

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

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR HIGHLANDS AT MANZANITA ("Declaration") is made and executed on this _ day of _____ 2019 by Encore Investments, LLC, an Oregon limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of the real property located in City of Manzanita, Tillamook County, Oregon and legally described on the attached **Exhibit A** (the "Property"). Declarant desires to establish a planned community on the property known as "Highlands at Manzanita". The Property consists of Lots 1-29 (each, a "Lot," collectively, the "Lots"), and Tract B, all as shown on the Plat (as defined herein). The Plat includes Tracts A, C, and D, none of which is subject to this Declaration.

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

ARTICLE 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

1.14 "Design Guidelines" shall mean the Design Guidelines established pursuant to Section 7.7.

1.15 "Home" shall mean a single-family dwelling located on a Lot.

1.16 "Lot" shall mean and refer to any of the Lots 1 through 29, inclusive, as depicted on the Plat, and any other platted or partitioned lot designated as a "Lot" in a Declaration of Annexation, and includes all Improvements located thereon.

1.17 "Members" shall mean and refer to the members of the Association, which shall be all Owners of Lots 1-29, inclusive within Highlands at Manzanita.

1.18 "Neighborhood" shall mean and refer to a collection of Lots that are, in the opinion of the Declarant, unique or different from other Lots subject to this Declaration in one or more ways such that they justify designation as a separate community within Highlands at Manzanita. The initial Neighborhood is Seaview Neighborhood.

1.19 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

1.20 "Plat" shall mean and refer to Seaview Neighborhood at Highlands at Manzanita Plat recorded in the plat records of Tillamook County in Plat Cabinet __, at Page ____ on _____, 2020, and any subsequent plats for future phases of Discovery West annexed into this Declaration, together with any amendments to any of the foregoing.

1.21 "Property" is the real property located in Tillamook County, Oregon, more particularly described as Lots 1 through 29, inclusive, and Tract B located on the Plat. The Property does not include Tracts A, C, and D, as shown on the Plat.

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

1.23 "Seaview Neighborhood" shall mean Lots 1-29, inclusive, and Tract B. Future Lots and Common Areas subjected to this Declaration pursuant to a Declaration of Annexation or Supplemental Declaration may be annexed into the Seaview Neighborhood or may be part of a separate Neighborhood.

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

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

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

ARTICLE 3 OWNERSHIP AND EASEMENTS

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

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

(a) Easements on Plat. The Lots are subject to the easements and rights of way shown on, or noted, on the Plat. These include easements for a public access, private stormwater, public utility, private utility, emergency access, and open space.

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

ARTICLE 4 USE AND MAINTENANCE

4.1 Residential Use; Consolidation; Partition.

(a) No structures shall be erected or permitted to remain on any Lot except structures containing living units and structures normally accessory thereto provided such structure is in conformity with the applicable governmental regulations and permitted by the City of Manzanita, is compatible in design and decoration with the dwelling structure on such lot and has been approved by the Board. Without limiting the generality of the foregoing, accessory dwelling units shall be permitted, if permitted by the City of Manzanita.

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

(c) There shall be no partition of any Lot and each Owner, whether by deed, gift, devise or operation of law, for such Owner's benefit and for the benefit of all other Owners, specifically waives and abandons all rights to partition any Lot or Lots owned by an Owner.

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

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

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

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

4.5 Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted within any Lot other than up to two (2) domestic household pets, which shall not be kept, bred or raised for commercial purposes and must be reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets, including noise and waste, shall be the responsibility of the respective Owners thereof.

No dogs shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside the living unit, except that unleashed pets are allowed within a fenced area on the Owner's Lot; provided, however, such fence was permitted pursuant to Section 4.3. An Owner may be required to remove a pet from the Property upon the receipt of the third notice in writing from the Association Board of Directors of violations of this section or any rule, regulation or restriction established by the Board. The definition of "domestic household pets" shall be subject to rules adopted and approved by the Board in its sole discretion. Nothing in this Declaration shall operate to restrict or otherwise limit the bona fide use of service animals. In the event of a dispute over the meaning or applicability of this section, the determination of the Board shall be definitive.

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

4.7 Vehicles; Parking. No Owner shall permit any vehicle, which is in an extreme state of disrepair, to be abandoned or to remain parked on the Owner's Lot for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such

vehicle within five (5) days following the date on which notice is mailed to him, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. The Association shall have the right to enforce the parking restrictions contained in this Declaration by imposing fines on the responsible Owner (each Owner will be responsible for the vehicles of its family members, tenants, guests and invitees) and/or towing the offending vehicles.

