

A G E N D A
CANBY PLANNING COMMISSION

REGULAR MEETING
City Council Chambers
Monday, August 14, 1995
7:30 p.m.

I.*ROLL CALL*

II.*MINUTES*

June 26, 1995
July 10, 1995

III.*CITIZEN INPUT ON NON-AGENDA ITEMS*

IV.*COMMUNICATIONS*

V.*NEW BUSINESS*

NCS 95-02 - Reconstruction of 4-plex at 16th and N. Maple

VI.*FINDINGS*

SUB 95-04 - Phase 8 of Township Village
VAR 95-01 - Ronald A. Holm and A. Wayne Scott
DR 95-12 - Ronald A. Holm and A. Wayne Scott
MLP 95-04 - H.O.P.E
DR 95-13 - H.O.P.E.

VII.*PUBLIC HEARINGS*

PUD Overlay 95-03/DR 95-10, revised *PUD Overlay 95-03/DR 95-10*, applications (and replat) by Walt West Construction for approval of a Planned Unit Development Overlay and Site and Design Review application proposed to be named "Willamette Commons." The purpose of the applications is to ultimately allow development of a "40-attached single family residential homes on individual lots". Total area involved is approximately 4.6 acres. The site is located just northwest of the intersection of N.E. Territorial Road and the "Logging Road." [Tax Lots 100-1100 plus Common Area, Tax Map 3-1E-C - Willamette Green Phase II, 2991]. **Continued from June 12, 1995.**

MLP 95-05, an application by John Stout [applicant] and Carl and Judith Soles [owners] for approval to partition a 4.5 acre parcel into two parcels, with the dividing line running along the central axis of the roadway easement from S.W. Berg Parkway to the rear property line. The site is located on the east side of S.W. Berg Parkway [Industrial Seating] [Tax Lot 900 of Tax Map 4-1E-4B]. **Continued from July 24, 1995.**

The City of Canby Planning Commission welcomes your interest in these agenda items. Please feel free to come and go as you please.

Kurt Schrader, Chair
Dan Ewert

Linda Mihata, Vice-Chair
Carl Jackson
James Larson

Bob Gustafson
Brad Gerber



MEETING TIMELINES AND PROCEDURES

- In order not to restrict any person from testifying but, rather, to encourage everyone to do so, the Canby Planning Commission shall try to adhere as closely as possible to the following timelines:

Applicant (or representative[s]) - not more than 15 minutes
 Proponents - not more than 5 minutes
 Opponents - not more than 5 minutes
 Rebuttal - not more than 10 minutes

- Everyone present is encouraged to testify, even if it is only to concur with previous testimony. For more complete presentations, Proponents and Opponents may "buy" time from one another. In so doing, those either in favor, or opposed, may allocate their time to a spokesperson who can represent the entire group.
- All questions must be directed through the Chair.
- Any evidence to be considered must be submitted to the hearing body for public access.
- All written testimony received, both for and against, shall be summarized by staff and presented briefly to the hearing body during presentation of the Staff Report.

The applicable substantive criteria for evaluating the application are displayed on the walls. Please direct your testimony to these criteria or other criteria in the Plan or land use regulations which you believe apply to the decision. Failure to raise an issue at this hearing with sufficient specificity to afford the Commission or Council and the parties an opportunity to respond to the issue precludes appeal to LUBA on that issue. A decision shall be made by the hearing body at the close of the hearing or the matter will be continued to a date certain in the future. This will be the only notice of that date that you will receive.



MEMO TO: Honorable Mayor Taylor & City Council

FROM: Michael Jordan, City Administrator

SUBJECT: County-Wide Gas Tax Project List

DATE: July 31, 1995

As you know the County is proposing a county-wide gas tax to be voted on in November. Currently, the proposal is to impose a 3 cent/gallon tax throughout the county and distribute the proceeds among the jurisdictions on a formula that is based 50% on population and 50% on road miles within the jurisdiction. It is estimated that Canby's first year distribution will be \$138,909. That money is for Canby to do as it chooses as far as determining which road projects need to be addressed first. However, the County will receive an estimated \$3,110,692 in the first year.

The County has asked all of the cities give them a list of road projects that we would like to see done on County roads within or near our jurisdictions. Listed below are all of the major road segments within the city that are owned by Clackamas County.

- 1) Township Road from Ivy to the City limits.
- 2) N. Pine St. from Hwy. 99E to Territorial Rd.
- 3) Territorial Road from Hwy. 99E to Birch St.
- 4) SE 13th Ave. east of Ivy St.
- 5) S. Pine St. North of Township Rd.
- 6) N. Maple St. from 14th to 22nd
- 7) 4th St. in front of the Fairgrounds (actually part of the Fairgrounds property)

I have attached a memo that was sent to County staff regarding our priorities among these street segments for repair and some of our top safety priorities. I will be meeting with County staff and other City staff people to try to finalize a county-wide list on Thursday, August 3rd. I would appreciate any input you have on this item at Wednesday's council meeting. If you have any questions regarding this issue, please feel free to contact me.

**CLACKAMAS COUNTY 3 CENT GAS TAX
ALLOCATION BASED ON
POPULATION (50%) AND ROAD MILES 50%**

JURISDICTION	1994 POP	1995 ROAD MILES	ONE YR TOTAL	FIVE YR TOTAL
BARLOW	130	0.9	\$2,139	\$10,694
CANBY	10,405	45.3	\$138,909	\$694,547
ESTACADA	2,045	14.51	\$34,071	\$170,356
GLADSTONE	11,325	40.96	\$141,115	\$705,575
HAPPY VALLEY	2,365	21.11	\$44,630	\$223,152
JOHNSON CITY	620	1.67	\$7,034	\$35,172
LAKE OSWEGO	30,634	142.4	\$419,875	\$2,099,373
MILWAUKIE	19,930	72.37	\$248,685	\$1,243,424
MOLLALLA	3,915	17.46	\$52,768	\$263,839
OREGON CITY	17,545	80.3	\$238,957	\$1,194,786
RIVERGROVE	272	2.75	\$5,522	\$27,610
SANDY	4,520	21.55	\$62,603	\$313,014
WEST LINN	18,860	94.04	\$266,191	\$1,330,953
WILSONVILLE	9,665	45.23	\$132,836	\$664,179
PORTLAND	710	8.63	\$16,167	\$80,833
TUALATIN	2,180	4.32	\$22,860	\$114,299
COUNTY (UNINCORP)	170,379	1434.21	\$3,110,692	\$15,553,458
TOTAL	305,500	2047.71	\$4,945,053	\$24,725,265

Population Data Source: PSU Center for Population Research and Census

Road Miles in Clackamas County Data Source: Oregon Department of Transportation,
Transportation Systems Monitoring Unit

County Fuel Tax Estimates: Clackamas County Dept. of Transportation & Development

MEMO TO: Tom Vanderzanden, Director, Clackamas County DTD

FROM: Michael Jordan, Canby City Administrator

SUBJECT: County Funded Gas Tax Projects

DATE: July 27, 1995

This memo is intended to fulfill your request of the cities of Clackamas County to submit a list of projects that they would like to see funded by the County with gas tax dollars. I will list the projects that the City of Canby deem important.

Maintenance Projects

1) The improvement of Township Road from S. Ivy St. (Hwy 170) to Mulino Road. I will mention the intersection at Township Rd. and S. Ivy St. later under safety improvements.

Comment: Township Rd. is the major collector in the SE quadrant of the City. The majority of the development in the City over the past five years has occurred in the SE quadrant including industrial development. The condition of Township Rd. inside the City limits, as defined by our recently completed Transportation Master Plan, is very poor to failing.

2) The improvement of N. Pine St. from Hwy 99E to Territorial Rd.

Comment: Pine St. is a major North/South collector in the NE quadrant of the City. We have seen significant residential development in this quadrant in the last five years. The pavement condition ranges from very poor to good. The good portions however are only because the City or developers have made improvements over the years. The North and South ends are in very poor condition.

Safety Related Projects

1) Signalization of the intersection of S. Ivy St. and S. 13th Ave.

Comments: S. Ivy St. is the only North/South arterial on the South side of Canby. S. 13th is a major collector on the South side. At this intersection is the Canby Adult Center, the Canby Swim Center, a subdivision, a proposed senior development and Ackerman Middle School. Of particular concern is the amount of school age pedestrian traffic at this intersection and the fact that a traffic study has been completed and it has shown that the intersection meets accident warrants.

