

**AMENDED AND RESTATED
BYLAWS
OF THE
KIWANDA SHORES MAINTENANCE ASSOCIATION**

**ARTICLE I
Plan of ownership**

1.1 Name and Location. These are the Amended and Restated Bylaws of the Kiwanda Shores Maintenance Association (herein "Association"). Kiwanda Shores Planned Unit Development (herein "Planned Community"), is located in Tillamook County, Oregon, and has been submitted to the provisions of the Oregon Planned Community Act (ORS 94.550 et sea.) by an Amended and Restated Declaration filed simultaneously herewith. ,

1.2 Purposes. The Association is formed under the provisions of .the Oregon Planned Community Act to serve as the means through which the Lot Owners may take action with regard to administration, management, and operation of the Planned community.

1.3 Applicability of Amended and Restated Bylaws. The Association, all Lot Owners, and all persons using the Planned Community property shall be subject to these Amended and Restated Bylaws and to all rules and regulations which may be promulgated hereunder.

1.4 Composition of the Association. The Association shall be composed of all the Lot Owners of the Planned Community, and the Association, itself, to the extent any of these own any Lots of the Planned Community.

1.5 Definitions. The definitions contained in or adopted by the Amended and Restated Declaration shall be applicable to these Amended and Restated Bylaws. In addition, all definitions as found in ORS 94.550 shall be applicable unless stated otherwise herein.

**ARTICLE II
Voting**

2.1 Voting. Each Lot shall be allocated one vote in the affairs of the Association. The Board of Directors shall be entitled to vote on behalf of any Lot which has been acquired by or on behalf of the Association; provided, however, that the Board of Directors shall not be entitled to vote such Lots in any election of directors.

2.2 Determination of Membership in the Association. Upon recordation of a conveyance or contract to convey a Lot, the grantee or purchaser named in such

conveyance or contract shall automatically be a member of the Association and shall remain a member of said Association until such time as such person's ownership ceases for any reason. Lot ownership shall be determined, for all purposes of the Amended and Restated Declaration for Kiwanda Shores Planned Unit Development (herein "Amended and Restated Declaration") and these Amended and Restated Bylaws, and the administration of the property, from the record of Lot ownership maintained by the Association. The record shall be established by the Lot owner filing with the Association a copy of the deed or land sale contract for his Lot, to which shall be affixed the certificate of the recording officer of Tillamook County, Oregon, showing the date and place of recording of such deed or contract.

2.3 Proxies. A vote may be cast in person or by proxy. A proxy given by a Lot Owner to any person who represents such Lot Owner at meetings of the Association shall be in writing and signed by such Lot owner and shall be filed with the secretary. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy, and every proxy shall automatically cease upon sale of the Lot by its Lot Owner. A Lot Owner may pledge or assign his voting rights to a mortgagee. In such a case, the mortgagee or its designated representative shall be entitled to receive all notices to which the Lot Owner is entitled hereunder and to exercise the Lot owner's voting rights from and after the time that the mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first mortgagee may designate a representative to attend all or any meetings of the Association.

2.4 Fiduciaries and Joint Lot Owners. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Lot owned or held by him in such capacity, whether or not the same shall have been transferred to his name; provided, that he shall satisfy the secretary that he is the executor, administrator, guardian, or trustee holding such Lot in such capacity. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote of such Lot may be exercised by any one of the Lot owners then present, in the absence of protest by a co-Lot Owner. In the event of such protest no **one** co-Lot owner shall be entitled to vote without the approval of all co-Lot Owners. In the event of disagreement among the co-Lot owners the vote of such Lot shall be disregarded completely in determining the proportion of votes given with respect to such matter.

2.5 Landlords and Contract Vendors. Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Lot shall be exercised by the landlord if the rental agreement or lease has an original term of ten (10) years or less, or by the tenant if the rental agreement or lease has an original term of more than ten (10) years. Unless otherwise stated in the contract, all voting rights allocated to a Lot shall be exercised by the vendee of any land sale contract on the Lot.

2.6 Quorum of Lot Owners. At any meeting of the Association, members holding twenty percent (20%) of the voting rights present in person or by proxy, shall constitute a quorum. The subsequent joinder of a Lot owner, in the action taken at a meeting by signing and concurring in the minutes thereof, shall constitute the presence of such

person for the purpose of determining a quorum. When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of a Lot Owner or Lot Owners. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

2.7 Majority Vote. The vote of the holders of more than fifty percent (50%) of the voting rights present, in person, or by proxy, at a meeting at which a quorum is constituted shall be binding upon all Lot Owners for all purposes except where a higher percentage vote is required by law, by the Amended and Restated Declaration, or by these Amended and Restated Bylaws.

