the Act, in the performance of their duties, officers are governed by ORS 94.640 and 65.377.

**7.9 Compensation of Officers.** An officer who is a member of the Board of Directors may not receive any compensation from the Association for acting as an officer. The Board of Directors may fix any compensation to be paid to any officers who are not also directors.

## **ARTICLE 8**

### **LIABILITY AND INDEMNIFICATION OF DIRECTORS AND OFFICERS<sup>30</sup>**

**8.1 Liability.** A member of the Board of Directors or an officer of the Association is not liable to the Association or any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. The Association shall indemnify and hold harmless each director and officer and the manager or managing agent, if any, against all contractual liability to others arising out of the contracts made by the Board of Directors, officers, manager or managing agent on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws.

**8.2 Indemnification.** If any member of the Board of Directors or officers of the Association is made a party of any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify the individual against liability and expenses incurred to the maximum extent permitted by law. Each director and officer shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been a director, officer, manager or managing agent and shall be indemnified upon

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<sup>30</sup> Compare Old Bylaws Section 3.10. I retained some of the limited liability and indemnification protection for directors and officers. In sum, the Association must indemnify its board members for their acts as board members, except in cases of gross negligence or intentional acts.

any reasonable settlement thereof; provided, however, there shall be no indemnity if the director, officer, manager or managing agent is adjudged guilty gross negligence or intentional acts.

## **ARTICLE 9 RULES AND REGULATIONS<sup>31</sup>**

**9.1 Adoption of Rules and Regulations by Board.** Pursuant to the Act, in addition to the other provisions of the Declaration and these Bylaws, the Board of Directors from time to time may by resolution adopt, amend and revoke such rules and regulations as it may deem necessary or appropriate, in order to assure the peaceful and orderly use and enjoyment of the Planned Community and the management and administration of the Association. The resolution may include, without limitation, rules and regulations that:

- (a) Govern the conduct of persons and the operation and use of the Lots and Common Property; and
- (b) Interpret the Declaration and these Bylaws.

**9.2 Annulment by Owners of Rules and Regulations.**

- (a) By a vote of two-thirds of owners present, in person or by proxy, at a special meeting of Owners called in accordance with Subsection (b) of this section, the Owners may adopt an Association resolution that annuls any or all of the rules adopted by resolution of the Board of Directors under Section 9.1 above.
- (b) A special meeting of Owners for the purpose of considering adoption of an Association resolution under Subsection (a) of this section must be requested by Owners under Section 4.2(b) above not later than ten (10) days after a copy of the resolution adopted by the Board under Section 9.1 above is delivered to Owners in accordance with Section 9.3 below.
- (c) Any rule adopted by the Board of Directors under Section 9.1 above is void upon the adoption by the Owners of an Association resolution under this section that specifically annuls the rule.

**9.3 Distribution of Copy of Resolution; Binding Effect.**

- (a) The secretary shall cause a copy of a resolution adopted under this article to be provided promptly to each Owner in accordance with Section 14.1 below.

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<sup>31</sup> The Old Bylaws did not have detailed procedures on adoption of rules and regulations. In this Article 9, it makes it clear how the Board adopts rules and regulations. It also gives the owners the power to annul any rules by two thirds vote.

- (b) Rules as adopted, amended or repealed by a resolution adopted under this article are binding upon all Owners and occupants of all Lots from the date of delivery of the copy required to be delivered under Subsection (a) of this section. If a special meeting is requested under Section 9.2(b) above, the resolution adopted by the Board is not effective until adjournment of the special meeting, subject to any Association resolution adopted by the Owners at the special meeting.

## **ARTICLE 10 ASSESSMENTS; BUDGET<sup>32</sup>**

**10.1 Assessments.** In accordance with Article 10 of the Declaration, the Board of Directors shall assess and collect from every Owner assessments in the manner described in the Declaration and in these Bylaws. Assessments shall be due on a date set by the Board of Directors. Any assessment that is not paid within 30 days of the due date set shall be delinquent.