2) Realignment and the addition of a left turn lane at the intersection of Township Rd. and S. Ivy St.

Comments: County engineering has already determined that a left turn lane in S. Ivy St. at

M E M O

TO: Planning Commission
FROM: Robert G. Hoffman, Planning Director
RE: Supplemental Staff Report - DR 95-10/PUD 95-03
DATE: August 2, 1995

This report will be organized into 4 sections, as follows:

1. Conditions of the original PUD, which was approved on July 18, 1979.
2. Issues raised by Ed Sullivan (Hearing of June 12, 1995).
3. Subdivision Approval criteria.
4. Recommendation

INTRODUCTION

The applicant has submitted a revised application dated August 1, 1995, to accomplish individual home ownership of 40 attached single family homes. The eleven lots which exist in the subdivision are proposed to be replatted into 40 lots, along the side walls of each unit with common wall construction.

The major effect of the change is to convert the proposed Planned Unit Development from a Conditional Use to a Subdivision. The change has been readvertised and renotified.

In addition, the applicant is proposing that the driveway width meet the requirements of Code Section 16.46, rather than Condition 2(f) of the August 15, 1979 PUD approval. Also, it is proposed to eliminate the requirements for a swimming pool which is required by Condition 11 of the August 15, 1979 PUD approval.

1. **Compliance with Conditions of Original PUD Approval:** [Final Order August 15, 1979]
 - Cond. a. Furnish to or provide Canby Telephone Association with: [a - i items needed prior to construction].

Staff Analysis

The items mentioned are proposed by staff to be conditions of approval in a few cases [e,f], or are expected to be implemented at time of construction (see Condition 24 of this staff report).

- Cond. b. Provide a circulation plan. [items a-f]

Staff Analysis

All detailed items described are complied with in the new project design, except the requirement of a paved 32 foot wide road with sidewalk for the access drive. The applicant has explicitly asked for a reduction of this requirement to 24 feet wide in most locations and 30 feet wide past the first four unit from Territorial. These proposed widths comply with the requirements of Chapter 16.46.010(3,4), Access Limitations on Project Density, and Section 16.10.70, Parking Lots and Access, which requires a 20 foot minimum width drive, plus 5 foot sidewalk. A sidewalk is provided as part of the proposal [see Condition 28 of this staff report.]

- Cond. c. "No Parking Signs" posted in turnarounds and areas not intended for parking purposes.

Staff Analysis

This should be a condition of approval of the DR/PUD. [See Condition 5 of this staff report.]

- Cond. d. "Dead End" and "Private Road" signs and "STOP" signs posted at entrance/exit [Territorial].

Staff Analysis

This should be a condition of approval of the DR/PUD. [See Condition 6.]

- Cond. e. Maximum number of units = 45. Minimum number of parking spaces = 90. Driveway spaces do not count if they block garages.

Staff Analysis

The proposal is to construct 40 units and there are 84 parking spaces proposed in the plan. The ordinance requires 2 spaces per unit, plus 1

space for every 5 units, for guests. Thus, 88 spaces are required by Section 16.10.010. Six more spaces are required to meet the condition. A new condition to correct this deficiency should be added. [See Conditions 10 and 25 of staff report.]

Cond. f. Water lines to be shown.

Staff Analysis

The Canby Utility Board and the Fire Marshal request a looped line. This should be a condition [see staff's proposed Condition #2 of this report.]

Cond. g. Individual water meters for each building.

Staff Analysis

CUB now requires all individual townhouses to have separate meters if on separate lots. This should be a condition of the DR/PUD. [See Condition 26.]

Cond. h. An additional fire hydrant.

Staff Analysis

This should be a condition of the DR/PUD, as requested by the Fire Marshal. [See Condition 16.]

Cond. i. On-site lighting shall be the responsibility of the Homeowners Association, with billing by CUB.

Staff Analysis

This is usual in each project, but should be a condition of the DR/PUD. [See Condition 27 of revised staff report.]

Cond. j. Adequate drainage of storm water certified by a registered professional engineer.

Staff Analysis

This is usual in each project, but should be a condition of approval of the DR/PUD. [See Condition 8.]

Cond. k. Swimming pool provided.

Staff Analysis

The applicant is requesting that this requirement be waived. The Commission action should specifically deal with this condition. The swimming pool, while an amenity, is not a necessary feature of a PUD, particularly where the single family homes are located on individually owned lots. Should the Homeowners Association desire a pool, the proposed CC&Rs would permit this. [See Condition 6 of revised staff report.]

Cond. l. Surety bond filed.

Staff Analysis

This is a usual practice, or actual construction of all improvements is done prior to occupancy. [See Condition 19.]

Cond. m. City Engineer Certification of Compliance with conditions prior to occupancy.

Staff Analysis

The City does not currently have a City Engineer and certification is now done by the City Planner prior to occupancy. Alternatively, Mr. Jordan, the City Administrator, or Curt McLeod, Canby's Contract Engineer, occasionally sign for the City Engineer.

2. **Issues Raised by Ed Sullivan on June 12, 1995**

Issue a. Ownership and use of the common areas and access easement.

Staff Analysis

Enforcement of the CC&Rs is not a function of city government in Oregon. The respective owners or the courts will need to resolve this issue. The owner of record has signed the application or power-of-attorney to represent them as far as we can determine.

Issue b. Site Access

Staff Analysis

The subdivision that the County and City approved includes approved access to Territorial Road. The County, in their original approval, required the owners to agree to provide access to the Logging Road if and when it becomes available. So far, it is not available. It is desirable, but not required. Construction drawings for access to Territorial Road will need to be approved by the County prior to construction. [See Condition 7 of revised staff report.]

Issue c. PUD Criteria

Staff Analysis

A PUD may be treated as a Conditional Use or a Subdivision. The revised application requests treatment as a subdivision replat and will be analyzed later in this report as a subdivision. The purpose of a PUD is described in Section 16.70.020 as to enable development to permit a "degree of flexibility and diversification in the use of land through grouped buildings and/or large scale land planning and the arrangement of specific structures and open space." ". . . permitting the development of land in a manner which would be as good as or better than that resulting from traditional lot-by-lot development. . . best utilization of site potentials characterized by special features of geography, topography, size, location, or shape."

The site is irregular in shape and is about 4.6 acres. If developed to the maximum permitted under R-2 zoning, it would permit about 63 units (assuming 20% of site is in streets), or 79 units without streets. Only 4,000 square feet of recreation land would be required for 40 units. In contrast, the applicant is proposing 40 attached single family homes on 40 lots and retention of a large wooded area of almost one acre of the site (18.5%). In addition, the site is adjacent to the Willamette Country Club and 16 of the units are proposed to front on the golf course. All units will front on either the golf course or the large area of treed open space. The single family attached homes are located in eleven buildings on their individual lots. Clearly, if this development had been designed without the grouping into eleven buildings around and adjacent to open space, it would not utilize many of the site's unique features. The proposed CC&Rs permit/requires common use and maintenance of roads, common areas, parking, and landscaping. If the property was used for apartments (without a PUD), the Design Review process would permit

development with 30% in recreation and open space, but may not require retention of the large wooded area. Forty-two (42%) percent of the site is proposed as landscaped space, including the 18% in the large treed area. Without the variations requested in side, front, and rear yards, which a PUD permits, the large common areas landscaped areas, pathway system, and views of open space for all units, would not be possible. Thus, staff is of the professional opinion that the purposes intended for Planned Unit Developments (PUDs) have been fulfilled by the subject application, as amended.

Retention of the treed area, landscape treatment, and careful placement and design of the attached single family homes has provided significant protection to the adjacent Willamette Green development. The roadway system is interconnected for emergency access for police and fire service while remaining separated for normal usage. The water system is also proposed to be looped, which will provide for redundancy in case of emergencies, including fire protection.

3. Applicable Criteria for PUD as a Subdivision

A. City of Canby Code Section 16.62.020

This is a quasi-judicial land use application. Applications for a subdivision shall be evaluated based upon the following standards and criteria:

- i. Conformance with the text and applicable maps of the Comprehensive Plan.
- ii. Conformance with other applicable requirements of the land development and planning ordinance.
- iii. The overall design and arrangement of lots shall be functional and shall adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use or development of adjacent properties.