ARTICLE III **Meetings of the Association**

3.1 Place of Meeting. The Association shall hold meetings at such suitable place convenient to the Lot Owners as may be designated by the Board of Directors from time to time.

3.2 Annual Meetings. The annual meetings of the Association shall be held on the Saturday prior to Labor Day of each year at such hour as the president may designate. The annual meetings shall be for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting.

3.3 Special Meetings. special meetings of the Association may be called by the president or secretary or by a majority of the Board of Directors and must be called by such officers upon receipt of a written request from at least twenty percent (20%) of the Lot owners stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

3.4 Notice of Meetings.. Notice of all meetings of the Association stating the time and place and the objects for which the meeting is being called, shall be given by the president or secretary. All notices shall be in writing and mailed to each Lot owner at his address as it appears on the books of the Association and to any first mortgagee requesting such notice not less than ten (10) days nor more than fifty (50) days prior to the date of the meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of the meetings may be waived by any Lot Owner before or after meetings. When a meeting is adjourned for less than thirty (30) days, no notice of the adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place.

3.5 Order of Business. The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;

- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

ARTICLE IV **Board of Directors**

4.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of at least three (3) persons all of whom must be a Lot Owner or the co-Lot Owner of a Lot. Provided, however, Lot Owners of the same Lot may not serve as directors simultaneously.

4.2 Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Amended and Restated Bylaws directed to be exercised and done by-the Lot Owners.

4.3 Other Duties. In addition to duties imposed by these Amended and Restated Bylaws or by resolutions of the Association, the Board of Directors shall have authority to carry out and be responsible for the following matters:

(a) Care, upkeep, security, and supervision of the Planned Community and the common property and assigning, supervising assignments or approving any assignment of the use of any common property, as may be required by the Amended and Restated Declaration.

(b) Designation and collection of assessments from the Lot Owners in accordance with these Amended and Restated Bylaws, the Amended and Restated Declaration, and the Oregon Planned Community Act.

(c) Payment of all common expenses of the Association, and institution and maintenance of a voucher system for payment, which shall require a sufficient number of signatories thereon as may be reasonably necessary to prevent any misuse of the Association's funds.

(d) Designation and dismissal of the personnel necessary for the maintenance and operation of the Planned Community and the common property.

(e) Subject to the limitations of the Oregon Planned Community Act, leasing, subleasing, or hypothecation in any manner of the common property of the Planned Community which have or may have any income producing potential.

(f) Promulgation and enforcement of rules of conduct for Lot owners, employees, and invitees which shall be consistent with the restrictions set out in Article VII, Section 7.3 of these Amended and Restated Bylaws.

4.4 Management Agent. The Board of Directors may employ a management agent, to be compensated in an amount established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize including, but not limited to, the duties listed in Section 4.3 of this Article. A majority vote of the Lot Owners present at a duly constituted meeting shall be required to approve the selection of a management agent.

4.5 Election and Term of Office. The successor for a director shall be elected to serve for a term of three years. Directors shall hold office until their respective successors have been elected by the Lot Owners. Election shall be by plurality.

4.6 Vacancies. Vacancies on the Board of Directors, caused by any reason other than the removal of director by a vote of the Association, shall be filled for the balance of the term of each directorship by vote of a majority of the remaining directors even though they may constitute less than a quorum; and each person so elected shall be a director until a successor is elected upon expiration of the term for which such **person was** elected by the other directors to serve.

4.7 Removal of Directors. At any legal annual or special meeting, other than a meeting by ballot, any one or more of the directors may be removed, with or without cause, by a majority of the Lot Owners and a successor may be then and there elected to fill the vacancy thus created. Any director whose removal has been proposed by the Lot Owners may be given an opportunity to be heard at the meeting.

4.8 Regular and Special Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Special meetings of the Board of Directors may be called by the president and must be called by the secretary at the written request of at least two (2) directors. Notice of any special meeting shall be given to each director, personally or by mail, telephone, or telegraph at least seventy-two (72) hours prior to the time set for such meeting and shall state the time, place, and purpose of such meeting. All meetings of the Board of Directors shall be open to Lot Owners. Such meetings may be conducted by telephonic communication, except that if a majority of the Lots are principal residences of the occupants, then: (a) for other than emergency meetings notice of each Board of Directors meeting shall be posted at a place or places on the property at least three (3) days prior to the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Lot Owners of such meeting; and (b) only emergency meetings of the Board of Directors may be conducted by telephonic communication.