### **10.2 Budgets.**

- (a) **Adoption of Budget.** The Board of Directors shall, from time to time and at least annually, prepare and adopt a budget for the Association (the “annual budget”). The annual budget shall be based on:
  - (1) An estimate of the common expenses expected to be incurred;
  - (2) Any expected revenue; and
  - (3) Any surplus available from the prior year.
- (b) **Continuation of Prior Adopted Budget.** If the Board of Directors fails to adopt an annual budget, the last adopted budget continues in effect.
- (c) **Amended Budget.** Subject to Subsection (d) of this section, if all or any part of a budget adopted under Subsection (a) of this section is or will become inadequate to meet common expenses incurred for any reason, as soon as practicable, the Board of Directors shall determine the approximate amount of the inadequacy and adopt by resolution an amended budget. The resolution shall identify the reason for the inadequacy.
- (d) **Special Budget.** If all or any part of a budget adopted under Subsection (a) of this section is or will become inadequate to meet common expenses incurred for any reason, in lieu of adopting an amended budget under Subsection (c) of this section, the Board may adopt a special budget. As soon as practicable, the Board of

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<sup>32</sup> Compare Old Bylaws Article 6.

Directors shall determine the approximate amount of the inadequacy and adopt by resolution a special budget. The resolution shall identify the reason for the inadequacy.

- (e) **Reconsideration by Owners.**<sup>33</sup> Within thirty (30) days after adopting a proposed annual budget for the Association, the Board of Directors shall provide a summary of the budget to all Association members. If the Board of Directors is petitioned by members representing twenty percent (20%) of the votes of the Association, the Board shall call a meeting of the members to consider rejection of the budget. The date of the meeting shall be not less than fourteen (14) or more than thirty (30) days after the summary is provided to the members. At the meeting, whether or not a quorum is present, the budget shall be adopted unless a majority of the votes of the Association rejects the budget. If the proposed annual budget is rejected, the last annual budget shall continue in effect until the Board members approve a subsequent budget.

### 10.3 Default on Assessments.<sup>34</sup>

- (a) **Personal Obligation.** All assessments properly imposed under the Declaration or Bylaws shall be the joint and several personal obligation of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (that is, one other than through foreclosure or a deed in lieu of foreclosure) the grantees shall be jointly and severally liable with the grantor(s) for all Association assessments imposed through the recording date of the instrument affecting the conveyance. The Association has authority to take action, including without limitation filing a suit for a money judgment against the Owner personally for the amount due.
- (b) **Assessment Lien.**
  - (1) **Notice of Lien.** At any time any assessment (of any type provided for by the Declaration or Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any management agent, may file a notice of lien in the deed records of Polk County, Oregon against the Lot in respect to which the delinquency pertains.
  - (2) **Future assessments, Fines, Late Fees, Interest, and Attorneys' Fees.** Once filed, such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorneys' fees (whether or not suit or action is instituted) and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. The provisions regarding the attachment, notice, recordation and duration of liens

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<sup>33</sup> Taken from Article 6. I recommend keeping this procedure for reconsideration of the budget in the new Bylaws.

<sup>34</sup> This Section 10.3 provides for more detail on remedies in the event of default on assessments.



established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien.

- (3) **Foreclosure.** The Association has authority to bring suit to foreclose the assessment lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, any first mortgage, deed of trust or land sale contract recorded previously to the Association's notice of lien and any mortgage or deed of trust granted to an institutional lender which is recorded previously to the Association's notice of lien.
- (c) **Fines, Late Charges, Interest, and Attorneys' Fees.** All fines, late charges, and interest and attorney fees for collecting on the unpaid debt are enforceable as assessments. The Board in its reasonable discretion may adopt a resolution to set the rate of interest not to exceed eighteen percent (18%) per annum and to impose a one-time late charge on any delinquent accounts not to exceed thirty percent (30%) of the delinquent assessment.
- (d) **Attorneys' Fees.** Any Owner who defaults on his or her obligation to pay assessments is obligated to pay reasonable fees and costs, including without limitation attorneys' fees and costs, related to collection of unpaid assessments regardless of whether or not the attorney fees have been secured by a judgment of the court.

