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DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
WAREWOOD TERRACE P.U.D.

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR WAREWOOD TERRACE P.U.D. ("Declaration") is made by Jerry L. Tabor Building,  
Inc., an Oregon corporation ("Declarant").

RECITALS

Declarant is the owner of all the real property and improvements thereon located in  
Douglas County, Oregon, described as follows (the "Property"):

Lots, inclusive, and Open Space 1, Irsus Drive and Troost Street as shown on the plat  
map of Warewood Terrace P.U.D. filed for record on 3-22, 2007 Book Vol 22, Pages  
404-C, in the plat records of Douglas County, Oregon.

Declarant intends to develop Warewood Terrace P.U.D. as a Class II planned  
community. To establish Warewood Terrace P.U.D. as a planned community, 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 Lots and Common Area in Warewood Terrace P.U.D.

Declarant has deemed it desirable for the efficient preservation of the values and  
amenities in Warewood Terrace P.U.D. to create a nonprofit corporation, to which will be  
delegated and assigned the powers and authority to own, maintain, and administer the Common  
Area and to administer and enforce the covenants, conditions, and restrictions of this  
Declaration, and to collect and disburse the assessments and charges hereinafter created.

The Declarant shall convey Open Space 1, Irsus Drive and Troost Street to the  
Warewood Terrace Homeowners' Association ("Association"). The Association shall assume the  
maintenance obligation of Open Space 1, Irsus Drive and Troost Street for the benefit of the  
Owners and assess the Owners for said expenses as provided in this Declaration.

NOW THEREFORE, Declarant declares that the Property shall be held, transferred, sold,  
conveyed, and occupied subject to the Oregon Planned Community Act as may be amended from  
time to time (ORS 94.550-94.783) and subject to the following covenants, conditions,  
restrictions, easements, charges, and liens, which shall run with the land, which shall be binding  
on all parties having or acquiring any right, title, or interest in the Property or any part thereof,  
and which shall inure to the benefit of the Association and of each Owner.

ARTICLE 1

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR WAREWOOD TERRACE P.U.D.

### DEFINITIONS

- 1.1 *Architectural Review Committee* or "ARC" shall refer to that committee constituted and acting pursuant to Article 6 of this Declaration.
- 1.2 *Articles* shall mean the Articles of Incorporation for the nonprofit corporation, Warewood Terrace Homeowners' Association, as filed with the Oregon Secretary of State.
- 1.3 *Association* shall mean and refer to Warewood Terrace Homeowners' Association, Inc., its successors and assigns.
- 1.4 This section intentionally left blank.
- 1.5 *Board* shall mean the Board of Directors of the Association.
- 1.6 *Bylaws* shall mean and refer to the Bylaws of the Association, which shall be recorded in the Douglas County, Oregon, deed records.
- 1.7 *Common Area* shall mean and refer to Open Space 1, Irsus Drive and Troost Street as shown on the recorded Plat of the Property, including any improvements located thereon, which areas and improvements are intended to be devoted to the common use and enjoyment of the members and which land has been conveyed to the Association. The Common Area shall be owned and maintained by the Association, with the cost of such maintenance assessed equally to Lots 1 through 25 and 27 and the Owners of such Lots.
- 1.8 *Declaration* shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration.
- 1.9 *Declarant* shall mean and refer to Jerry L. Tabor Building, Inc., an Oregon corporation, and its successors or assigns, or any successor or assign to all or the remainder of its interest in the Property.
- 1.10 *General Plan of Development* shall mean 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 and 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 25 and 27. The term *Lot* specifically excludes Lot 26 and the Common Area.
- 1.13 *Members* shall mean and refer to the Owners of Lots in Warewood Terrace P.U.D.
- 1.14 *Occupant* shall mean and refer to the occupant of a Home, whether such person is an Owner, a lessee, or any other person authorized by the Owner to occupy the Home.
- 1.15 *Owner* 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 of a Lot under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.
- 1.16 *Plat* shall mean and refer to the Plat of Warewood Terrace P.U.D. recorded in the Plat Records of Douglas County, Oregon, at Book Vol 22, Pages 404C, on \_\_\_\_\_, 2007.
- 1.17 *Private Road* shall mean the Irsus Drive and Troost Street within the Plat of Warewood Terrace P.U.D. which serve as a means of access to Lots 1 through 25 and 27.
- 1.18 *Property* shall have the meaning attributed to such term in the Recitals of this Declaration.