4.9 Board of Directors Quorum. At all meetings of the Board of Directors a majority of the existing directors shall constitute a quorum for the transaction of business and the acts of the majority of the directors shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

4.10 Compensation of Directors. No director shall be compensated in any manner, except for out-of-pocket expenses, unless such compensation is approved by a vote of the Lot Owners.

4.11 Liability and Indemnification of Directors, officers, Manager, or Managing Agent. The directors and officers shall not be liable to the Association for any mistake of judgment, negligence, or otherwise except for their own willful misconduct or bad faith. The Association shall indemnify and hold harmless each director and officer and the manager or managing agent, if any, against all contractual liability to others arising out of contracts made by the Board of Directors, officers, manager, or managing agent on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Amended and Restated Declaration or of these Amended and Restated Bylaws. Each director and officer and the manager or managing agent, if any, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees reasonably incurred or imposed upon them in connection with any proceeding to which they may be a party or which they may become involved, by reason of being or having been a director, officer, manager or managing agent, and shall be indemnified upon any reasonable settlement thereof; provided, however, there shall be no indemnity if the director, officer, manager, or managing agent is adjudged guilty of willful nonfeasance, misfeasance, or malfeasance in the performance of his duties.

4.12 Fidelity Bond. The Board of Directors shall require any person or entity, including, but not limited to, employees of any professional manager who handles or is responsible for Association funds, to furnish such fidelity bond as the Board of Directors deem adequate. The premiums on such bonds shall be paid by the Association.

4.13 Insurance. The Board of Directors shall obtain the insurance required in Article VIII of these Amended and Restated Bylaws. In addition the Board of Directors, in its discretion, may obtain such other insurance as it deems necessary to protect the interests of the Association or Lot Owners. The Board of Directors shall conduct an annual insurance review which, if appropriate, shall include an appraisal of all improvements contained in the Planned Community.

ARTICLE V Officers

5.1 Designation. The principal officers of the Association shall be a president, a secretary, and a treasurer, all of whom shall be elected by the directors. The directors may appoint an assistant treasurer, an assistant secretary, and any such other officers as in their judgment may be necessary. No two offices may be held by the same person.

5.2 Election of Officers. The officers of the Association may be elected by the Board of Directors at the organizational meeting of each new board or any Board of Directors' meeting thereafter and shall hold office at the pleasure of the Board of Directors.

5.3 Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors any officer may be removed, either with or without cause, and his successor elected at any regular or special meeting of the **Board of Directors**.

5.4 President. The president shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to, the power to appoint committees from among the Lot Owners from time to time, as he may in his discretion decide is appropriate, to assist in the conduct of the affairs of the Association. The president shall be entitled to vote at Board of Directors meetings only in case of a tie vote at any such meeting and his vote shall be final.

5.5 Secretary. The secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of secretary.

5.6 Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by the managing agent, and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board of Directors.

5.7 Directors of Officers. Any director may be an officer of the Association.

ARTICLE VI
Budget, Loans, Expenses and assessments

6.1 Budget. The Board of Directors shall, from time to time and at least annually, prepare a budget for the Association: estimate the common expenses expected to be incurred; and assess the common expenses to each Lot owner in the proportion set forth in the Amended and Restated Declaration.

6.2 Loans. No loan shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors and approved by the affirmative vote of the Lot Owners representing seventy-five percent (75%) of the voting rights. Such authority.: may be general or confined to specific *instances*.

6.3 Determination of Common Expenses. Common Expenses shall include:

- (a) Expenses of administration;
- (b) Expenses of maintenance, security, repair, or replacement of the common property;
- (c) Cost of insurance or bonds obtained in accordance with these Amended and Restated Bylaws
- (d) A general operating reserve;
- (e) Reserve for replacements and deferred maintenance as set forth in Section 6.5;
- (f) Any deficit in common expenses for any prior period;
- (g) Utilities for the common property and other utilities with a common meter or commonly billed, such as trash collection, water, sewer, and cable television; and
- (h) Any other items properly chargeable as an expense of the Association.

6.4 Assessment of Lot Owners. All Lot Owners shall be obliged to pay common expenses assessed to them by the Board of Directors on behalf of the Association pursuant to these Amended and Restated Bylaws and the Amended and Restated Declaration. Assessments may not be waived due to limited or nonuse of the common property. The Board of Directors, on behalf of the Association, shall assess the common expenses against the Lot owners, from time to time and at least annually, and shall take prompt action to collect from a Lot Owner any common expense due which remains unpaid by him for more than one hundred-eighty (180) days from the due date for its payment.