B. Conclusion Regarding Consistency with the Policies of the Canby Comprehensive Plan and Compliance with Other Applicable City Ordinances:

Review of the Comprehensive Plan analysis incorporated in the June 2, 1995 staff report will show that the proposed subdivision, with the recommended conditions of approval, is consistent with the policies of the Comprehensive Plan. Development of each of the lots will need to comply with all applicable provisions of the City of Canby Land Development and Planning Ordinance, Building Codes, and other County and State codes and regulations.

C. Conformance with Applicable Requirements of the Land Development and Planning Ordinance

16.64.010 Streets.

The proposed street names will need to conform with the Street Naming Ordinance. The design of the streets are in compliance with the City's standards. The local roads are all private drives and will be constructed at a paved width of thirty (30) feet for the first 4 units, and twenty-four (24) feet for the remainder,, with a five (5) foot sidewalk provided, and utilities and street trees provided.

16.64.030 Easements.

Twelve foot utility easements will be provided for all exterior property lines and as requested by the utility providers.

The sidewalks will be "swung" around any obstacles (such as mailboxes, newspaper boxes and fire hydrants) that are located against the curb. The width of the sidewalk will be five feet, including the curb when the sidewalk is against the curb. The minimum distance between the garage and the back of the sidewalk is nineteen feet (allowing for a car to be parked in front of the garage without obstructing the sidewalk), regardless of the sidewalk's location. Locating the sidewalk in this manner will allow for the utilities and street trees to be placed with the least amount of conflict and hinderance on the "buildable" area of the lot. In addition, the sidewalk will be kept clear of obstacles to pedestrians.

16.64.040 Lots.

The lots will range in size from approximately 1,040 square feet to approximately 4,968 square feet. All lots will not meet the minimum required area of 5,000 square feet, but will be of such dimensions as not to preclude development with single-family homes for reasons of insufficient room for required setbacks, as is demonstrated by the actual design of units proposed and setbacks proposed. All interior lots will not be at least 50 feet in width, 10 lots being less than 20 feet in width, 12 lots between 30 and 57 feet, and the remainder [18] between 20 and 30 feet in width. Only 2 lots exceed 50 feet. However, all lots are functional for residential uses since the design proposed is zero lot line, common wall construction, and the reductions are permitted by the PUD section and are appropriate for the specific design shown on the maps. The R-2 zone permits single family homes with common wall construction, as proposed, and the PUD Ordinance permits reductions in minimum lot sizes and setbacks and lot widths, as proposed.

16.64.050 Public Open Spaces.

Land is not dedicated for public parkland in the development. A golf course exists to the north, 30 acres of public use are located to the east, and a significant Parks Systems Development fee will be paid for each unit.

16.64.070 Improvements.

A bond will be required for any improvements in the subdivision that are not completed prior to the signing of the final replat. Such agreement of assurance shall be in conformance with Paragraph (O) of Section 16.64.070 of the Land Development and Planning Ordinance. A pre-construction conference with the developer, the City, and the utility providers is necessary prior to any construction of the improvements.

D. Design and Lot Arrangement - The Overall design shall be functional in terms of sites, utility easements and access, without hindering adjacent development.

The layout and provision of services to the proposed subdivision has been described by staff in the staff report of June 2, 1995. The design and arrangement of the lots and streets are functional under the PUD design, with frontage both on private streets and on open space, with common wall construction and built-in garages. Additional parking and open space is provided in the common area.

4. Recommendation [revised]

Based upon the revised application, site plans, and elevations as shown in the subdivision layout dated July 31, 1995, and utility plan dated June 7, 1995, the landscape plan dated May, 1995, and additional revised submission dated August 1, 1995, the facts, findings, and conclusions of this report, and with benefit of a public hearing, staff recommends that the Planning Commission approve, with conditions, DR 95-10/PUD 95-03, for a 40 attached single family home subdivision. Furthermore, staff recommends approval with the following conditions [changes from the June 2, 1995 staff report are indicated by ~~strikeout~~ and caps]:

- ~~1. The 1993 judgement regarding 91-1-59, by Judge Brockley, is to be respected and implemented *except* for the change in architecture and amount of parking, as described in the application and supporting documents. The maximum number of units approved is 40.~~
- 21. During construction, erosion-control shall follow the *Erosion/Sedimentation Control Plans Technical Guidance Handbook for Clackamas County*, August 1991 [as amended].**

32. A looped water main shall be installed in the complex, as approved by CUB and the Fire Marshal.
43. Prior to each phase of construction, a detailed solar analysis shall be done regarding type and location of trees. Solar-friendly trees shall be used where needed.
54. The applicant shall participate in a preconstruction meeting with City staff, CUB, the fire district, etc., prior to construction.
65. Signs shall be placed at the entrance indicating "DEAD END" AND "Private Property - No Through Traffic." **STOP SIGNS SHALL BE POSTED AT THE EXIT. "NO PARKING" SHALL BE POSTED IN THE TURNAROUND DRIVEWAY AND OTHER AREAS NOT INTENDED FOR PARKING.** No other signage is approved.
76. A landscape *construction* plan shall be submitted to the City Planning office as part of the building permit application for each phase. The plan shall include an irrigation system, planting schedule, plant locations within the landscaped areas, plant types and sizes, and the plant spacing. The landscaping shall be installed prior to the final building inspection or a bond shall be posted for the amount of landscaping to be completed [plus 10%] with a date certain for completion of the landscaping improvements. **ADDITIONAL LANDSCAPING SHALL BE PROVIDED IN THE AREA ORIGINALLY PROPOSED FOR THE SWIMMING POOL. THE POOL DOES NOT NEED TO BE BUILT AT THIS TIME, BUT MAY BE ADDED AT A LATER POINT, IF DESIRED BY THE HOMEOWNERS ASSOCIATION.**
87. Once access to the Logging Road becomes available, a new entranceway(s) shall be provided from the Logging Road, and direct access to Territorial Road shall be terminated. The factual determination that Logging Road access is available shall be made by the Canby City Administrator.
98. Specific design and location of the sewer and stormwater disposal [drywells] system shall be as approved by the Public Works Supervisor. **SITE DRAINAGE TO BE DESIGNED AND CONSTRUCTED SUCH THAT THE RESULTANT OVERALL DRAINAGE CAPACITY WILL BE AS GOOD OR BETTER THAN THE PRE-DEVELOPMENT DRAINAGE OF THE SITE. THE ADEQUACY OF THE DRAINAGE SYSTEM SHALL BE CERTIFIED BY A REGISTERED PROFESSIONAL ENGINEER.**
409. Concrete sidewalks shall be provided along Territorial and from Territorial Road to the development along the access drive.

4410. The number of attached single family homes is 40, and number of lots is 40. The proposed setbacks [yards] are approved, as indicated on the applicant's site plan(s) for external lot lines. Distances between buildings are also approved, as indicated. These dimensions may be modified slightly, provided the changes are no less than the minimum permitted in the ordinance. **IT IS UNDERSTOOD THAT MANY OF THE 40 HOMES ARE "ZERO LOT LINE" SITUATIONS AND THE REDUCTIONS IN LOT SIZE AND INDIVIDUAL YARDS ARE HEREBY APPROVED TO ACCOMMODATE THE SPECIFIC STRUCTURES APPROVED AS PART OF THIS DR/PUD.**
- ~~42~~11. Prior to **APPROVAL OF THE FINAL REPLAT OR PRIOR TO** issuance of a building permit, **A FINAL DRAFT OF PROPOSED** covenants, conditions, and restrictions [CC&Rs], and by-laws, shall be submitted to the City Planner for review and approval prior to recordation with Clackamas County. Such CC&Rs shall establish a homeowners' association and funding mechanism to maintain the "common areas," **INCLUDING, BUT NOT LIMITED TO PRIVATE ROAD, LANDSCAPING, AND PARKING AREAS. A COPY OF THE RECORDED CC&RS SHALL BE PROVIDED TO THE CITY PLANNER.**
- ~~43~~12. Utility easements shall be provided as required by the Canby Utility Board and Canby Public Works Supervisor. **WITH 12 FOOT EASEMENTS ON THE ENTIRE PERIMETER OF THE PARENT PARCEL AND ELSEWHERE, AS NEEDED.**
13. **THE FINAL REPLAT SHALL REFERENCE THIS LAND USE APPLICATION - CITY OF CANBY, FILE NO. DR 95-10/PUD 95-03, AND SHALL BE REGISTERED WITH THE CLACKAMAS COUNTY SURVEYOR'S OFFICE AND RECORDED WITH THE CLACKAMAS COUNTY CLERK'S OFFICE. EVIDENCE OF THIS SHALL BE PROVIDED TO THE CITY OF CANBY PLANNING DEPARTMENT PRIOR TO THE ISSUANCE OF BUILDING PERMITS REQUESTED SUBSEQUENT TO THE DATE OF THIS APPROVAL.**
14. **THE FINAL PLAT MYLARS MUST CONTAIN, IN THE FORM SPECIFIED, ALL INFORMATION NECESSARY TO SATISFY ALL MATTERS OF CONCERN TO THE COUNTY SURVEYOR, OR HIS AUTHORIZED DEPUTY, INCLUDING, BUT NOT NECESSARILY LIMITED TO, VARIOUS MATTERS RELATED TO LAND SURVEYING, LAND TITLE, PLAT SECURITY, AND PLAT RECORDATION.**
15. **ANY NECESSARY UTILITIES SHALL BE CONSTRUCTED TO THE SPECIFICATIONS OF THE UTILITY PROVIDER.**
16. **ONE ADDITIONAL FIRE HYDRANT SHALL BE PROVIDED, TO BE LOCATED BY THE FIRE MARSHAL.**