## **ARTICLE 11 ASSOCIATION RECORDS AND ACCOUNTS<sup>35</sup>**

### **11.1 General Records.**

- (a) The Board of Directors and managing agent or manager, if any, shall keep records of the actions of the Board of Directors and managing agent or manager, minutes of the meetings of the Board of Directors and minutes of meetings of the Association.
- (b) The Board of Directors shall maintain a Book of Resolutions containing the rules and regulations adopted by the Association and the Board of Directors.
- (c) The Board of Directors shall maintain a list of Owners. The list must indicate the name, address and Lot number of the Owner.
- (d) Unless otherwise provided in ORS 94.670, the Association shall retain within this state the documents, information and all other records of the Association for not

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<sup>35</sup> Compare Old Bylaws Article 7.

less than the period specified in ORS 65.771 or any other applicable law, except that:

- (1) The documents described in ORS 94.616(3)(o), if received, must be maintained as permanent records of the Association.
- (2) Proxies and ballots must be retained for one (1) year from the date of determination of the vote, except proxies and ballots relating to an amendment to the Declaration, Bylaws or other governing document must be retained for one year from the date the amendment is recorded.

## 11.2 Financial Records.

- (a) **Required Records.** The Board of Directors or its designee shall keep within the State of Oregon financial records sufficient for proper accounting purposes.
- (b) **Assessment Roll.** An assessment roll shall be maintained in a set of accounting books in which there is an account for each Lot. The account shall designate the Lot number, the name and address of the Owner or Owners, the amount of each assessment against the Owners and Lot, the dates and amounts in which the assessment is due, the amounts paid upon the account and the balance due on the assessments.

## 11.3 Association Funds and Accounts.

- (a) **Deposit of Funds.** All assessments and other funds of the Association shall be deposited in accounts described in Subsection (c) of this section. The Board shall cause to be allocated to the accounts those amounts from the assessments deemed necessary by the Board for the purposes set forth in the Declaration and these Bylaws.
- (b) **Distribution of Funds.** All expenses of the Association shall be paid from accounts of the Association in accordance with the Declaration and these Bylaws. The Association shall maintain a voucher or payment system that requires a sufficient number of signatories as is reasonably necessary to prevent any misuse of the Association's funds.
- (c) **Association Accounts.** The Association shall establish and maintain, in accordance with ORS 94.670, two (2) primary accounts and such other accounts as the Board of Directors deems necessary or appropriate to manage the Association's funds. The accounts shall be in the name of the Association with a financial institution in accordance with ORS 94.670. The primary accounts shall be generally identified as the:
  - (1) General Operating Account.

- (2) Reserve Account for major maintenance, repair and replacement established under Section 11.4 below.

(d) **General Operating Reserve Account.**

- (1) **Establishment of Account.** The Board of Directors may establish and maintain a general operating reserve account by allocation and payment periodically of an amount determined by the Board of Directors to be appropriate.
- (2) **Use of Funds.** A general operating reserve account may be used for the purposes the Board of Directors determines appropriate, including, without limitation:
  - (A) Expenses that exceed budgeted amounts.
  - (B) Deductibles under property damage insurance in accordance with Article 12 below.
  - (C) Contribution to the reserve account established under Section 11.4 below.

**11.4 Reserve Accounts; Reserve Study.**<sup>36</sup> To the extent there is any common property within West Hill Estates, the Board of Directors may, at its option, establish and maintain a reserve account for major maintenance, repair and replacement of all items of Common Property that will normally require replacement in whole or in part, in more than one (1) or less than thirty (30) years. The Board may also at its option establish a reserve study and maintenance plan to determine amounts required to be kept in the reserve account in accordance with the provisions of the Act.

**11.5 Fiscal Year.** Unless otherwise provided by resolution adopted by the Board of Directors, the fiscal year of the Association begins on the July 1st and ends on June 30th of each calendar year.

**11.6 Financial Reports and Audits.**

- (a) **Annual Financial Statement.** In accordance with ORS 94.670, within ninety (90) days after the end of the fiscal year, the Board of Directors shall:

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<sup>36</sup> The Old Bylaws and Declaration did not provide for establishment of a reserve account, reserve study or maintenance plan. These are now required under the Planned Community Act. However, West Hill Estates is not required to maintain a reserve account for two reasons: 1) the original documents which predate these statutory requirements did not require them and 2) there is no common property in West Hill Estates, like common property tracts, green spaces, or other common property. West Hill Estates consists of lots and streets only (which are publicly maintained). I include this provision to make it clear that a reserve account and reserve study are optional.