1.19 *Reserve Account(s)* shall mean and refer to an account or accounts set up by the Board to hold funds for construction, improvements or maintenance of the Common Area.

1.20 *Rules and Regulations* shall mean and refer to the documents containing rules and regulations and policies adopted by the Board or the Architectural Review Committee, as may be from time to time amended.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Development.** The development of Warewood Terrace P.U.D. shall consist of the Property, which shall be held, transferred, sold, conveyed, and occupied subject to this Declaration. Declarant does not intend to build any Common Area improvements in Warewood Terrace P.U.D. other than the private streets delineated on the Plat and the one entry gate.

2.2 **Right to Annex Additional Property or to Withdraw Property.** Declarant reserves the right to annex additional property to or to withdraw property from Warewood Terrace P.U.D.

## ARTICLE 3

### OWNERSHIP AND EASEMENTS

3.1 **Nonseverability.** 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 law, for such Owner's 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 agrees that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment. Ownership interests in the Common Area and Lots are subject to the easements granted and reserved in this Declaration. Each of the easements granted or reserved herein shall be deemed to be established upon the recording 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 Warewood Terrace P.U.D..

3.2 **Ownership of Lots.** Title to each Lot in Warewood Terrace P.U.D. 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 Area.** Title to any Common Area shall be conveyed to the Association not later than the date of the Turnover Meeting.

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 nonexclusive 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.** As long as Declarant owns any Lot, Declarant reserves an easement over, under, and across the Common Area in order to carry out sales activities necessary or convenient for the sale of Lots. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, 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 in such a way as not to interfere unreasonably with the occupancy, use, enjoyment, or access to an Owner's Lot by such Owner or such Owner's 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 Warewood Terrace P.U.D.. No structure, planting, or other material that may damage or interfere with the installation or maintenance of utilities, that may change the direction of flow of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easement areas shall be placed or permitted to remain within any easement area.

**3.4.5 Association's Easements.** Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and Common Area as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws, and the Articles, as the same may be amended.

**3.4.6 Easement to Governmental Entities.** Declarant grants a nonexclusive easement over the Common Area to all governmental and quasi-government entities, agencies, utilities, and their agents for the purpose of performing their duties as utility providers.

**3.4.7 Perimeter Easement Benefiting Association.** Declarant grants to the Association and its duly authorized agents and representatives an easement over that perimeter portion of each Lot that is included within the building setbacks set by applicable ordinances for the purposes of installation, maintenance, repair, and replacement of utilities, communication lines, and drainage. The Board may grant or convey the easements reserved herein to any governmental body or agency and/or any public or private utility company or provider, on a two-thirds vote of the Board members at a duly called and held Board meeting.

#### ARTICLE 4 LOTS AND HOMES

**4.1 Use.** No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling and a private garage. The private garage may not have entrances for more than three vehicles, including recreational vehicles, facing the street. No chain link fencing are allowed. Outbuildings, which are strictly incident to a Home, shall be permitted.

**4.2 Setback.** All Homes or other buildings shall be erected in compliance with setback requirements as prescribed by governing building departments.

**4.3 Square Footage.** The minimum square footage for any Home, excluding garages, decks and porches, shall be 1,800 square feet. The ground floor of any Home shall not be less than 1000 square feet. Homes shall not exceed two stories in height from street grade without



approval of the Architectural Review Committee. Homes on Lots 1 through 8 shall not exceed one story in height from street grade. Basements and what are known as "daylight basements" shall not be counted as a story for purposes of this paragraph.

**4.4 Completion Time.** All Homes shall be completed as to exterior appearance within one year from the time construction is commenced. No Home shall be occupied for any purpose until such time as such building shall have been completed as to exterior appearance.

**4.5 Temporary Structures.** No structure of a temporary nature, basement, tent shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, and no old structure shall be moved or placed onto any of the said Lots.