4.8 Rubbish and Trash. Trash, garbage and other waste shall be kept in sanitary containers, screened from public view. No part of the Property shall be used as a dumping ground for trash, garbage, waste, debris or rubbish of any kind. Yard rakings, dirt, tree and shrub leaves and prunings and other material resulting from landscaping work shall not be dumped onto Lots or streets, or Common Maintenance Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or the Property where deposited by such person within five (5) days following the date on which notice is mailed to the Owner or occupant by the Association, the materials will be removed by the Association and the expense of such removal charged to the Owner. If an Owner chooses to use a professional waste removal company, the Owner may place his or her cans only in the designated spot and no sooner than the night before the scheduled pickup day, and must remove the cans no later than the end of the day of pickup.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 COMMON MAINTENANCE AREAS

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

- (a) All Common Areas, including Tract B;
- (b) Trails, if any, installed on the Property, to the extent not maintained by a public entity;
- (c) Entry monuments whether located on Common Area or private property;

(d) Any other area determined by the Board to be in the best interest of the Association to maintain.

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

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

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

ARTICLE 6 COMMON EXPENSES

6.1 The cost of all maintenance by the Association shall be a Common Expense paid out of assessments described in Article 8. However, the Association will have the right, at the discretion of the Board, to assess an Owner and his or her Lot for the cost of maintenance or repairs that are not

covered by the Association's insurance (regardless of whether the Association made an insurance claim) if the maintenance or repairs are needed because of the willful or negligent act or omission of that Owner, or his/her or her family, tenants, guests or invitees. The acceptance and submission of any insurance claims for Association insurance is at the sole discretion of the Board of Directors. Such an Assessments will be a Special Assessment.

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

ARTICLE 7 HIGHLANDS AT MANZANITA HOMEOWNERS ASSOCIATION

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

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

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

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

- (a) Class A Members. Class A Members shall be all Owners other

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

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

7.5 Turnover Meeting. Declarant shall call the Turnover Meeting within ninety (90) days following the Conversion Date for the purpose of turning over control of the Association to the Owners; provided, however, such turnover shall not include control of the ARC pursuant to Section 7.7. Declarant may retain control of the ARC indefinitely, as provided in Section 7.7. The Turnover Meeting shall be conducted in accordance with the Bylaws and the Oregon Planned Community Act.

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

7.7 ARC Review. Except as specifically provided in this Section 7.7, no improvement or portion thereof including fencing, decks, hot tubs, patios, patio trellises, play structures, court yards, walkways and driveways shall be commenced, erected, placed, altered, repaired or replaced on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials. Notwithstanding the foregoing, to the extent that an Owner replaces an

exterior feature of a home, such as a door, shutter, fence or trellis, with a replacement that is newer, but substantially identical, such replacement shall not require ARC approval. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the ARC. Construction by the Declarant is presumed to have been approved and is thereby exempt from this review. In all cases for which the ARC consent is required by this Declaration, the provision of this Section shall apply. The ARC, the Declarant, and the Board, as applicable, are hereby granted an easement over the Lots to enable the ARC to carry out its designated functions.

(a) Architectural Review Committee – Appointment and Removal. The ARC shall consist of no fewer than three (3) members and no more than five (5) members. The Declarant reserves the right to appoint and remove all members of the ARC until Declarant relinquishes control of the ARC. After the Declarant relinquishes control of the ARC in writing, the following shall apply: (a) the Board of Directors shall assume the right to appoint and remove members of the ARC; (b) the terms of office for each member of the ARC shall be for one (1) year unless lengthened by the Board at the time of appointment or unless the Board serves as the ARC in which event the terms of the ARC members shall be the same as their terms as Board members; (c) the Board may appoint any or all of its members for the ARC and there should be no requirement for non-Board members on the ARC. In the discretion of the Declarant or the Board, as applicable, the ARC may include one or more members who are not Owners, but who have special expertise regarding the matters, which come before the ARC. In the sole discretion of the Declarant or the Board, as applicable, such non-Owner members of the ARC may be paid and that cost paid by applicants or the Association.

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

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

(d) ARC Decision. The ARC shall render its approval or denial

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

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

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

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

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

(i) Determination of Compliance. The ARC shall inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of any noncompliance and shall require the Owner to take the necessary action to bring the work into compliance with the approved project.

(j) Non-compliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications on which

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

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

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

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

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

ARTICLE 8 FUNDS AND ASSESSMENTS

8.1 Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants, and for the improvement, operation and maintenance of the Common Maintenance Areas, including maintenance and administrative costs, and insurance for the Association.