17. STREET NAME AND TRAFFIC CONTROL SIGNS SHALL BE PROVIDED AT THE DEVELOPER'S EXPENSE. THIS SHALL INCLUDE "STOP" STREET SIGNS AND OTHER SIGNS WHICH ARE REQUIRED.
18. THE SUBDIVISION DEVELOPMENT FEE, AS PROVIDED IN THE LAND DEVELOPMENT AND PLANNING ORDINANCE SECTION 16.68.040(G), SHALL BE PAID.
19. THE LAND DIVIDER SHALL FOLLOW THE PROVISIONS OF SECTION 16.64.070 IMPROVEMENTS, IN PARTICULAR, BUT NOT LIMITED TO, SUBPARAGRAPH (O) BONDS, WHICH REQUIRES A SURETY BOND, PERSONAL BOND, OR CASH BOND FOR SUBDIVISION IMPROVEMENTS FOR ANY IMPROVEMENT NOT COMPLETED PRIOR TO THE SIGNING OF THE FINAL PLAT. THE BOND SHALL PROVIDE FOR THE CITY TO COMPLETE THE REQUIRED IMPROVEMENTS AND RECOVER THE FULL COST OF THE IMPROVEMENTS.
20. "AS-BUILT" DRAWINGS SHALL BE SUBMITTED TO THE CITY WITHIN SIXTY (60) DAYS OF COMPLETION. A COPY OF THE "AS-BUILT" DRAWINGS SHALL BE SUBMITTED ON A COMPUTER DISK IN AN AUTOCAD FORMAT.
21. GARAGES SHALL BE SET BACK A MINIMUM OF NINETEEN (19) FEET FROM THE BACK OF THE SIDEWALK. THE DISTANCE SHALL BE MEASURED FROM THE CLOSEST EDGE OF THE SIDEWALK AT THE DRIVEWAY.
22. THE FINAL PLAT MUST BE SUBMITTED TO THE CITY WITHIN ONE (1) YEAR OF THE APPROVAL OF THE PRELIMINARY PLAT APPROVAL ACCORDING TO SECTION 16.68.020.
23. THE APPROVAL WILL BE NULL AND VOID IF THE FINAL PLAT IS NOT SUBMITTED TO THE COUNTY WITHIN SIX (6) MONTHS AFTER SIGNING OF THE PLAT BY THE CHAIRMAN OF THE PLANNING COMMISSION (SECTION 16.68.070).
24. PRIOR TO CONSTRUCTION, CANBY TELEPHONE ASSOCIATION SHALL BE PROVIDED WITH THE INFORMATION REQUIRED, AS PROVIDED FOR IN CONDITION #1(A-E) OF SUBDIVISION APPROVAL DATED JULY 18, 1979.
25. SIX (6) ADDITIONAL PARKING SPACES SHALL BE PROVIDED ALONG THE ACCESS DRIVE TO MEET THE REQUIREMENTS OF CONDITION #5 OF THE JULY 18, 1979 APPROVAL.

26. INDIVIDUAL WATER METERS SHALL BE PROVIDED FOR EACH HOME.
27. ON-SITE LIGHTING SHALL BE PROVIDED BY THE SUBDIVISION DEVELOPER OR ASSOCIATION, WHICH SHALL PAY ALL COSTS OF CONSTRUCTION, OPERATION, OR MAINTENANCE.
28. THE DRIVEWAY WIDTH SHALL BE 24 FEET, EXCEPT FOR THE PORTION UP TO AND ADJACENT TO THE FIRST 4 UNITS NORTH OF TERRITORIAL, IN WHICH CASE IT SHALL BE 30 FEET WIDE.

Exhibits:

1. Application, **AS AMENDED** [letter from David Bennett dated August 1, 1995]
2. Tentative REPlat (*too large to reproduce*)
3. Draft CC&Rs

COPELAND, LANDYE, BENNETT AND WOLF

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

3500 FIRST INTERSTATE TOWER

PORTLAND, OREGON 97201

(503) 224-4100

FACSIMILE (503) 224-4133

MARK G. COPELAND, P.C.**
THOMAS M. LANDYE, P.C.
J. DAVID BENNETT, P.C.
DAVID P. WOLF, INC.*
ROBERT B. HOPKINS, P.C.
RICHARD L. SADLER, P.C.
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ROBERT P. OWENS****
THOMAS R. BENKE
PATRICK S. GALVIN*
KARNA R. GUSTAFSON

ALASKA OFFICE
550 WEST SEVENTH AVENUE
SUITE 1350
ANCHORAGE, ALASKA 99501
(907) 276-5152

*ALASKA STATE BAR
**ALASKA STATE AND OREGON STATE BARS
***WASHINGTON STATE AND OREGON STATE BARS
****ALASKA STATE AND WASHINGTON STATE BARS
ALL OTHERS OREGON STATE BAR ONLY

August 1, 1995

VIA HAND-DELIVERY

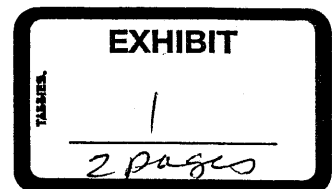
Mr. Robert Hoffman
Mr. James Wheeler
CITY OF CANBY PLANNING DEPT.
182 N. Holly
Canby, OR 97013

Re: Walt West/Willamette Commons

Gentlemen:

This letter shall serve as an amendment to Walt West's application to develop a parcel of land adjacent to Willamette Green to be known as Willamette Commons. Mr. West proposed to develop 40 attached residential units on 11 platted blocks/lots. Because of objection by Willamette Green homeowners, Mr. West is modifying his proposal in a manner which we understand will be supported by the Willamette Green Homeowners' Association ("Association"). There are a number of proposed agreements and arrangements by and between the Association and Walt West as developer of Willamette Commons, but only four of them pertain to the application. These four issues which require amendment of Mr. West's application are the following:

1. The 40 residential units would be developed on 40 single family lots by replatting the 11 block/lots into 40 single family lots. This will allow the attached homes to be separately sold and conveyed.
2. The swimming pool is deleted from the application. We understand this will be supported by the Association as a trade off for platting the development into single family lots.
3. Because of the aggregation of the homes along the golf course, the width of the interior driveway nearest the golf course needs to be reduced from 32 feet to 24 feet.



COPELAND, LANDYE, BENNETT AND WOLF

Mr. Robert Hoffman

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Page Two

4. Each of the 11 blocks will be replatted in their entirety into separate lots. The blocks\lots on which duplexes will be located are divided into two lots, and those on which fourplexes will be located are divided into four lots. We are unsure of the square footages and widths that will be created by these lots and, to the extent necessary, the application is amended to allow for these new lot sizes and widths.

Nothing different new is being proposed in respect to the structures. However, building the attached homes on individual lots, we believe, meets the concern of the Association members who are interested in the greater possibility of individual home ownership.

Enclosed is a draft of the Declaration of Covenants, Conditions, and Restrictions for Willamette Commons (CC&Rs). I will add, either in the CC&Rs or in another recorded document, a provision for an easement over the roadway in Willamette Commons to reach the eight units in Willamette Green which are currently provided access over the flag lot portion of the Willamette Commons property which will be closed if the adjacent logging road is dedicated and improved.