**4.6 Maintenance of Lots.** Each Lot shall be maintained in a good and clean condition and free of hazards to the adjacent property and to the occupants thereof, and weeds and brush growing upon said Lots shall be cut and removed therefrom so that the same will not create an unsightly condition or a fire hazard.

**4.7 Garbage Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

**4.8 Noxious or Offensive Activities.** No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**4.9 Signs.** No sign of any kind shall be displayed to the public view on any Lot. One sign of not more than five square feet advertising the property for sale, or signs used by a builder to advertise the property during the construction and sales period, shall be permissible. No "For Rent" signs shall be displayed on any Lot.

**4.10 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other household pets may be kept provided they are not kept, bred or maintained for any commercial purpose.

**4.11 Individual Water Supply System.** No individual water supply system shall be permitted on any Lot unless the system is designed, located and constructed in accordance with the requirements and standards of all controlling public health authorities. Approval of such system as installed shall be obtained from such authorities. No individual sewage disposal systems shall be permitted on any Lot.

**4.12 Mobile Homes.** No mobile home shall be kept, stored or used as a Home, either temporarily or permanently, on any Lot. No truck or other commercial vehicle having a manufacture's rated capacity of more than two tons shall be kept or stored on any Lot, either temporarily or permanently.

**4.13 Recreational Vehicles.** No camper, travel trailer, motor home or other recreation vehicle containing cooking and sleeping facilities shall be kept or stored on any Lot in such a manner as to be visible from any street, except such vehicle may be visible on sight for one day upon return from a trip or to prepare for an upcoming trip. No boat, all terrain vehicle or trailer shall be kept or stored on any Lot in such a manner as to be visible from any street, except such vehicle may be visible on sight for one day upon return from a trip or to prepare for an upcoming trip.

**4.14 Antennas and Satellite Receivers.** Exterior television antennas and satellite receivers shall be restricted to one on each Lot; however, the height, shape and construction of the same shall be subject to the written approval of the Architectural Review Committee. Satellite receivers no larger than eighteen inches in diameter shall be deemed acceptable.

## **ARTICLE 5 COMMON AREA**

**5.1 Use of Common Areas.** Use of the Common Area is subject to the provisions of the Declaration, Bylaws, Articles, and the Rules and Regulations adopted by the Board. There shall be no obstruction of any part of the Common Area with the exception of an entry gate. Nothing shall be stored or kept in the Common Area without the prior written consent of the Board. No alterations or additions to the Common Area shall be permitted without the prior written consent of the Board. The Common Area owned by the Association consists solely of Open Space 1, Irsus Drive and Troost Street. Except as specifically provided in this Declaration, there shall be no parking of any kind or of any type of vehicle on the Common Area for any length of time.

**5.2 Maintenance of Common Area.** The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area at the expense of the Owners as further described in this Declaration. The Association shall keep the Common Area in good condition and repair, provide for all necessary services, and cause all acts to be done that may be necessary or proper to assure the maintenance of the Common Area.

**5.3 Funding.** Expenditures for alterations, maintenance, or repairs to an existing improvement for which a reserve has been collected shall be made from the Reserve Account. As provided in Article 10, the Board may levy a special assessment to fund any construction, alteration, repair, or maintenance of an improvement (or any other portions of the Common Area) for which no reserve has been collected or for which the Reserve Account is insufficient to cover the cost of the proposed improvement.

**5.4 Landscaping.** All landscaping on the Common Area shall be maintained and cared for in a manner that is consistent with Declarant's or the ARC's original approval of such landscaping.

**5.5 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 Board shall receive and expend the entire award in a manner that, in the Board's discretion, is in the best interest of the Association and the Owners. The Association shall represent the interest of all Owners in any negotiations, suit, action, or settlement in connection with such matters.

**5.6 Damage or Destruction of Common Area.** If all or any portion of the Common Area is damaged or destroyed by an Owner or any of Owner's guests, Occupants, tenants, licensees, agents, or members of Owner's family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner hereby authorizes 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. Reasonable costs incurred in connection with effecting such repairs shall become a special assessment on the Lot and against the Owner who

caused or is responsible for such damage.