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

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

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

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

(2) Directors and Officers Insurance. At the discretion of the Board, the Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Association, or is or was serving at the request of the Association, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not

the Association would have the power to indemnify him or her against such liability under the provisions of the Articles of incorporation of the Association.

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

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

(5) Insurance Companies Authorized. All policies obtained under this Articles shall be written by a company licensed to do business in Oregon and holding a "Commissioner's Rating" of "A-" and a size rating of "VI," or better, by Best's Insurance Reports, or as may be otherwise acceptable to the Board.

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

(A) Waiver of Subrogation. A waiver of subrogation by the insurer as to any claims against the Board, the officers, the manager, the Owners and their respective servants, agents, guests and tenants.

(B) Noncancellation without Opportunity to Cure. A provision that the master policy on the Property cannot be canceled, invalidated or suspended on account of the conduct of any officer, Board member or employee of the Board or the manager, if any, without prior demand in writing that the Board or manager cure the defect.

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

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

(a) Funds Held. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used

solely for the operation, care and maintenance of Highlands at Manzanita or as expressly provided by this Declaration.

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

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

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

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

(a) Allocation of Assessments. The total amount in the budget shall be charged equally against all Lots subject to assessments as annual assessments.

(b) Other Assessments. Operating Assessments shall include all costs incurred by the Association, including, without limitation, the costs of upkeep, maintenance, repair and replacement of Common Maintenance Areas; the cost of insurance; the cost of fulfilling all obligations hereunder or under the Planned Community Act; and all other costs that the Board deems to be in the best interests of the Association. Reserve Assessments shall be those the Board deems necessary to fund the Reserve Account. Annual assessments, including Operating Assessments, Reserve Assessments, and if applicable, Special Assessments, will be fixed annually in accordance with the general budget guidelines outlined in Section 8.5(a) above for the general association assessment.

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

8.6 Reserve Funds

(a) Reserve Fund for Periodic Maintenance, Repairs and Replacements. The Board shall establish a reserve fund in the name of the Association for periodic maintenance, repair or replacement, in whole or in part, of any completed improvements located in, on, or under the Common Maintenance Areas for which the Association is responsible pursuant to this Declaration, that will normally require periodic maintenance, repair or replacement in more than one (1) year and less than thirty (30) years, ("Reserve Fund"). The Reserve Fund need not include those items that could reasonably be funded from the maintenance fund or operating assessments, or for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws. For purposes of funding the Reserve Fund, the Association shall impose an assessment to be called the "Reserve Fund Assessment" equally against all Lots. The reserve assessments shall commence as to each Lot upon the conveyance of the Lot from Declarant to an Owner other than Declarant. Reserve Fund Assessments shall not be levied against Declarant-owned Lots upon which construction of a Home has not been completed. However, if the exemption from Reserve Fund Assessments is rendered unenforceable or otherwise invalid by any applicable law, then Declarant hereby reserves the right, for itself and any successor Declarant, to defer payment of any accrued Reserve Fund Assessments on each Lot owned by Declarant or a successor Declarant until the date on which the Lot is conveyed to an Owner other than Declarant or a successor Declarant, but in no event beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association.

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

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

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

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

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

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

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

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

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

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

8.8 Accounts.

(a) Types of Accounts. Assessments collected by the Association will be deposited into at least two separate accounts with a bank, which accounts shall be designated as (i) the Current Operating Account and (ii) the Reserve Account. Those portions of the assessments collected for current maintenance and operation levied under Section 8.5(b) will be in the Current Operating Account and those portions of the assessments collected as reserves for periodic maintenance, repair or replacement and deferred maintenance of capital improvements into the Reserve Account. The Board may hold funds in the operating account until such time as the total reserve funds meet bank account minimum deposits to avoid special fees. Special assessments shall be deposited into one of the two accounts, whichever is deemed by the Board to be appropriate. Withdrawal of funds for the Association's Reserve Account shall require the signatures of two (2) Directors, or Board approval in the written minutes of the Association.