- (1) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year; and
  - (2) Provide a copy of the annual financial statement to each Owner and to any mortgagee of a Lot who has requested in writing a copy of annual financial statement.
- (b) **Review of Annual Financial Statement.** If required by ORS 94.670, the Board of Directors shall cause the financial statement required under Subsection (a) of this section to be reviewed by an independent certified accountant licensed in this state as provided in ORS 94.670.
- (c) **Audit of Books and Records.**
- (1) From time to time the Board of Directors, at the expense of the Association, may cause an audit, review, compilation or other financial examination of the books and records pertaining to the Association to be conducted and may furnish copies thereof to the Owners and mortgagees of Lots.
  - (2) Subject to any rules adopted under Section 11.11 below, upon written request and notification, at any reasonable time an Owner or mortgagee may, at the Owner's or mortgagee's own expense, cause an audit, review, compilation or other financial examination of the books and records of the Association to be made by an independent certified accountant licensed in this state as provided in ORS 94.670.

**11.7 Copies of Documents Required to be Maintained by the Association.** Except as otherwise provided under the Act:

- (a) The Board of Directors shall maintain a copy, suitable for the purposes of duplication, of the following:
  - (1) The Declaration, Bylaws and any amendments or supplements thereto, and rules and regulations of the Association currently in effect.
  - (2) The most recent financial statement prepared in accordance with ORS 94.670.
  - (3) The current annual budget of the Association.
  - (4) Any reserve study conducted or updated under Section 11.4 above.
  - (5) Any other records required by ORS 94.670.

- (b) The Association, within ten (10) business days after receipt of a written request by an Owner, shall furnish the requested information required to be maintained under Subsection (a) of this section.

#### **11.8 Statement of Occupancy Information.<sup>37</sup>**

- (a) The Board may in its discretion adopt a resolution that requires all non-resident Owners to provide the Board of Directors with a Statement of Occupancy Information. If such a resolution is adopted, the Board may require these Owners to furnish information such as the contact information for non-owner occupants, the terms of any rental or lease agreement, and any other information necessary for the Board to ensure compliance with the Declaration and these Bylaws.
- (b) The Owner shall promptly notify the Board of Directors in writing of any changes to the Statement of Occupancy Information.
- (c) Statements of Occupancy Information must be kept on file with the books and records of the Association. However, under ORS 94.670(8)(g), Statements of Occupancy Information and specific information contained in the forms are not available for inspection or duplication by Owners, except for an Owner's individual Statement of Occupancy Information. The information required under Subsection (a) of this section is to enable the Association to respond to requests for statistical occupancy information related to Lot sales, financing of Lots, insurance and other similar matters and for contact information in the case of emergencies.

#### **11.9 Inspection of Records by Owners; Restricted Owner Information.<sup>38</sup>**

- (a) Except as otherwise provided in ORS 94.670 or other section of the Act, all records of the Association must be reasonably available for examination and, upon written request, available for duplication by an Owner and any mortgagee of a Lot that makes a request in good faith for a proper purpose in accordance with rules adopted by resolution of the Board of Directors under Section 11.11 below.
- (b) Unless otherwise provided in the Act, the following information of an Owner or occupant of a Lot is part of an Owner's individual file under 94.670(9)(b)(G) and is not available for examination or duplication under ORS 94.670(8) or use by the Association for a purpose other than for which the information was maintained or provided, without the consent of the Owner or occupant, even if the Association maintains a separate list of Owners, including a list provided under ORS 94.616(3)(t), indicating the information:

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<sup>37</sup> This new provision can be helpful for lots that are being rented or leased. This allows the Board to require renting owners to provide the contact information for the tenants that are occupying the lot.

<sup>38</sup> This new section provides for procedures on inspection of records with a reference to ORS 94.670, which was not contained in the Old Bylaws.