6.4 Reserves. A portion of the common expense collected from each Lot Owner shall be placed in an account separate from the general operating account of the Association in accordance with ORS 94.595. This separate account is to be used as a reserve account for major maintenance and replacement of the common property all or part of which would normally require replacement in more than three (3) or less than thirty (30) years from the time the budget is determined by the Board of Directors.

The reserve account shall be used only for the purposes outlined in this section; provided, however, that the Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from special assessments or maintenance fees. The reserve account may be invested by the Board of Directors subject to normal prudent investment standards.

Assessments paid into the reserve account shall be the property of the Association and are not refundable to sellers of Lots. Sellers of Lots may treat their outstanding share of the reserve account as a separate item in any agreement for the sale of their Lots.

6.5 Special Assessments - Capital Improvements. In the case of any duly authorized capital improvement (see Amended and Restated Declaration, Section 7.4) to the common property, the Board of Directors may, by resolution, establish separate assessments for the same which may be treated as capital contributions by the Lot Owners and the proceeds of which shall be used only for the specific capital improvements described in the resolution. Special assessments shall be collectable as a regular common expense and are applicable to all lien provisions herein.

6.6 Default in Payment of Common Expenses. In the event of default by any Lot Owner in paying to the Association the assessed common expenses, such Lot Owner shall be liable for late payment charge at the rate of twelve percent (12%) per annum on such common expenses from the due date thereof or at such greater rate as may be established by the Board of Directors, from time to time, not to exceed the maximum lawful rate, if any. The defaulting Lot owner shall also pay any other reasonable late charge established by the Board of Directors, from time to time, together with all expenses incurred by the Association in collecting such unpaid expenses including attorneys' fees (whether or not suit is instituted, and at trial or any appeal therefrom). In addition, the Board of Directors shall have the authority to attach a surcharge to any delinquent account not paid to the Association prior to March 1 of the year such assessment is due. A surcharge equal to ten percent (10%) of the total assessment due to the Association shall be charged against the Lot if said assessment is paid during the period March 1 through April 30. Any assessment paid on or after May 1 shall incur a surcharge equal to twenty percent (20%) of the total assessment due to the Association. The Board of Directors shall have the right and duty to recover for Association such common expenses together with such charges, interest, and expenses of the proceeding, including attorneys' fees, by an action brought against such Lot Owner or by foreclosure of the lien upon the Lot granted by the Oregon Planned Community. The Board of Directors shall notify the holder of any first mortgage upon a Lot of any default not cured within thirty (30) days of the date of default.

6.7 Foreclosure of Liens for Unpaid Common Expenses. In any suit brought by the Association to foreclose a lien on a Lot because of unpaid assessments, the Lot owner shall be required to pay a reasonable rental for the use of the Lot during the pendency of the suit; and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The Board of Directors, acting on behalf of the Association, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Lot. A suit or action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing the liens securing the same.

6.8 Statement of Common Expenses. The Board of Directors shall advise each Lot Owner in writing of the amount of common expenses payable by him and furnish copies of each budget, on which such common expenses are based to all Lot Owners and, if requested, to their mortgagees. The Board of Directors shall promptly provide any Lot owner who makes a request in writing with a written statement of his unpaid common expenses.

6.9 Priority of Lien; First Mortgages. Any lien of the Association against a Lot for common expenses shall be subordinate to tax and assessment liens and any first mortgage of record. Where the purchaser or mortgagee of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or by deed in lieu of foreclosure, such purchaser or mortgagee, his successors and assign, shall not be liable for any of the common expenses chargeable to the Lot which became due prior to the acquisition of title by the purchaser or mortgagee.

ARTICLE VII

Maintenance and Use of the Planned Community Property

7.1 Maintenance and Repair. Except as otherwise provided herein for damage or destruction caused by casualty:

(a) Lots. All maintenance of and repairs to any Lot and/or structures thereon shall be made by the Lot Owner of such Lot; who shall keep the same in good order, condition, and repair; and shall do all redecorating, painting, and staining which at any time may be necessary to maintain the good appearance and condition .of said structure *on* his Lot. *In* addition, each Lot Owner shall be responsible for the maintenance, repair, or replacement of windows and doors and any plumbing, heating, or air conditioning fixtures, telephones, water heaters, fans, lighting fixtures and lamps, fireplaces, refrigerators, dishwashers, ranges, or other appliances and accessories that may be in or connected with his Lot.

(b) Common Property. All maintenance, repairs, and replacements to the common property shall be made by the Association and shall be charged to all the Lot owners as common expense.