**5.7 Power of Association to Sell, Dedicate, or Transfer Common Area.** As provided in ORS 94.665, the Association may sell, dedicate, transfer, grant a security interest in, or grant an easement for installation and maintenance of utilities or for similar purposes with respect to, any portion of the Common Area. Except for grants of easements for utility-related purposes, no such sale, dedication, transfer, or grant of a security interest shall be effective unless approved by 80% of the votes of both Class A and Class B members.

## ARTICLE 6 ARCHITECTURAL REVIEW COMMITTEE

**6.1 Committee Makeup.** The Architectural Review Committee (ARC) presently is composed of Jerry Tabor, Debbie Tabor and Michael Tabor. There shall at all times be three members on said committee. In the event of the resignation or death of any three of the present committee members that member's successor shall be appointed by the other two. In the event of the death or resignation of two of said three present members, the successors shall be appointed by the remaining member of said three person committee. In the event of the death or resignation of all three members of said present three person committee then the successors to said three person committee shall be elected by the Owners of the Lots in Warewood Terrace P.U.D. Except for the present members of said committee, any future member, while a member, must be a member of the Association. In the event all of the present members of the Architectural Review Committee are replaced and subsequently one of the three new members resigns or dies, that member shall be replaced by appointment by the other then new members and in the event of the death or resignation of all three future members of said future Architectural Review Committee, the successors to said three person committee shall be elected by the Warewood Terrace Homeowners' Association. No member of the Architectural Review Committee shall receive any compensation or make any charge for the member's services.

**6.2 Authority.** The Architectural Review Committee shall have the authority, but not the obligation, to enforce any covenant, condition or restriction contained in this Declaration. Such authority shall not act to prohibit or otherwise interfere with or alter any individual homeowner's rights to enforce the terms of this Declaration.

**6.3 Approval Required Before Construction.** No residence, building, fence, wall or other permanent structure shall be erected, altered, or placed on any Lot, until building plans, name of builder, specifications and plot plans showing the location of structure on the Lot have been submitted to and approved, in writing, by the Architectural Review Committee as to quality of workmanship and materials, architectural design, harmony of external design with existing structures, compatibility with surrounding vegetation, location with respect to topography and finished excavation, and location so as not to interfere with reasonable enjoyment of any other Lot. The Architectural Review Committee shall have the authority to approve all builders and to create an "approved builder list" for the purpose of ensuring high quality construction within the Property. In reviewing proposed construction of fences and walls, the Architectural Review Committee shall consider whether the proposed fence or wall is aesthetically pleasing on both sides of the structure and whether it is to be constructed in a good and workmanlike manner according to any industry standards and building codes as they may exist at the time that construction approval is requested. The Architectural Review Committee may charge the Owner a review and approval fee as deemed appropriate by the Architectural Review Committee in its

sole and arbitrary discretion but in any event not to exceed \$15,000. The color of any building, fence, wall or other permanent structure shall not be changed unless approved by the Architectural Review Committee.

**6.4 Implied Approval.** Upon failure by the Architectural Review Committee or its designated representative to approve or disapprove plans and specifications for any structures or change in color of any existing structure within sixty days after the same have been properly presented, approval thereof will be deemed to have been made, providing the proposed construction complies with all the provisions of this Declaration.

**6.5 Submission of Plans.** When a Lot owner wishes to begin construction, the owner shall provide building specifications to the Architectural Review Committee on a form provided by the committee which will provide the committee with the necessary information for review of the construction. Such information shall include building floor plan and elevations, specifications of certain materials to be used, precautions to be taken during the building process and a complete site plan. The Architectural Review Committee shall have the power to require a string layout and indications of the date of final completion. The string layout shall outline the exterior perimeter of the house and shall locate the entry, driveway, parking and carport or garage. Similar submittal with complete applicable information shall be required for later additions, remodeling and planting or removing of vegetation. One set of plans and submittal documents must be delivered to at least one member of then existing Architectural Review Committee.

**6.6 Waiver.** Consent by the Architectural Review Committee to any matter proposed to it within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to approve or withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

**6.7 Liability.** Neither the Architectural Review Committee nor any member thereof shall be liable to any owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the committee or a member thereof.