- (1) Telephone numbers, cellular phone numbers and facsimile numbers.
  - (2) Electronic mail addresses.
  - (3) Any other form of telephonic or electronic communication number or address.
- (c) The rules adopted by the Board under Section 11.11 below may specify the method of providing consent of an Owner or occupant required under Subsection (b) of this section or the actions of an Owner or occupant that constitute consent for specified purposes.

**11.10 Notice of Sale; Records Update Fee.** Immediately upon the sale of any Lot, the current Owner shall promptly inform the secretary or manager of the name and address of the purchaser. As soon as practicable after receipt of the notice or other information evidencing the sale of the Lot, the Board shall provide the new Owner a Statement of Occupancy Information form described in Section 11.8 above and notice of any records update fee due under Section 11.11 below.

**11.11 Rules Governing Association Records and Documents.**<sup>39</sup> Pursuant to Article 9 above, the Board of Directors, by resolution, may adopt reasonable rules that:

- (a) Govern the frequency, time, location, notice and manner of examination and duplication of Association records.
- (b) Prescribe a reasonable fee for furnishing copies of any requested documents, information or records. The fee may include reasonable personnel costs incurred to furnish the information.
- (c) Impose a records update fee to cover the administrative costs incurred by the Association when there is a change in Lot occupancy. Unless specifically permitted under the Act, the fee may not exceed the reasonable costs of updating records of the Association, providing copies of Association information and documents and any inspections required to determine if the Lot is in compliance with the Declaration and these Bylaws.

## **ARTICLE 12 INSURANCE<sup>40</sup>**

**12.1 Types of Association Insurance.** The Board of Directors shall obtain and maintain at all times the insurance specified in this section.

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<sup>39</sup> This new section gives the Board the authority to establish rules on requests of records and imposition of fees.

<sup>40</sup> Compare Old Bylaws Section 3.11. The Old Bylaws were pretty brief on insurance requirements. I included more detail here for the types of insurance required and what terms they should include.

(a) **Property Damage Insurance.**<sup>41</sup> To the extent there is any common property in West Hill Estates, the Association shall obtain insurance as follows:

- (1) The Association shall obtain and maintain property insurance covering loss or damage from perils normally covered by a “special,” “blanket,” or “all risk” form policy or the equivalent, including, to the extent available at a reasonable cost, earthquake and flood.
- (2) The amount of coverage shall be for not less than the one hundred percent (100%) of the current replacement cost of the improvements on the Common Property (exclusive of land, foundation, excavation and other items normally excluded from coverage).
- (3) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Property and all personal property and supplies belonging to the Association.
- (4) The insurance shall include the following terms, if the Board determines they are reasonably available:
  - (A) A waiver of subrogation by the insurer as to any claims against the Board, any Owner, or any guest of an Owner;
  - (B) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;
  - (C) A provision that no policy may be canceled, invalidated, or suspended because of the action of an Owner;
  - (D) A provision that no policy may be canceled, invalidated or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association correct the defect and allows the association a reasonable time to make the correction; and
  - (E) A provision that any “other insurance” clause in any policy shall exclude from its coverage all owners’ policies.

(b) **Liability Insurance.**

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<sup>41</sup> This is not in the Old Bylaws and West Hill Estates has no common property, therefore property insurance will not be required. However, in the event property is annexed in the future, there could be common property and these provisions need to be included just in case.

- (1) The Association shall obtain and maintain comprehensive general liability insurance coverage insuring the Association, the Board of Directors and managing agent, if any, against liability to the public or to the Owners and their invitees or tenants incident to the operation, maintenance, ownership or use of the Common Property. There may be excluded from the policy or policies coverage of an Owner (other than as a member of the Association or the Board of Directors) for liability arising out of acts or omission of the Owner and liability incident to the ownership or use of the part of the property as to which the Owner has the exclusive use or occupancy.
  - (2) Limits of liability under the insurance required under Paragraph (1) of this subsection may not be less than One Million Dollars (\$1,000,000) on a combined single limit basis.
  - (3) The policy or policies obtained under this subsection shall be issued on a comprehensive liability basis and must provide cross liability endorsement wherein the rights of named insured under the policy or policies may not be prejudiced as respects his, her or their action against another named insured.
- (c) **Workers' Compensation Insurance.**<sup>42</sup> The Association shall obtain and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.
- (d) **Fidelity Insurance.**<sup>43</sup>
- (1) The Association shall maintain fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association.
  - (2) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the Board of Directors.
  - (3) The fidelity insurance shall name the Association as obligee and shall contain waivers by the issuers of the insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association.