I have been in contact with Ed Sullivan who represents the Association. I understand he will be meeting with members of that organization prior to the August 14th hearing and will inform me of their position. While Mr. West believes he has the Association's support, he wishes to amend his application and proceed to make his arguments at the hearing whether or not his proposal is supported by the Association. However, since we have met their concerns, we believe Mr. West should achieve their support.

Thank you for your assistance. Please call me if there are further matters we need to accomplish to amend the application to create the 40 single lot planned community of attached homes.

Very truly yours,



J. David Bennett, P.C.

JDB:drh

Enclosures

cc: Walt West

Marilyn Purcell 4-22-80

1 BEFORE THE CANBY CITY COUNCIL OF CANBY, CLACKAMAS COUNTY, OREGON

2 In the Matter of the Application of

3 DAVE J. BOLAND and HAROLD S. JEANS;
4 request for approval of a preliminary plat
5 of a subdivision to be called Willamette
6 Green #2 on property described as Tax Lot 1900,
7 Section 27C, T3S, R1E.

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ORDER CC-1-79

8 The application of Dave J. Boland and Harold S. Jeans for approval
9 of a preliminary plat of a subdivision to be called Willamette Green #2
10 on property in the City of Canby, Clackamas County, State of Oregon,
11 described as Tax Lot 1900, Section 27C, T3S, R1E, came before the Canby
12 City Planning Commission on April 11, 1979. The matter was tabled
13 because of lack of sufficient information submitted to the Planning
14 Commission, and the matter was later considered by the Planning Commission
15 on April 25, 1979. The application was denied by the Planning Commission
16 by its order dated May 22, 1979, nunc pro tunc April 25, 1979, and the
17 applicants filed a timely notice of appeal to the Canby City Council.

18 The appeal hearing was duly and regularly scheduled for June 6,
19 1979, and proper notice of the time, place and purpose of the hearing
20 was given to all interested persons in the manner and for the time
21 required by City ordinance. At the time of hearing on June 6, 1979,
22 the hearing was continued for a full de novo evidentiary hearing on
23 July 18, 1979. The full de novo hearing was held by the City Council on
24 July 18, 1979, and was continued for decision only at the council
25 meeting on August 1, 1979. The City was represented at the hearing on
26 July 18, 1979, by Deputy City Attorney, R. Roger Reif.

27 On August 1, 1979, said hearing was convened for decision only
28 by the hearing body, and one of the applicants, Harold S. Jeans, appeared

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EXHIBIT A

160 N.W. THIRD AVENUE
CANBY, OREGON 97013
266-1113 - 655-1674

1 in person and the City of Canby was represented by City Attorney,
2 Wade P. Bettis. The hearing having been closed on July 18, 1979,
3 the Council, as the hearing body, proceeded to consider staff reports,
4 recommendations of the Planning Commission and its prior order,
5 presentations and oral arguments on behalf of the applicants during
6 the course of the hearing, and the entire record and file of this
7 matter.

8 The Canby City Council being fully advised in the matter made
9 the following

10 FINDINGS

11 (A) The design of the development, as originally submitted
12 showing a maximum of 60 units, would create an excessive density in
13 view of the single, private access road and compatibility with
14 surrounding development.

15 (B) By limiting the development to 45 total units and requiring
16 a wider road surface, these problems will be alleviated and the total
17 density of the area will be in keeping with the developer's original
18 intentions when Willamette Green Phase I was developed.

19 (C) The proposal conforms with the adopted City Plan.

20 (D) It complies with applicable state-wide planning goals.

21 (E) It meets the requirements of the City Zoning and Subdivision
22 Ordinance.

23 (F) There is a public need for the development of 45 additional
24 condominium units at this time.

25 (G) Section 29(D)(3) of Subdivision Ordinance No. 443 (as
26 amended) imposes the following general requirement in submittance and

Page

EXHIBIT A

-2- Order.

1 development of a planned unit development subdivision:

2 "(3) The development of the property in the manner proposed will not
3 be detrimental to the public welfare and will be in keeping with the
4 general intent of the remainder of the City's subdivision ordinance."

4 Furthermore, Section 29(D)(4) and (5) impose the following additional
5 general requirements:

6 "(4) The plan for the proposed development shall present unified and
7 organized arrangement of buildings and service facilities."

8 "(5) The development must be designed so that the land areas and build-
9 ings around the perimeter of the project are in keeping with the adjoining
10 properties."

10 The public need can only be met for the development of this
11 property as herein conditionally approved.

12 BASED ON THE EVIDENCE adduced at said hearing and the records
13 and the file of this matter and the findings of the hearing body,
14 it is hereby

15 ORDERED that Phase II of a planned unit development in the
16 Willamette Green Subdivision #2 on Tax Lot 1900, Section 27C, T3S,
17 R1E, in Canby, Clackamas County, State of Oregon, is approved for
18 the development of the property and the construction of a total of
19 45 residential units according to the design and plans otherwise of
20 said project as previously submitted to the Planning Commission, but
21 the approved development and construction project is subject to the
22 applicants full compliance with the following CONDITIONS:

23 (1) Furnish to or provide the Canby Telephone Association
24 with:

25 (a) One copy of the proposed plat vicinity map showing
26 the property, location and type of subdivision being proposed and the
Page

EXHIBIT A

1 date the subdivider is proposing completion of project.

2 (b) Two approved copies of the completed plat vicinity map
3 no later than fifteen (15) days after final plat approval.

4 (c) A written agreement setting forth the amount and
5 condition for prepayment to the Association of the cost of utility
6 line construction before any work begins.

7 (d) Contact Canby Telephone Association at least fifteen
8 (15) days before telephone facilities are to be placed within the
9 subdivision.

10 (e) 6' utility easement on all interior lot lines.

11 (f) 12' utility easement on all exterior lot lines.

12 (g) Install 2" conduits under all existing and proposed
13 roadways, sidewalks, or any other areas covered by asphalt or cement
14 where telephone facilities are to be placed.

15 (h) Open all trenches for telephone utility lines with a
16 minimum depth of 30" of cover on final grade. The routing of all
17 trenches will be at the option of the Telephone Association. Trenches
18 will be opened in such a manner that telephone facilities can be placed
19 without delay.

20 (i) Assume responsibility for any damage that occurs to
21 the telephone facilities during the construction of other utilities
22 within the subdivision.

23 (2) Section 29(1)(C)(7) of Subdivision Ordinance No. 443 requires:

24 "A circulation plan indicating the proposed movement of vehicles, goods,
25 and pedestrians within the development to and from adjacent public thorough-
26 fares. Any special engineering features and traffic regulation devices
needed to facilitate or insure the safety of this circulation shall be shown.
Supporting data shall be supplied when requested by the Commission."

Page

EXHIBIT A

1 Therefore, in order to meet the requirements of this ordinance provision
2 the following conditions are imposed:

3 (a) All ingress/egress shall meet the requirements of the
4 Canby Fire Marshall for fire trucks. OK

5 (b) All turns in on-site roads to allow for use by large
6 trucks. OK

7 (c) The acute angle turn ($\pm 135^\circ$) at the north end of the
8 property to have a 45 foot radius (based upon the design requirements
9 of a cul-de-sac). OK

10 (d) The road through the existing Willamette Green
11 Development shall be connected with the proposed road in Willamette
12 Green Phase II. A chain or other locking system shall be utilized to
13 prevent a drive-through situation by other than authorized users of
14 this gate. OK

15 (e) A turnaround shall be provided at the termination of
16 the road. This turnaround shall be designed and constructed to allow
17 for a 180° turnaround by a full sized American car with only a single
18 reverse motion. OK

19 (f) Road to have a paved surface 32 feet in width through
20 entire development. Building setbacks may be reduced to 0 feet along
21 the northwest property line to allow for this road width. NO
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22 (3) "No Parking" signs to be posted in the turnaround areas and
23 all other areas which are not intended for parking purposes. 30

24 (4) "Dead End" and "Private Road" signs to be posted at the
25 entrance to the development. A "Stop" sign to be posted at the exit
26 point to Territorial Road. Cen
Cen

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EXHIBIT A

ATTORNEYS AT LAW
160 N.W. THIRD AVENUE
CANDY, OREGON 97013
266-1113 - 055-1674

1 (5) Maximum number of units to be constructed to be 45.

OK

2 Minimum number of parking spaces to be 90. Parking spaces in drive-
3 ways not to be counted in total if they block access to garage spaces.