(c) Public Land. The Lot Owners of those Lots that abut public lands, which includes any fore-dune area, shall be responsible for the maintenance and the cost of such maintenance of said public land as may be required by the State of Oregon or any other government agency. The association may maintain said public lands if a Lot Owner fails to comply with said requirements and the costs of such maintenance shall be charged to the Lot Owner and added to the assessments of said Lot.

7.2 Additions, Alterations, or Improvements.

(a) A Lot Owner may not change the appearance of the common property without permission of the Architectural Control Committee.

(b) The leveling or removal of sand from an undeveloped Lot shall not be permitted without prior approval of the Board of Directors.

(c) No more than one single family dwelling shall exist upon a Lot.

7.3 Restrictions and Requirements Respecting Use of the Planned Community Property. The following restrictions and requirements are in addition to all other restrictions and requirements contained in the Amended and Restated Declaration and these Amended and Restated Bylaws:

(a) No commercial activities of any kind shall be carried on in any Lot or in any other portion of the Planned Community without the consent of the Board of Directors of the Association or manager except activities relating to the rental or sale of Lots. This provision, however, shall not be construed so as to prevent or prohibit a Lot Owner from maintaining his professional personal library; keeping his personal business or professional records or accounts; handling his personal business or professional telephone calls; or conferring with business or professional associates, clients, or customers, within his Lot.

(b) Nothing shall be done or kept on any Lot or in the common property which will increase the cost of insurance on the common property. No Lot Owner shall permit anything to be done or kept on his Lot or in the common property which will result in cancellation of insurance on any Lot or any part of the common property.

(c) No Lot Owner or his guests shall allow overnight parking of vehicles or trailers on adjoining streets. No motor bikes, motorcycles, dune buggies, ATV's or similar vehicles shall be allowed on any portion of the Planned community at any time (excepting when not in use and stored in garage areas) and no Lot owner or guest shall use such devices on any of the property, or roads, dunes or beaches adjoining the Planned Community. No vehicles shall be operated contrary to or not in conformity with any rules or regulations established from time to time by the Kiwanda Shores Maintenance Association.

(d) Each Lot owner shall maintain the grounds and improvements of his Lot in a clean and attractive condition and in good repair, carefully retaining the natural features of the landscape and making no excavation or fill of any change in the natural or existing surface drainage of a Lot without the written consent of the Architectural Control Committee. The color of any improvement shall be first approved in writing by the Architectural Control Committee.

(e) The Lot Owner and/or occupant of a Lot shall so maintain the surface of his Lot with beach grass and native plantings so that excessive or bothersome amounts of sand are not carried by the wind from his property onto neighboring Lots.

(f) No animals, livestock, or poultry of any kind may be raised, bred, or kept in any Lot except dogs, cats, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose. The owner of any dog or cat must keep said dog or cat on a leash or keep it confined within the Lot and no cat or dog shall be allowed to run free in the common property.

(g) No part of the Planned Community may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste.

(h) No noxious, offensive, or unsightly conditions are permitted upon any portion of the Planned Community; nor may anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

(i) No car parts, appliances, immobilized, or immobile vehicles shall be placed or stored upon any common property of the Planned Community. Any such property so described will be removed after seventy-two (72) hours at the Lot Owner's expense.

(j) Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers that may disturb other residents.

(k) No person will dust rugs or clean rugs from the windows or by beating them upon the exterior part of a dwelling within the Planned Community.

(l) Parking of boats, trailers, motor homes, trucks, truck campers, and like equipment in the Planned Community, except within an area approved by the Board of Directors, if any, is prohibited.

(m) The parking spaces designated as a part of the common property in the Amended and Restated Declaration are intended for use of automobiles of Lot owners and guests. The Board of Directors may make such rules necessary to govern the use of any common property parking areas by which all Lot Owners and other users shall be bound.

(n) At no time shall parking be allowed within the Planned Community except within the garages, driveways and clearly marked parking spaces as shown on the plat.

(o) Vehicular and bicycle traffic on the parking areas, driveways and roads on the Planned Community property shall be limited to fifteen (15) miles per hour as a safety precaution.

(p) All trees, hedges, shrubs, flowers and trees growing on a Lot shall be maintained and cultivated so that plant insects, pests and diseases shall not be a menace or detrimental to the trees, hedges, shrubs, flowers, lawns or other vegetation within the Planned Community. All snags are to be removed from the premises.

(q) No trees, shrubs or other vegetation more than five feet from the dwelling shall be removed from a Lot and no trees, shrubs or other vegetation which obstruct the view of another, shall be planted or placed on a Lot except as approved jointly by the Architectural Control Committee and the Lot Owner.