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<sup>42</sup> The Association has no employees so workers comp is not required. But should the Association hire an employee, like a full time manager (not an independent contractor) the Association will need to have workers comp.

<sup>43</sup> The Association needs to be required to have fidelity insurance against director or officer dishonesty (embezzlement or conversion of funds).



- (e) **Directors' and Officers' Liability Insurance.**<sup>44</sup> The Association shall maintain a policy of directors' and officers' liability insurance with coverage in the amount of not less than One Million Dollars (\$1,000,000), subject to a reasonable deductible, if any.

### **ARTICLE 13 AMENDMENTS<sup>45</sup>**

**13.1 Proposal of Amendments.** Amendments to the Bylaws may only be proposed by a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

**13.2 Adoption.**

- (a) Amendments may be approved by the Owners at a constituted Association meeting or by written ballot in lieu of a meeting in accordance with Section 4.8 above. Subject to Subsection (b) of this section, a vote of a majority:
  - (1) Of the Owners present in person or by proxy is required for approval of any amendment at a meeting; or
  - (2) Of those voting by mail in a vote by written ballot in lieu of a meeting pursuant to Article 4 above.
- (b) In accordance with ORS 94.635(18), if any provision required to be in a declaration under ORS 94.580 is included in these Bylaws, the voting requirements for amending the Declaration also govern the amendment of the provision in these Bylaws.

**13.3 Execution; Recording.** An amendment is not effective until the amendment is:

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

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<sup>44</sup> This is also new. Every Association needs to be required to have directors and officers insurance.

<sup>45</sup> Compare Old Bylaws Article 8. This Article contains a few more details to clarify the amendment process. The substantive requirements are mostly the same: either the Board or 30% of owners are required to propose amendments. Section 13.2 clarifies that amendments may be adopted by written ballot in lieu of a meeting.

**ARTICLE 14**  
**GENERAL PROVISIONS<sup>46</sup>**

**14.1 Notices and Information.**

- (a) **Association.** A notice, information or written material required to be provided to the Association or the Board of Directors shall be sent 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 of Directors may designate from time to time.
- (b) **Owners.**
  - (1) Any notice, information or written material required to be provided to an Owner shall be delivered to such address as may be designated in writing by an Owner to the Board of Directors. If no address has been designated, then notice shall be delivered to the Owner's Lot.
  - (2) If a Lot is jointly owned or the Lot has been sold under a land sale contract, notice shall be sent to a single address, of which the Board of Directors has been notified in writing by the parties. If no address has been given to the Board in writing, then mailing to the Lot is sufficient.
- (c) **Manner of Delivery.** Except as otherwise required by the Declaration, these Bylaws, or applicable law, delivery of notices or other written information that is required to be delivered to owners may be delivered by the following methods:
  - (1) Personal delivery; or
  - (2) Delivery by deposit in the United States mail, postage prepaid.
- (d) **Waiver.** Whenever any notice is required to be given under the Act or the Oregon Nonprofit Corporation Act, as they exist or may be amended in the future, or under the provisions of the Declaration, Articles of Incorporation or these Bylaws, a waiver of notice in writing signed by the person or persons entitled to the notice, whether before or after the time stated in the document or law, is deemed equivalent to the giving of the notice.

**14.2 Electronic Communications.<sup>47</sup>**

- (a) Subject to Subsections (b) and (c) of this section, the Board may cause any notice, information or written material required to be provided an Owner to be delivered by electronic mail, facsimile or other form of electronic communication acceptable

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<sup>46</sup> Compare boilerplate provisions from Old Bylaws Article 9.