84
are
pro

4 (6) Water lines to be as shown on the preliminary plat, with
5 the addition of a 2 inch line to be run from the termination of the
6 4 inch line back to the main water line in the vicinity of building #1.

(need
6.2)

7 (7) Individual water meters to be required for each building.

Bills

8 (8) An additional fire hydrant to be placed in the vicinity
9 of building #1.

Bills
T.D.

10 (9) On-site area lighting shall be the responsibility of the
11 Association, with billing to be determined by the Utility Board.

02

12 (10) Site drainage to be designed and constructed such that the
13 resultant overall drainage capacity will be as good as, or better than,
14 the predevelopment drainage of the site. The adequacy of the drainage
15 system shall be certified by a registered professional engineer.

Need
Letter

16 (11) Section 29(1)(D)(9) of the subdivision ordinance requires
17 that a planned unit development plan (as in this case) must show:

or
Con.

18 "The location of adjacent utilities intended to serve the development
19 and a layout of utilities within the development."

20 Therefore, a swimming pool of the same general size, shape and location
21 as shown on the applicants' plan shall be constructed.

Prop

22 (12) A surety bond for the estimated total cost of the project
23 shall be executed by a surety company authorized to transact business
24 in the State of Oregon in a form approved by the City Attorney in
25 favor of the City of Canby to guarantee full compliance with these
26 conditions.

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EXHIBIT A

Page

ATTORNEYS AT LAW
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1 It is further ORDERED that City building or other use or
2 occupancy permits shall not be issued for any development or use
3 of the said property, or any partitioned part thereof, until the
4 City Engineer has certified to the Canby City Council that the
5 conditions imposed by this order have been complied with or met or
6 that satisfactory assurance for completion of them have been filed
7 with and approved by the City Engineer.

*Bees
to
Pres.*

8 DATED this 15 day of August, 1979.

9
10 Robt E Rapp
11 Robt. E. Rapp, Mayor

Robert D. Westcott
Robert Westcott, Councilperson

12 Beryl Brown
13 Beryl Brown, Councilperson

Robert Swayze
Robert Swayze, Councilperson

14 W Beauford Knight
15 W. Beauford Knight, Councilperson

Richard Nichols
Richard Nichols, Councilperson

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EXHIBIT A

DRAFT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WILLAMETTE COMMONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WILLAMETTE COMMONS ("Declaration") is made this _____ day of _____, 1995 by Walter L. West, dba Walter West Construction Co. ("Declarant").

Recitals

Declarant is the Owner of all the real property and improvements thereon located in the City of Canby, County of Clackamas, State of Oregon, described on Exhibit "A" and incorporated herein.

Declarant intends to develop the Property as a planned development. To establish the planned development project of Willamette Commons, Declarant desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments and liens on the Property under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within Willamette Commons.

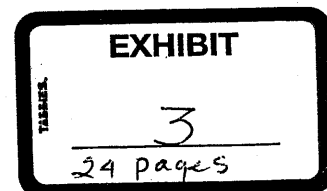
Declarant has deemed it desirable for the preservation of the values and amenities in Willamette Commons to create a non-profit corporation, to which will be delegated and assigned the powers and authority to own, maintain and administer the Association and the Common Area and facilities, and administer and enforce the covenants, conditions, and restrictions of this Declaration, and collect and disburse the assessments and charges hereinafter created.

NOW THEREFORE, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of the Association and of each Lot Owner.

ARTICLE 1.

DEFINITIONS

1.1. "Architectural Review Committee" or "ARC" shall mean and refer to the Declarant until turnover and thereafter shall refer to the Board of Directors unless the Board has appointed a separate body to carry out the functions described in Article 6 in which case "Architectural Review Committee" or "ARC" shall refer to the body so appointed.



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1.2. "Articles" shall mean the Articles of Incorporation for the non-profit corporation, Willamette Commons Homeowners' Association, Inc., as filed with the Oregon Corporation Commissioner.

1.3. "Association" shall mean and refer to Willamette Commons Homeowners' Association, Inc., its successors and assigns.

1.4. "Bylaws" shall mean and refer to the Bylaws of the Association.

1.5. "Willamette Commons" shall mean Lots 1 through 40 and all Common Area included within the Plat of Willamette Commons.

1.6. "Board" or "Board of Directors" shall mean the Board of Directors of Willamette Commons Homeowners' Association.

1.7. "Common Area" shall mean and refer to that area of land shown on the recorded plat of the Property, including any improvements thereon, which are intended to be devoted to the common use and enjoyment of the members of the Association.

1.8. "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration of Covenants, Conditions and Restrictions for Willamette Commons.

1.9. "Declarant" shall mean and refer to Walter West Construction Co., its successors or assigns, or any successor or assign to all remainder of its interest in the development of the Property.

1.10. "General Plan of Development" shall mean the Declarant's general plan of development of the Property as approved by appropriate governmental agencies, as may be amended from time to time.

1.11. "Home" shall mean and refer to any portion of a structure situated on a Lot designed and intended for use and occupancy as a residence by a single family or household.

1.12. "Lot" shall mean and refer to each and any of Lots 1 through 40 of Willamette Commons. Provided, however; "Lot" shall not include any Lot or tract depicted on the plat of the Property which is designated for use as Common Area on the plat or in the Declaration of Willamette Commons.

1.13. "Members" shall mean and refer to the Owners of Lots in Willamette Commons and who are members of the Willamette Commons Homeowners' Association.

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1.14. "Occupant" shall mean and refer to the occupant of a Home who shall be either the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.15. "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 who hold an interest in any Lot merely as security for the performance of an obligation.

1.16. "Property" shall mean and refer to all real property, including Lots 1 through 40, the Common Area Tract and all improvements located on the real property subject to this Declaration, as more particularly set forth on Exhibit "A" hereto attached.

1.17. "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of the Association or the Architectural Review Board ("ARC") as may be from time to time amended.

1.18. "Tracts" or "Common Area Tracts" shall mean and refer to those parcels of land on the plat of the Property designated as a Tract.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Canby, Clackamas County, Oregon, in that certain plat map entitled "Willamette Commons" filed in the plat records of Clackamas County, Oregon.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1 Non-Severability. The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of

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law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interest in the Common Area and Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Willamette Commons.

3.2 Ownership of Lots. Title to each Lot in Willamette Commons 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.

3.3 Ownership of Common Areas. Title to any Common Area shall be conveyed to the Association not later than sixty (60) days after seventy-five percent (75%) of the Lots have been conveyed to purchasers or seven years from the date of this Declaration, whichever is earlier.

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

3.4.1 Easements on Plat. The Common Area and Lots are subject to the easements and rights of way shown on the plat.

3.4.2 Easements for Common Area. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot.

3.4.3 Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales activities necessary or convenient for the sale of Lots. In addition, Declarant hereby reserves to itself and for the Owners of Lots in all future Phases of Willamette Commons a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant and future Phases of the Property. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property or other real

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property owned by Declarant in such a way as to not unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests or invitees.

3.4.4 Additional Easements. Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of Willamette Commons. No structure, planting or other material shall be placed or permitted to remain within any easement area which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

3.4.5 Association's Easements. There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration, the Bylaws and Articles, as the same may be amended or supplemented.

3.4.6 Easement to Governmental Entities. There is hereby reserved and granted a non-exclusive easement over the Common Area to all governmental and quasi-government entities, agencies, utilities, and their agents for the purposes of performing their duties within Willamette Commons.

ARTICLE 4

LOTS AND HOMES

4.1 Residential Use. Lots shall only be used for residential purposes. Except with the consent of the Board of Directors of the Association, 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 Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any residences as a sales office or model home for purposes of sales in

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Willamette Commons, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his residence. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

4.2 Construction of Homes. No construction, reconstruction or exterior alterations shall occur on a Lot unless the approval of the ARC is first obtained pursuant to Article 6. Consideration such as siting, shape, size, color, design, height, solar access, or material may be taken into account by the ARC in determining whether or not to consent to any proposed work. The following restrictions are minimum standards applicable to all Lots.

4.2.1 No Home shall exceed two (2) stories in height above the ground;

4.2.2 The square footage area of a single story Home shall not be less than nine hundred (900) square feet, and the square footage area of a two-story Home shall not be less than twelve hundred (1,200) square feet exclusive of basements, attics, patios, decks, porches, balconies and garages;

4.2.3 At least a one (1) car garage must be constructed on the Lot;

4.3 Completion of Construction. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within six (6) months from the beginning of the construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the ARC. The Lot and building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage disposal facility located on site during such construction period. If construction has not commenced within three (3) months after the project has been approved by the ARC, the approval shall be deemed revoked unless the Owner has applied for and received an extension of time from the ARC.