(r) Bright exterior lighting or noise making devices shall not be installed or maintained on a Lot. Shaded lights at entrances and other controlled exterior lighting approved by the Architectural Control Committee shall be encouraged however.

(s) No sign or advertising shall be placed or kept on any Lot other than to identify the Lot Owner. No sign shall be larger than two square feet, and shall be approved in advance by the Architectural Control Committee.

(t) No exterior fires shall be permitted on Lots except barbecue fires or those fires contained in approved receptacles.

(u) No part of a Lot may be used for the purpose of exploring for, taking therefrom, or producing therefrom, water, minerals, gas, oil or other hydrocarbon substances.

(v) The use of painted or whitewashed rocks or trees or other type of decoration foreign to the natural environment is prohibited.

(w) Each Lot Owner shall keep any garbage, trash and other refuse on his parcel in covered containers, and shall keep such containers and any fuel tanks, clothes lines and other service facilities screened from the view of the neighboring Lots and common property and streets by means incorporated into the original design for the dwelling, in a manner approved by the Architectural Control Committee. All such garbage, trash and other refuse must be promptly and periodically removed.

7.4 Association Rules and Regulations. In addition, the Board of Directors, from time to time, may recommend the amendment, adoption, modification, or revocation or

rules and regulations governing the conduct of persons and the operation and use of the Lots and common property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Planned Community property. Such recommendation shall become effective upon vote of not less than a majority of the Lot Owners, present in person or by proxy, at any meeting; the notice of which shall have stated that such adoption, modification, or revocation of rules and regulations will be under consideration. A copy of the rules and regulations, upon adoption and a copy of each amendment, modification, or revocation thereof shall be delivered by the secretary promptly to each Lot Owner and shall be binding upon all Lot Owners and occupants of all Lots from the date of delivery.

7.5 Abatement and Enjoining of Violations. The violation of any rule or regulation adopted pursuant to these Amended and Restated Bylaws or the breach of any Bylaw contained herein or of any provision of the Amended and Restated Declaration shall give the Board of Directors, acting on behalf of the Association, the right in addition to any other rights set forth in these Amended and Restated Bylaws:

(a) To enter the Lot in which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Lot owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty, of any manner of trespass: or

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceedings; or

(c) To levy reasonable fines after giving notice and an opportunity to be heard. Such fines shall be treated in the same manner as common assessments.

Any expense incurred by the Association in remedying the default, damage incurred by the Association or Lot owners, or fines so levied shall be assessed against the offending Lot as a common expense and enforced as provided in Article VI. In addition, any aggrieved Lot owner may bring an action to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

ARTICLE VIII **Insurance**

8.1 Insurance. For the benefit of the Association and Lots Owners the Board of Directors shall obtain and maintain at all times and shall pay for out of common expense funds the following insurance:

(a) Property insurance covering loss or damage from occurrences including, but not limited to, fire, vandalism, and malicious mischief with extended coverage endorsement; and such other coverages such as flooding, which the Association may deem desirable, for not less than the full insurable replacement value of the Lots and common property. Such policy or policies shall name the Association, and the Lot Owners as insureds as their interest may appear and

shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Lot, if any.

(b) A policy or policies insuring the Association, the Board of Directors, Lot owners, and managing agent against liability to the public or to the Lot owners and of common property and their invitees or tenants incident to the Lot ownership or use of the property. There may be excluded from such policy or policies coverage of a Lot owner (other than as a member of the Association or the Board of Directors) for liability arising out of acts or omission of such Lot Owner and liability incident to the Lot ownership and/or use of the part of the property as to which such Lot Owner has the exclusive use or occupancy. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single limit basis. Such policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured; and

(c) Worker's compensation insurance to the extent necessary to comply with any applicable laws.

Each Lot Owner shall be responsible for obtaining, at his own expense, insurance covering his property not insured under paragraph (a) above and against his liability not covered under paragraph (b) above, unless the Association agrees otherwise.

8.2 Policies. Insurance obtained by the Association shall be governed by the following provisions:

(a) All policies shall be written with the State of Oregon or a company licensed to do business in the State of Oregon and holding a Commissioner's rating of "A" and a size rating of "AAA" or better by the Best's Insurance Reports, current at the time the insurance is written.

(b) All losses under policies hereafter in force regarding the property shall be settled exclusively with the Board of Directors or its authorized representative. Proceeds of the policies shall be paid to the Association as trustee for the Lot owners, or upon demand of any mortgage, to an insurance trustee acceptable to the Association and mortgagees of Lots.