## ARTICLE 7

### MEMBERSHIP IN THE ASSOCIATION

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

**7.2 Proxy.** Each Owner may cast such Owner's vote in person, by written ballot, or pursuant to a proxy executed by such Owner. An Owner may not revoke a proxy given pursuant to this Section 7.2 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 year after its date, unless the proxy specifies a shorter term.

**7.3 Voting Rights.** The Association shall have two classes of voting members:

**7.3.1 Class A.** Class A members shall be all Owners of Lots other than Declarant, and each Class A member shall be entitled to one vote for each Lot owned with respect to all matters



on which Owners are entitled to vote.

**7.3.2 Class B.** The Class B member shall be Declarant, its successors, and its assigns. The Class B member shall have three votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of the following dates (the "Termination Date"):

- (a) The date on which 95% of the total number of Lots in Warewood Terrace P.U.D. have been sold and conveyed to Owners other than Declarant; and
- (b) The date on which Declarant elects in writing to terminate Class B membership.

After the Termination Date, each Owner, including Declarant, shall be entitled to one vote for each Lot owned with respect to all matters on which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots subject to this Declaration, initially or through annexation.

When more than one person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event shall fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum.

**7.4 Procedure.** All meetings of the Association, the Board, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board. Notwithstanding which rule of order is adopted, the President 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.** Declarant hereby reserves administrative control of the Association. Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim board (the "Interim Board"), which shall manage the affairs of the Association and be invested with all powers and rights of the Board until the Turnover Meeting (as hereinafter defined). The Interim Board shall consist of one to three members. Notwithstanding the provision of this Section 8.1, at the Turnover Meeting, at least one Director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all three Directors.

**8.2 Turnover Meeting.** Declarant shall call a meeting for the purposes of turning over administrative control of the Association from Declarant to the Class A members within 60 days of the earlier of the following dates:

**8.2.1 Earliest Date.** The date on which Lots representing 95% of the total number of votes of all Lots in Warewood Terrace P.U.D. have been sold and conveyed to persons other than Declarant;

**8.2.2 Optional Turnover.** The date on which Declarant has elected in writing to terminate Class B membership.

**8.2.3 Notice.** Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws.

If Declarant does not call the Turnover Meeting required under this Section the transitional advisory committee or any Owner may do so.

## ARTICLE 9 DECLARANT'S SPECIAL RIGHTS

**9.1 General.** Declarant is undertaking the work of developing Lots and other improvements within Warewood Terrace P.U.D. 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 Area and each Lot on the Property, Declarant shall have the special rights set forth 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 that Declarant owns. 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. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Area.

**9.3 Declarant Easements.** Declarant reserves easements over the Property as more fully described in Article 3 hereof.

**9.4 Additional Improvements.** Declarant does not agree to build any improvements not described in this Declaration.

## ARTICLE 10 FUNDS AND ASSESSMENTS

**10.1 Purpose of Assessments; Expenses.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, aesthetics, and welfare of the Owners and Occupants of Warewood Terrace P.U.D. for the improvement, operation, and maintenance of the Common Area, for the administration and operation of the Association and for property and liability insurance.

**10.2 Covenants to Pay.** Declarant and each Owner covenant and agree to pay the Association the assessments and any additional charges levied pursuant to this Declaration or the Bylaws. All assessments for operating expenses, repairs and replacement, and reserves shall be allocated among the Lots and their Owners as set forth in this Article 10.

**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 as set forth in Section 10.1. On the sale or transfer of any Lot, the Owner's interest in such funds shall be deemed automatically transferred to the successor in interest to such Owner.

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

**10.2.3 Right to Profits.** Association profits, if any, shall be the property of the Association and shall be contributed to the Current Operating Account.

**10.3 Basis of Assessment; Commencement of Assessments.** Declarant shall pay all common expenses of the Association until the Lots are assessed for common expenses. The amount and date of commencement of the initial annual assessment to Owners other than Declarant shall be determined by Declarant. In the sole and unfettered discretion of Declarant, Declarant may defer payment of reserves for a Lot until the Lot is conveyed to a third party. However, Declarant may not defer payment of accrued reserves beyond the date of the Turnover

Meeting.