4.4 Landscaping. Landscaping within each Lot shall commence within thirty (30) days after final building inspection by the local government jurisdiction, and shall be completed within six (6) months after the final building inspection.

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4.5 Maintenance of Lots and Homes. Each Owner shall maintain those portions of his Lot not maintained by the Association and all improvements on such Lot in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the ARC. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on his Lot, which is not maintained by the Association, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. 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.

4.6 Rental of Homes. An Owner shall be entitled to rent or lease his residence, if:

4.6.1 There is a written rental or lease agreement specifying that: (i) the tenant shall be subject to all provisions of Willamette Commons Documents and (ii) a failure to comply with any provision of Willamette Commons Documents shall constitute a default under the agreement;

4.6.2 The period of the rental or lease is not less than thirty (30) days;

4.6.3 The Owner gives each tenant a copy of Willamette Commons Documents.

4.7 Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets 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 a Lot. An Owner may be required to remove a pet upon the receipt of the third notice in writing from the Association Board of Directors of violation of any rule, regulation or restriction governing pets within the Property.

4.8 Nuisance. No noxious, harmful or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the enjoyment of other Lots or Common Area, or which is a source of annoyance to residents.

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4.9 Parking. Parking of boats, trailers, commercial vehicles, mobile homes, campers, other recreational vehicles or equipment regardless of weight shall not be allowed on any part of the Lot or Common Area for more than six hours or such other period as may be permitted by the Association Rules and Regulations. Provided, however, boats, trailers, campers and other recreational vehicles may be stored in the garage out of the visibility of other Owners.

4.10 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Area for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which the notice is mailed to him by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

4.11 Signs. No signs shall be erected or maintained on any Lot except that not more than one "For Sale" or "For Rent" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner.

4.12 Rubbish and Trash. No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Areas or any other Lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any Lot, any streets or Common Area where deposited by him within ten (10) days following the date on which notice is mailed to him by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner.

4.13 Fences and Hedges. No fences or boundary hedges shall be installed without prior written approval of the ARC.

4.14 Service Facilities. Service facilities (garbage containers, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property.

4.15 Antennas and Satellite Dishes. Exterior antennas, microwave, aerial, tower or other devices for the transmission or reception of television, radio or other forms of sound or electro-

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magnetic radiation shall not be erected, constructed or placed on any Lot. With prior written consent from the ARC, exterior satellite dishes with a surface diameter less than twenty-four (24) inches may be placed on any Lot so long as they are not visible from the street and are screened from a neighboring property.

4.16 Exterior Lighting or Noisemaking Devices. Except with the consent of the ARC, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than security and fire alarms.

4.17 Grades, Slopes and Drainage. There shall be no interference with the established patterns or systems over or through any Lot within Willamette Commons so as to affect any other Lot or Common Area or any real property outside Willamette Commons unless adequate alternative provision is made for proper drainage and is approved by the ARC. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets designed and constructed for the project.

4.18 Damage or Destruction to Home and/or Lot. If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (i) restore the damaged Improvements or (ii) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (i) above must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article 6 are complied with by the Owner. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within six (6) months thereafter.

4.19 Right of Maintenance and Entry by Association. If an Owner fails to perform maintenance and/or repair which he is obligated to perform pursuant to this Declaration, and if the Board determines, after notice and a hearing (given pursuant to the provisions of the Bylaws), that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Willamette Commons, the Board may cause such maintenance and/or repair in connection therewith to be performed and may enter any such Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than forty-eight (48) hours, except in emergency situations. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot as a reimbursement assessment and collected and enforced with any other assessments authorized hereunder.

4.20 Association Rules and Regulations. The Board of Directors from time to time may adopt, modify or revoke such rules

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and regulations governing the conduct of persons and the operation and use of Lots and Common 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 the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be provided in the Bylaws of the Association.

ARTICLE 5

COMMON AREA

5.1 Use of Common Areas. Use of Common Areas is subject to the provisions of the Declaration, Bylaws, Articles and any rules and regulations promulgated by the Board of Directors. There shall be no use of the Common Area except by Owners and their invitees. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior written consent of the Board of Directors. No alterations or additions to the Common Area shall be permitted without the prior written approval by the Board of Directors. Nothing shall be stored or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board.

5.2 Maintenance of Common Area. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area, including, but not by way of limitation, all drainage systems and pathways. The Association shall keep the Common Area and improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in first class condition.

5.3 Alterations to Common Area. Only the Association shall construct, reconstruct, or alter any improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws and this Declaration.

5.4 Funding. Expenditures for alterations, maintenance or repairs to an existing capital improvement for which a reserve has been collected shall be made from the reserve account. The Board may levy a special assessment to fund any construction, alteration, repair or maintenance of an improvement for which no reserve has been collected or if the reserve account is insufficient to cover

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the cost of the proposed improvement. Provided, however, special assessments for new improvements (as distinguished from replacement or renovation or existing improvements) shall be approved by a majority of the Owners at an Association meeting or vote by written ballot.

5.5 Landscaping. All landscaping on any Lot or portion of the Common Area shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant or the ARC. The Association shall be responsible for all landscaping located in Common Areas and on those portions of the Lots which are not within the patio areas, entryways or enclosed courtyards, including regular maintenance, irrigation, fertilization and weed abatement. Any weeds or deceased or dead lawn, tree, ground cover or shrubs shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed.

5.6 Condemnation of Common Area. If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be received by and expended by the Board of Directors in a manner which in their discretion is in the best interest of the Association. The Association shall represent the interest of all Owners in any negotiations, suit or action or settlement in connection with such matters.

5.7 Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constituted or as may be modified or altered subsequently by the Association in the discretion of the Board of Directors. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is responsible for such damage.

ARTICLE 6

ARCHITECTURAL REVIEW COMMITTEE

6.1 Architectural Review. No improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of exterior design with the

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existing improvements and landscaping. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Lot Owners. 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. In all cases which the ARC consent is required by this Declaration, the provision of this Article shall apply.

6.2 Architectural Review Committee, Appointment and Removal. The ARC shall consist of no fewer than three (3) members and no more than five (5) members, as the Declarant may appoint from time to time. Declarant reserves the right to appoint all members of the ARC and all replacements thereto until Willamette Commons is one hundred percent (100%) built out. Until seventy-five percent (75%) of the Homes have been conveyed by the Declarant to new Owners, the Declarant may appoint a single person to serve as the ARC. After built out, Declarant shall delegate the right to appoint and remove members of the ARC to the Board of Directors. 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. 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. The Board may appoint one or more members to the ARC who are not Owners, but who have special expertise regarding the matters which come before the ARC. In the sole discretion of the Board, such non-Owner members of the ARC may be paid.

6.3 Major 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 of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting hereto.

6.4 Duties. The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in Willamette Commons; provided, however that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

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6.5 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. In the event the ARC fails to render its decision of approval or denial in writing within sixty (60) days of receiving all material required by it with respect to the proposal, the application shall be deemed approved.

6.6 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 intends for Willamette Commons. 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.

6.7 Nonwaiver. Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.8 Appeal. At any time after Declarant has delegated appointment of the members of the ARC to the Board of Directors pursuant to Section 6.2, 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 this 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.

6.9 Effective Period of Consent. The ARC's consent to any proposed work shall automatically be revoked three (3) 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.

6.10 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 non-compliance. The notice shall specify the

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particulars of non-compliance and shall require the Owner to remedy the non-compliance.

6.11 Non-Compliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an approval granted, and if the Owner fails to agree to and diligently commence to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then at the expiration of the third (3rd) day from the date of such notification, the ARC shall provide notice of hearing to consider the Owner's continuing non-compliance. 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 ARC may either remove the non-complying improvement, remedy the non-compliance, or file suit to compel compliance. The costs of such action shall be assessed against the Owner and his Lot, including all attorneys' fees expended and other costs incurred to enforce compliance before and after suit is filed and at trial or on any appeal or review of therefrom.