(c) Each Lot Owner shall be required to notify the Board of Directors of all improvements made by the Lot Owner to his Lot (except for improvements to the interior of a structure), the value of which is in excess of Five Hundred Dollars (\$500). Nothing in this paragraph shall permit a Lot Owner to make improvements other than to the interior of a structure without first obtaining the approval of the Board of Directors pursuant to Section 7.2.

(d) All Lot Owners shall be required to carry a personal effects fire and comprehensive personal liability and premises medical coverage policy.

8.3 Provisions. The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

(a) A waiver of subrogation with respect to fire insurance coverage by the insurer as to any claims against the Board of Directors, manager, Lot Owners and their respective servants, agents, and guests.

(b) A provision that the master policy on the Planned Community cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Lot Owners.

(c) A provision that the master policy on the Planned Community cannot be cancelled, invalidated, or suspended on account of the conduct of any officer or employee of the Board of Directors or the manager without prior demand in writing that the Board of Directors or manager cure the defect.

(d) A provision that any "no other insurance" clause in the master policy excludes individual Lot Owners' policies from consideration, and a waiver of the usual proration clause with respect to such policies.

(e) A waiver of the insurer's right to determine whether the damage should be repaired. If reasonably available the policy or policies should contain a stipulated amount clause, or determine cash adjustment clause or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild.

ARTICLE IX

Damage and Destruction

9.1 Insurance Proceeds Sufficient to Cover Loss. In case of fire, casualty, or any other damage and destruction the insurance proceeds of the master policy, if sufficient to reconstruct the buildings damaged or destroyed, shall be applied to such reconstruction. Reconstruction of the damaged or destroyed buildings, as used in this paragraph, means restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty, or disaster with each Lot; and the common property having the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished under the direction of manager or the Board of Directors.

9.2 Insurance Proceeds Insufficient to Cover Loss. If the insurance proceeds are insufficient to reconstruct the damaged or destroyed buildings, the damage to or destruction of such buildings shall be promptly repaired and restored by the manager or the Board of Directors using the proceeds of insurance, if any, on such buildings for that purpose; and all the Lot Owners shall be liable for assessment for any deficiency for such reconstruction, such deficiency to take into consideration as the Lot Owner's contribution any individual policy insurance proceeds provided by such Lot Owner. Provided, however, if three-fourths (3/4) or more in value of all the buildings are

destroyed or substantially damaged and if the Lot owners of at least three-fourths (3/4) of the Lots do not, voluntarily within sixty (60) days after such destruction or damage make provision for reconstruction, the manager or the Board of Directors shall record with the County Recorder a notice setting forth such facts and the recording of such notice.

(a) The Planned Community property shall be deemed to be owned in common by the Lot Owners.

(b) The respective interest of each Lot owner in the property shall be determined by the provisions of Oregon law, which are in effect on the date the Amended and Restated Declaration is recorded.

(c) The Planned Community shall be subject to an action for partition at the suit of any Lot Owner. If a decree of partition orders the sale of the Planned Community property, the net proceeds of sale, together with the net proceeds of the policies of insurance on the Planned Community, if any, shall be considered as one fund and shall be divided among all of the Lot owners in proportion to their respective undivided interest after first paying, out of the respective shares of the Lot Owners to the extent such share is sufficient for the purpose, all liens on the undivided interest in the project owned by each Lot Owner.

9.3 Architectural Chances After Damage or Destruction. Notwithstanding all other provisions hereof, the Lot Owners may, subject to the Oregon Planned Community Act, by an affirmative vote of sufficient Lot Owners to amend these Amended and Restated Bylaws, cause an amendment to be made to the Planned Community documents so as to facilitate architectural changes that the Lot owners affected thereby and the Association deem desirable; if, and only if, the partial or total destruction of the Planned Community or any buildings thereof, by fire, casualty, or any other disaster is so great as to require the substantial reconstruction of the whole of the Planned community or said buildings. Any such amendment of such Planned Community documents shall be valid only upon (1) the recording thereof with the recording officer of Tillamook County; and (2) the recording, with that recording officer, of the approval thereof of each mortgagee and each other lien holder of record having a lien against any part of the project or building affected by such amendment.

ARTICLE X **Condemnation**

The Board of Directors shall have the sole authority to negotiate with any public or private body or person having the power of eminent domain; and to sue or defend in any litigation, involving such bodies or persons with respect to the common property of the Planned Community, and shall assist any Lot Owner whose Lot or a part thereof is the subject of any condemnation or eminent domain proceeding; provided, however, nothing in this or any document or agreement relating to the Planned Community shall be construed to give a Lot Owner or any party priority over the rights of the first mortgagees of any Planned Community Lots in the case of a distribution to the

Lot owner of any such condemnation awards for losses to or a taking of a Lot and/or the common property.