**10.4 Annual Assessments.** Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. The initial annual assessment shall be determined by Declarant and shall be prorated on a monthly basis at the time of the closing of the first sale from Declarant. For proration purposes, any portion of a month shall count as a full month. Annual assessments shall be payable on a periodic bases, not more frequently than monthly, as determined by the Board. The fiscal year shall be the calendar year unless another year is adopted by vote of the Association members.

**10.4.1 Budgeting.** Each year the Board shall prepare, approve, and make available to each Member an operating statement (budget) containing:

- (a) an itemized estimate of revenues and expenses on an accrual basis;
- (b) itemized summary of the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies;
- (c) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement, or additions to major components of such improvements as provided in this Article 10;

(d) the annual assessment for each of the following categories:

- (1) ordinary maintenance and operating expenses attributable to the Common Area, which includes the private roads to Lots 1 through 25 and 27;
- (2) all other common expenses not solely attributable to the Common Area including, but not limited to, all property and liability insurance premiums;
- (3) reserves to defray the costs of repair, replacement, or additions to the Common Area, which includes the private road to Lots 1 through 25 and 27; and

(e) a general statement setting forth the procedures used by the Board in the calculation and establishment of the above annual statements.

Notwithstanding that budgeting shall be done on an accrual basis, the Association's books shall be kept on a cash basis and the Association shall be a cash basis taxpayer, unless applicable governmental regulations require otherwise. 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 or summary thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, within 30 days after adoption of such budget.

**10.4.2 Allocation of Assessments.** The annual assessments in each year's budget shall be charged against all the Lots equally.

**10.4.3 Nonwaiver 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 and/or the Owners 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 Correct Deficit.** To correct a deficit in the operating budget, by vote of a majority of the Board;

**10.5.2 Special Obligations of an Owner.** To collect amounts due to the Association

from an Owner for breach of the Owner's obligations under this Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

**10.5.3 Repairs.** To collect additional amounts necessary to make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board; or

**10.5.4 Capital Improvements.** To make capital acquisitions, additions or improvements, by vote of at least 80% of all votes allocated to the Lots.

**10.5.5 Reimbursement Assessments.** The Association shall levy a reimbursement assessment against any Owner and such Owner's Lot if a failure to comply with this Declaration, Bylaws or any Rules and Regulations has (a) necessitated an expenditure of monies by the Association to effect compliance or (b) resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot (a "Reimbursement Assessment"). A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least 10 days' written notice to the Owner being assessed. If, within said 10-day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct it not less than 10 nor more than 30 days after the request by the Owner, and shall make its decision within not more than 30 days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

#### **10.6 Accounts.**

**10.6.1 Types of Accounts.** Assessments collected by the Association shall be deposited into at least two separate accounts with a bank, which accounts shall be clearly designated as (a) the Common Operating Account and (b) a Private Road Reserve Account. The Board shall deposit those portions of the assessments collected into the following accounts:

ASSESSMENT	ACCOUNT
Ordinary maintenance and operating expenses attributable to the Common Area, which includes the private road to Lots 1 through 25 and 27 and all other common expenses	Common Operating Account
Reserves to defray the costs of repair, replacement, or additions the Common Area, which includes the private road to Lots 1 through 25 and 27	Private Road Reserve Account

Withdrawal of funds from any of the three accounts described above shall be for those purposes described above corresponding with each account. In its books and records, the Association shall account separately for revenues and expenses relating to the five categories described above.

**10.6.2 Calculation of Reserve Assessment; Reserve Study.** The Board of Directors of the Association shall annually conduct a reserve study, or review and update an existing study, of the Common Area to determine the reserve account requirements.

**10.6.3 Investment of Reserve Account.** Nothing in this Section 10.6 prohibits the



prudent investment of Reserve Account funds, subject to any constraints imposed by the Board, the Bylaws, or the Rules and Regulations.

**10.6.4 Refunds of Assessments.** Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers or Owners of Lots may treat their outstanding share of the Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their Lot.

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

**10.7 Default in Payment of Assessments, Enforcement of Liens.**

**10.7.1 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 (i.e., one other than through foreclosure or a deed in lieu of foreclosure), the grantees shall be jointly and severally liable with the grantors for all Association assessments imposed through the recording date of the instrument effecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.