<sup>47</sup> This is a new section that allows for electronic communications except in the cases listed in Subsection (a).

to the Board. However, notice of the following matters may not be delivered by electronic notice:

- (1) Failure to pay an assessment.
  - (2) Foreclosure of the Association lien under ORS 94.709.
  - (3) Action the Association may take against the Owner.
  - (4) Offer to use dispute resolution program required under ORS 94.630.
- (b) At the time a notice, information or written material is to be provided an Owner under subsection (a) of this section, to the extent that this section conflicts with a provision of the Act or Oregon Nonprofit Corporation Act, the applicable act governs.
- (c) An Owner may not be required to receive any notice, information or material by any form of electronic communication. Any rules adopted under Subsection (a) of this section must provide for Owners to receive the notice, information or written material in the manner required under the Declaration, these Bylaws, the Act or applicable law.

#### **14.3 Compliance and Enforcement.**

- (a) **Compliance.** Each Owner and occupant (including tenants) of a Lot shall comply with the provisions of the Declaration, these Bylaws and the rules and regulations and the Act.
- (b) **Violations of Bylaws.** The violation of any provision of the Declaration, these Bylaws or rules or regulations gives the Board of Directors, acting on behalf of the Association, the right, in addition to any other rights set forth in the Declaration or these Bylaws, the remedies specified in the Declaration, these Bylaws, or the Act.
- (c) **Action by the Association.** The Association may take action, including but not limited to, levying of fines to enforce compliance with the Declaration, Bylaws, or any rules and regulations. The Board shall establish an enforcement policy and a schedule of fines for violations.
- (d) **Action by Owners.** An aggrieved Owner may bring an action against another Owner or the Association for violations of, or for failure to comply with, these Bylaws or any rules or regulations as provided under Section 11.10 of the Declaration.

**14.4 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in these Bylaws or rules and regulations adopted pursuant to these Bylaws may

be deemed to have been abrogated or waived by the Association or an Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof that may occur. Any failure to enforce the same may not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

#### **14.5 Severability; Number; Construction; Captions.**

- (a) **Severability.** The invalidity of any part of these Bylaws does not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.
- (b) **Number; Construction.** As used in these Bylaws:
  - (1) The singular includes the plural and the plural the singular as the context requires.
  - (2) “May not” and “shall not” are equivalent expressions of an absolute prohibition.
  - (3) The masculine, feminine and neuter each include the masculine, feminine, and neuter as the context requires.
- (c) **Captions.** All captions used in these Bylaws are intended solely for convenience of reference and in no way limit any of the provisions of these Bylaws.

#### **14.6 Conflicts.**

- (a) These Bylaws are intended to comply with the Act to the extent applicable, the Oregon Nonprofit Corporation Act and the Declaration. In case of any irreconcilable conflict, the acts, subject to ORS 65.959 and 94.770, and the Declaration control over these Bylaws or any rules and regulations.
- (b) In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation control to the extent consistent with the Act and the Oregon Nonprofit Corporation Act.

**EXHIBIT A  
LEGAL DESCRIPTION**

The property subject to the Bylaws is all lots and tracts within the following plats:

West Hill Estates Phase 1, recorded on August 28, 1991 in Volume 9, Page 27, County of Polk, State of Oregon

West Hill Estates Phase 2, recorded on November 25, 1992 in Volume 009, Page 0038, County of Polk, State of Oregon

West Hill Estates Phase 3, recorded on November 5, 1993 in Volume 004, 0048, County of Polk, State of Oregon

West Hill Estates Phase 4, recorded on October 27, 1994 in Volume 010, Page 0017, County of Polk, State of Oregon

West Hill Estates Phase 5, recorded on December 6, 1994 in Volume 010, Page 0018, County of Polk, State of Oregon

West Hill Estates Phase 6, recorded on July 16, 1996 in Volume 010, Page 043, County of Polk, State of Oregon

West Hill Estates Phase 7, recorded on May 9, 1997 in Volume 011, Page 0007, County of Polk, State of Oregon

West Hill Estates Phase 8, recorded on December 23, 1998 in Volume 011, Page 0035, County of Polk, State of Oregon

West Hill Estates Phase 9, recorded on January 2, 2001 in Volume 012, Page 0005, County of Polk, State of Oregon

West Hill Estates Phase 10, recorded on October 2, 2001 in Volume 12, Page 16, County of Polk, State of Oregon