6.12 Liability. Neither the ARC nor any member thereof shall be liable to any Owner, occupant, or builder for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

6.13 Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairman of the ARC and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof either: (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration and any rules and regulations promulgated by the Board or the ARC, or (b) such improvements do not so comply, in which event, the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such non-compliance. The Owner, his heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Declarant, the ARC, the Association and all Owners, and such persons deriving any interest through any of them.

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ARTICLE 7

MEMBERSHIP IN THE ASSOCIATION

7.1 Members. Each Owner shall be a mandatory 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, Bylaws, and rules and regulations of the Association and any amendments thereof.

7.2 Proxy. Each Owner may cast his vote in person, pursuant to a proxy executed by the Owner, or by written ballot, as provided by ORS 65.222. An Owner may not revoke a proxy given pursuant to this section except by actual notice of 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 Voting Rights. The Association shall have two (2) classes of voting members:

7.3.1 Class A. Class A members shall be all Owners of Lots other than the Declarant, and each Class A member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

7.3.2 Class B. The Class B member shall be Declarant, its successors and assigns. The Class B member shall have three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of:

7.3.2.1 When eighty percent (80%) of the Lots in the final phase of development of Willamette Commons have been sold and conveyed to Owners other than Declarant ("Termination Date"); or

7.3.2.2 At such earlier time as Declarant may elect in writing to terminate Class B membership.

Thereafter, each Owner, including the Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots.

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When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum. The total number of votes as of the Termination Date and thereafter shall be equal to the total number of Lots annexed to the Property and subjected to this Declaration as of the Termination Date.

7.4 Procedure. All meetings of the Association, the Board of Directors, the ARC, 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.

ARTICLE 8

DECLARANT CONTROL

8.1 Interim Board and Officers. The Declarant hereby reserves administrative control of the Association. The Declarant, in its sole discretion, shall have the right to appoint and remove members of the Interim Board of Directors, which shall manage the affairs of the Association and which shall be invested with all powers and rights of the Board of Directors. The Interim Board shall consist of from one to three members. Notwithstanding the provision of this Section, at the Turnover Meeting (as hereinafter defined) at least one (1) Director shall be elected by Owners other than the Declarant, even if the Declarant otherwise has voting power to elect all of the members of the Board.

8.2 Turnover Meeting. The Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the Class A members within one hundred twenty (120) days of the earlier of:

8.2.1 The date that Lots representing eighty percent (80%) of the total number of votes have been conveyed to persons other than the Declarant; or

8.2.2 At such earlier time as Declarant elected in writing to terminate Class B membership.

The Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If the Declarant does not call the meeting required under this Section, any Owner may do so.

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ARTICLE 9

DECLARANT'S SPECIAL RIGHTS

9.1 General. Declarant is undertaking the work of developing Lots and other improvements within Willamette Commons. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. Until the Homes on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Areas and each Lot on the Property, the Declarant shall have the special rights set for in this Article 9.

9.2 Marketing Rights. Declarant shall have the right to maintain a sales office and model on one or more of the Lots which the Declarant owns to be staffed by the employees of the Declarant or any licensed real estate sales agents. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, the Common Area.

9.3 Declarant Easements. The Declarant has reserved easements over the Property as more fully described in Article 3, Sections 3.4.3 and 3.5.3 hereof.

9.4 Size and Appearance of Willamette Commons. Declarant shall not be prevented from changing the exterior appearance of the Common Area, including the landscaping or any other matter directly or indirectly connected with Willamette Commons in any manner deemed desirable by Declarant, provided that the Declarant obtains governmental consents required by law.

ARTICLE 10

FUNDS AND ASSESSMENTS

10.1 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owner and occupants of Willamette Commons and for the improvement, operation and maintenance of the Common Areas.

10.2 Covenants to Pay. Declarant and each Owner covenants and agrees to pay the Association the assessments and any additional charges levied pursuant to this Article 10. All such assessments, together with interest thereon at the rate established from time to time by resolution of the Board of Directors and together

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with all other costs, attorneys' fees (whether or not suit or action is filed), charges and fines allowed by law, shall be a lien and charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law. All such assessments also shall be a personal obligation of the Lot Owner. In a voluntary conveyance the new Owner shall be personally liable for any unpaid assessments owed on the date of the conveyance.

10.2.1 Funds Held in Trust. 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 Willamette Commons as provided in this Declaration. 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.

10.2.2 Offsets. No offsets against any assessment shall be permitted for any reason, including, without any limitation, any claim that the Association is not properly discharging its duties.

10.3 Basis of Assessment. Assessments are to be levied against all Lots whether or not such Lots have been improved with a substantially completed Home. Provided, however, the Declarant shall be exempt from paying assessments on all unimproved Lots owned by it until after the Turnover Meeting. Assessments for all Lots conveyed by the Declaration to others shall begin on the first day of the month following the recording of the deed or land sale contract conveying or contracting to convey the Lot to the new Owner.

10.4 Annual Assessments. Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Annual assessments shall be levied on a fiscal year basis. The fiscal year shall be the calendar year unless another year is adopted by vote of the Board members. Unless otherwise specified by the Board, annual assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. The general assessments with respect to the Lots shall commence on the first day of the first month following the conveyance of a Lot to an Owner other than the Declarant.

10.4.1 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 pro forma operating statement (budget) containing: (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available

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for replacement or major repair of the Common Area and for contingencies; (iii) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area. For the first fiscal 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, not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the fiscal year.

10.4.2. Allocation of Assessments. The total amount in the budget shall be charged equally against all Lots as annual assessments.

10.4.3. Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new annual assessment is fixed.

10.5 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:

10.5.1 To correct a deficit in the operating budget by vote of a majority of the Board;

10.5.2 To correct amounts due to the Association from an Owner for breach of the Owner's obligations under the Declaration, these Bylaws, or the Association's rules and regulations, by vote of a majority of the Board;

10.5.3 Upon vote of a majority of the Board of Directors, to make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or replacement reserve accounts; or

10.5.4 To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

10.6 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his Lot if a failure to comply with the Willamette Commons Declaration, Articles, Bylaws or rules and regulations promulgated by the Board or the ARC has

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(i) necessitated an expenditure of monies by the Association to bring the Owner into compliance or (ii) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until notice of and an opportunity for a hearing before the Board or a committee appointed by the Board has been given to the Owner against whom the Reimbursement Assessment is proposed.

10.7 Accounts.

10.7.1 Types of Accounts. Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank, which accounts shall be clearly designated as (i) the Current Operating Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation, together with all Reimbursement Assessments, into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Withdrawal of funds for the Association's Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and an officer of the Association who is not a Director.

10.7.2 Reserve Account. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital improvements for which reserves have been collected and held. No funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

10.7.3. Current Operating Account. All other costs may be paid from the Current Operating Account.

10.8 Default in Payment of Assessments, Enforcement of Liens.

10.8.1. Personal Obligation. All assessments properly imposed under this Declaration or the 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 effecting the conveyance. 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.

10.8.2. Association Lien. At any time any assessment (of any type provided for by this Declaration or the Bylaws)

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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 Clackamas 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 suit or action is instituted) and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time, but not later than six (6) years after the latest lienable charge has been imposed. 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.

10.8.3 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 adopted by the Board or the ARC. 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, fines or penalties for violation of this Declaration, the Bylaws or any rule and regulation, other than failure to pay regular, Reimbursement, or special assessments, may not be imposed against an Owner or his Lot until such Owner is given an opportunity for a hearing as elsewhere provided herein.

ARTICLE 11

GENERAL PROVISIONS

11.1. 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

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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 providing copies.

11.2. 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 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 acted in good faith and in a manner he 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 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 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 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, should it be proven at a later time that said 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 of the Association who participated with or benefited from the acts which created said liability.

11.3. 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.

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In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal or review, the cost of the appeal or review, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

11.4. 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.

. 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, amendments which do not constitute rescission of the planned community may be adopted as provided in Section 11.6 below. Additionally, any such rescission which affects the Common Area shall require the prior written consent of the City of Canby. Provided, however, that if any of the provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or, in the event the rule against perpetuities applies, until twenty-one (21) years after the death of the last survivor of the now living descendants of President Bill Clinton.

11.6. Amendment. Except as otherwise provided in Sections 11.5, 11.9, 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 of each class of members that are eligible to vote. 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. Provided further, no amendment affecting the general plan of development or any other right of the Declarant herein contained may be effected without the express written consent of the Declarant or its successors and assigns.

11.7. Release of Right of Control. The Declarant may give up its right of control in writing at any time by notice to the Association.