**10.7.2 Association Lien.** The Association shall have a lien against each Lot for any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof that is delinquent. Such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorney fees (whether or not suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Recording of the Declaration constitutes record notice and perfection of the lien. Said lien may be foreclosed at any time pursuant to the Planned Community Act. The Association shall record a notice of a claim of lien for assessments and other charges in the deed records of Douglas County, Oregon, before any suit to foreclose may be filed. 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 before the Association's notice of lien, and any mortgage or deed of trust granted to an institutional lender that is recorded before the Association's notice of lien.

**10.7.3 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 the Rules and Regulations adopted by the Board. The adoption of such impositions shall be communicated to all Owners in writing not less than 30 days before the effective date by a notice mailed to the assessment billing address of such Owners. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violation of this Declaration, the Bylaws, or any rule and regulation, other than late fees, fines, or interest arising from an Owner's failure to pay regular, special, or reimbursement assessments may not be imposed against an Owner or such Owner's Lot until such Owner is given an opportunity for a hearing as elsewhere provided herein.

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

and all future installments of any special assessments.

**10.7.5 Association's Right to Rents; Receiver.** In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of such Owner's Lot or shall be entitled to the appointment of a receiver.

## ARTICLE 11 GENERAL PROVISIONS

**11.1 Records.** The Board shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board also shall 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 on the account, and the balance due on the assessments. The minutes of the Association, the Board and Board committees, and the Association's financial records shall be maintained in the State of Oregon and 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 such person is or was a Director, officer, employee, or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action, or proceeding if such person acted in good faith and in a manner that such person 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 that such person's 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 that such person 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 that such person's conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit, or proceeding as and when incurred, subject only to the right of the Association to reimbursement of such payment from such person, should it be proven at a later time that such person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee, or agent shall have a right of contribution over and against all other Directors, officers, employees, or agents and members of the Association who participated with or benefited from the acts that created said liability.

**11.3 Enforcement; Attorney Fees.** The Association and the Owners and any mortgagee holding an interest on a 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 appertain specifically to such parties or

Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration (including without limitations, for the collection of assessments), the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event that is the subject of the suit or action, attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees and costs incurred in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed.

**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.

**11.5 Duration.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the land for a term of 35 years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of 10 years, unless rescinded by a vote of at least 90% of the Owners and 90% of the first mortgagees; provided, however, that amendments that do not constitute rescission of the planned community may be adopted as provided in Section 11.6 and 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 21 years after the death of the last survivor of the now living descendants of Jerry L. Tabor.

**11.6 Amendment.** Except as otherwise provided in Section 11.5 or ORS 94.590, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than 95% 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 Nonprofit Corporation Act and that no amendment affecting the general plan of development or any other right of Declarant herein contained may be effected without the express written consent of Declarant or its successors and assigns, including, without limitation, amendment of this Section 11.6.

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

**11.8 Unilateral Amendment by Declarant.** In addition to all other special rights of Declarant provided in this Declaration, Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee, or provide financing in connection with development of the Property and sale of Lots.

Before the Turnover Meeting, no such amendment shall require notice to or approval by any Class A member.

**11.9 Resolution of Document Conflicts.** In the event of a conflict among any of the provisions in the documents governing Warewood Terrace P.U.D., such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration;
2. Articles;
3. Bylaws;
4. Rules and Regulations.

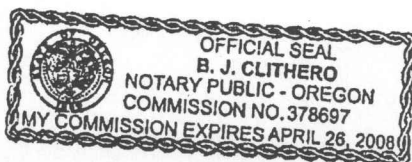
IN WITNESS WHEREOF, Declarant has executed this instrument this 19<sup>th</sup> day of March, 2007.

Jerry L. Tabor Building, Inc.

By: [Signature]  
Jerry L. Tabor, President

STATE OF OREGON           )  
                                          ) ss.  
County of Douglas        )

This instrument was acknowledged before me on March 19, 2007, by Jerry L. Tabor, president of Jerry L. Tabor Building, Inc., and Oregon corporation, on behalf of said corporation.



[Signature]  
Notary Public for Oregon  
My commission expires: 4/26/08