ARTICLE XI

Amendments to the Amended and Restated Bylaws

11.1 How Proposed. Amendments to the Amended and Restated Bylaws shall be proposed by either a majority of the Board of Directors or by Lot Owners holding twenty percent (20%) of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon.

11.2 Adoption. Amendments may be approved by the Association at a duly constituted meeting or ballot meeting conducted for such purpose. A vote of a majority of the Lot Owners is required for approval of any amendment except those items appearing in Section 11.3 below.

11.3 Restricted Amendments. Any amendments which relate to pets of Lot Owners, occupancy restrictions relating to the age or number of occupants, and the rental of Lots by Lot Owners shall require the approval of two-thirds (2/3) of the voting rights of the Lot Owners. Any such amendment must be reasonable in light of all of the facts and circumstances as affect the Association at.-the time the amendment is made.

11.4 Execution and Recording. An amendment shall not be effective until certified by the president and secretary of the Association and recorded as required by law.

ARTICLE XII

Records and Audits

12.1 General Records. The Board of Directors and managing agent or manager, if any, shall keep detailed records of the actions of the Board of Directors and managing agent or manager: minutes of the meetings of the Board of Directors; and minutes of the meeting of the Association. The Board of Directors shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association, Board of Directors, and the manager. The Board of Directors shall maintain a list of Lot owners entitled to vote at meetings of the Association and a list of all mortgagees of Lots.

12.2 Records of Receipts and Expenditures. The Board of Directors or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common property; itemizing the maintenance and repair expenses of the common property and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the Lot Owners and mortgagees during normal business hours.

12.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books manual and automated, in which there shall be an account for each

Lot. Such account shall designate the name and address of the Lot owner or Lot Owners, the amount of each assessment against the Lot Owners, the dates and amounts in which the assessment comes due, the amounts paid upon the account, and the balance due on the assessments.

12.4 Payment of Vouchers. The Treasurer shall pay all vouchers up to One Thousand Dollars (\$1,000) signed by the president, managing agent, manager, or other person authorized by the Board of Directors. Any voucher in excess of \$1,000 shall require the signature of the president.

12.5 Reports and Audits. An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board of Directors to all Lot owners and to all mortgagees of Lots within ninety (90) days after the end of each fiscal year. From time to time the Board of Directors, at the expense of the Association, may obtain an audit of the books and records *pertaining to* the Association and furnish copies thereof to the Lot owners and such mortgagees. At any time any Lot Owner or mortgagee may, at his own expense, cause an audit or inspection to be made of the books and records of the Association.

12.6 Notice of Sale, Mortgage Rental, or Lease. Immediately upon the sale, mortgage, rental, or lease of any Lot, Lot owner shall promptly inform the secretary or manager of the name and address of said vendee, mortgagee, lessee, or tenant.

12.7 Inspection of Records by Lot Owners. The Association shall maintain all of the documents delivered by the Board of Directors. These and all other records of the Association shall be reasonably available for examination by a Lot owner and any mortgagee of a Lot. Upon written request, the Association shall make available for duplication any such records. The Association may charge a reasonable fee for furnishing copies of any documents, information, or records described in this section.

ARTICLE XIII **Miscellaneous**

13.1 Notices. All notices to the Association or the Board of Directors shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time. All notices to any Lot owner shall be sent to such address as may have been designated by him, from time to time, in writing to the Board of Directors, or if no address has been designated, then to the Lot Owner's Lot.

13.2 Waiver. No restriction, condition, obligation, or provision contained in these Amended and Restated Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

13.3 Action Without a Meeting. Any action which the Oregon Planned Community Act, the Amended and Restated Declaration, or these Amended and Restated Bylaws require or permit the Lot owners or directors to take at a meeting may be taken without

a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Lot owners or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the Lot Owners or directors, shall be filed in the record of minutes of the Association.

13.4 Invalidity; Number; Captions. The invalidity of any part of these Amended and Restated Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Amended and Restated Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Amended and Restated Bylaws.

13.5 Conflicts. These Amended and Restated Bylaws are intended to comply with the Oregon Planned Community Act and the Amended and Restated Declaration. In case of any irreconcilable conflict such statute and document shall control over these Amended and Restated Bylaws or any rules and regulations adopted hereunder.

THEREFORE, the Board of Directors hereby adopts these Amended and Restated Bylaws on behalf of the Kiwanda Shores Maintenance Association.

DATED this 1st day of April, 1990.

KIWANDA SHORES MAINTENANCE ASSOCIATION

By: George W. Baumgardner
President

By: Scott Culp
Secretary