(b) Reserve Account. The Association shall pay out of the Reserve Account only those costs that are attributable to the periodic maintenance, repair or replacement of capital improvements for which reserves have been collected and held. After the individual Lot Owners have assumed responsibility for administration of the planned community, the Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses. Funds borrowed must be authorized by a resolution passed by the Board of Directors, which also outlines the manner of repayment from later assessments. Such resolution may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget

for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

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

8.9 Default in Payment of Assessments, Enforcement of Liens.

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

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

(c) Interest; Fines; Late Fees; Penalties. The Board in its reasonable discretion may from time to time adopt resolutions to set the rate of interest, and to impose late fees, fines and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, and any Rules and Regulations. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before

the effective date by a notice mailed to the assessment billing addresses of such Owners. Such impositions shall be considered assessments which are lienable and collectible in the same manner as any other assessments. Provided, however, no fine or penalty for violation of this Declaration, the Bylaws or any Rules and Regulations (other than late fees, fines or interest arising from an Owner's failure to pay regular or Special Assessments) may be imposed against an Owner or his/her Lot until such Owner is given an opportunity for a hearing as provided in Section 4.22.

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

(e) Association's Right to Rents/Receiver. In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his/her Lot or shall be entitled to the appointment of a Receiver. Any default by the Owner in any provisions of the Declaration or Bylaws shall be deemed to be a default by the Owner of any mortgage to which the Owner is party or to which the Lot is subject.

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

ARTICLE 9 SPECIAL DECLARANT RIGHTS

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

- (a) Responsibility and control of the Association until the Turnover Meeting, including the right to appoint, remove and replace members of the Board.
- (b) The right to control ARC Review pursuant to Section 7.7 until Declarant relinquishes the same by recording a signed instrument to that effect in the official records of Tillamook County, Oregon.
- (c) The right to reserve easement and access rights across the Common Areas for use in connection with future development until the Turnover Meeting.
- (d) As provided in this Declaration, the right to annex additional property to this Declaration, including the right to create new Neighborhoods, annex Lots and Common Areas to Neighborhoods, and create sub-associations.
- (e) Until the Turnover Meeting, the right to designate additional Common Areas, and the right to construct Improvements in the Common Areas and other portions of the Property, whether or not such Improvements are described in this Declaration, provided that Declarant has no obligation to construct any such Improvements.
- (f) The right to approve amendments to this Declaration and the Bylaws prior to the Turnover Meeting and for a period of ten (10) years thereafter regardless of whether Declarant still owns a Lot. No such amendment shall be effective unless so approved in writing by Declarant.
- (g) Until the Turnover Meeting, the right to approve Special Assessments for capital improvements or additions for so long as Declarant owns a Lot. No Special Assessment shall be levied against Declarant unless so approved in writing by Declarant.
- (h) The right to receive notice of and to attend all Owner meetings and Board meetings for a period of ten (10) years following the Turnover Meeting regardless of whether Declarant still owns a Lot. Meeting notices to Declarant shall be given in the same manner as notices to the Owners; provided, however, that any notice of a Board meeting that is posted at the Property pursuant to the Bylaws must also be given to Declarant by mail or any other delivery method described in the Bylaws within the time period prescribed in the Bylaws.

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

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

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

ARTICLE 10 CASUALTY OR CONDEMNATION

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

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

ARTICLE 11 ANNEXATION

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 12 NEIGHBORHOODS

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

12.2 Other Neighborhoods at Highlands at Manzanita. The Declarant shall have the right to create additional Neighborhoods in addition to Seaview. Declarant may do so, if at all, by establishing the Neighborhood in a Declaration of Annexation or Supplemental Declaration, which may include restrictions or provisions that are separate than those that are applicable to other Lots subject to this Declaration. Declarant reserves the right to create a

sub-association for a Neighborhood. Declarant and/or the Board may establish additional or separate Rules and Regulations and/or Design Guidelines for individual Neighborhoods.

ARTICLE 13 GENERAL PROVISIONS

13.1 Records. The Board of Directors shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for labor and materials relative to providing copies, Owners can obtain copies of this information within ten (10) days of receipt of a written request.

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

employees or agents and Members who participated with or benefited from the acts which created said liability.

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

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

13.5 Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees; provided, however, that amendments which do not constitute rescission of the planned development may be adopted as provided in Section 13.6 below.

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

13.7 Regulatory Amendments. Notwithstanding the provisions of Section 13.6, until the Turnover Meeting, Declarant shall have the right to amend this Declaration or the Bylaws without any other Owner approval in order to correct scrivener's errors or to comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board,

commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community.

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

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

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

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

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

DECLARANT: ENCORE INVESTMENTS, LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of Tillamook)

The foregoing instrument was acknowledged before me on this _ day of _____, 2020, by _____, the _____ of Encore Investments, LLC, an Oregon limited liability company, on behalf of the corporation.

Notary Public for Oregon
My Commission Expires: _____

**EXHIBIT A
PROPERTY
LEGAL DESCRIPTION**

EXHIBIT B
BYLAWS

[attached]