

STAFF REPORT & FINDINGS
FLORENCE COMMUNITY DEVELOPMENT DEPARTMENT
Planning Commission
Exhibit "A"

Public Hearing Date: September 15, 2015 **Planner:** Wendy FarleyCampbell
Date of Report: September 22, 2015
Application: PC 15 18 PUD 02

I. PROPOSAL DESCRIPTION

Proposal: A request for a modification to East Bank Planned Unit Development (PUD) approval, from a 99 lot townhouse development to a 54 lot detached single family dwelling PUD.

Applicant: Byron Roberts, representing owner S & C Investments

Property Owners: S&C Investments, LLC

Location: Between 38th Loop and 43rd St. west of Oak St. and east of Sandpines Golf Course.

Site: Groups of Building Sites: Map #18-12-14-31 TL: 3600-5500
Open Space: Map #18-12-14-31 TL: 3500, 5600, & 5700
Groups of Building Sites: Map #18-12-15-44 TL: 100-7800
Open Space: Map #18-12-15-44 TL: 7900-8200, 8400, & 8500
Streets: Map #18-12-15-44 TL 8300, 8600, 8700

Comprehensive Plan Map Designation: High Density

Zone Map Classification: Multi-Family Residential District

Surrounding Land Use / Zoning:

Site: Vacant / Multi-Family Residential
North: Sandpines Golf Course/ Single Family Residential
South: Vacant / Multi-Family Residential District
East: Single Family Homes, Duplexes, Multi-Family Residential / Highway District
West: Sandpines Golf Course / Single Family Residential

Streets / Classification:

Site – Nandina Drive, Local; West – Internal Sandpines Golf Course Driveway – N/A;
North – None; East – Oak St. Collector; South – None

II. NARRATIVE:

On August 30, 2005 the Florence Planning Commission approved Resolution PUD 05 05 for a preliminary PUD and tentative subdivision plan for East Bank. On July 16, 2006 the public improvement plans were approved by Planning Dept. with the condition that the developer ensures that the road connecting the PUD to the Clubhouse area was built in accordance with the Sandpines Golf Clubhouse East Entry Connector Road Plan and Profile. Between August 17, 2006 and July 16, 2007 the utility installation and road improvements were completed after receipt of the wetland mitigation plan approval from the Army Corps of Engineers. On August 14, 2007 the Planning Commission approved the Final Plat for East Bank and the plat was recorded on October 4, 2007. The property has changed ownership several times since its original application in 2005 and has remained undeveloped.

Once the final plat was recorded with the county the PUD approval was set even with the stalled lot development. The new owner of the property wishes to reduce the approved development density by creating 54 buildable lots out of the 99 town house lots. Rather than filing for a re-plat and resurveying and monumenting the entire development the applicant proposes to file a deed restriction on ownership groupings of lots forever joining them unless approved for dissolution by the City. Each grouping would then be used to construct one single family detached residence. The deed restriction with the list of groupings was provided in the application and is included in the packet materials.

The applicant submitted the application for a modification of the Final Planned Unit Development Plan on July 29, 2015. With the application, the applicant submitted a narrative, Traffic Impact Analysis, deed restrictions, utility needs, and open space and transportation changes.

The application was deemed "complete" on August 26, 2015.

III. ISSUES

Secondary Access-Both Resolutions PC 05 05 (2005) and PC 07 24 SFP 02 (2007) required secondary access for the development. The 2005 proposal included two construction phases. As such their approval required a temporary outlet onto Oak St. until connectivity was made with the Sandpines Golf Course internal driveway. The 2007 approval for final plat noted that the applicant's completion of Nandina Dr. through to the golf course internal driveway met the condition for connectivity and no outlet to Oak St. was required. Since this time a gate was installed presumably by a new golf course owner and secondary access blocked for East Bank. Code requires secondary access.

IV. NOTICES & REFERRALS:

Notice: On September 2, 2015 notice was mailed to surrounding property owners within 300 feet of the property. On September 2, 2015 a sign was posted on the property. Notice was published in the Siuslaw News on September 16, 2015.

At the time of this report, the City received no written comments.

Referrals: On September 2, 2015 referrals were sent to the Florence Building, Police, and Public Works Departments; United States Postal Service, Central Lincoln PUD, Western Lane Ambulance District, Division of State Lands, Department of Land Conservation and Development, Charter Communications, Century Link, and Siuslaw Valley Fire and Rescue.

At the time of this report, the City received no written comments. Verbal comments were received from both Siuslaw Valley Fire and Rescue regarding the turnaround and Public Works regarding the capping of utilities.

V. APPLICABLE REVIEW CRITERIA

Florence City Code, Title 9:

Chapter 5: Stormwater Management Requirements

Florence City Code, Title 10:

Chapter 1: Zoning Administration, Sections 1-5

Chapter 3: Off-Street Parking and Loading

Chapter 7: Special Development Standards, Sections 2, 3, 5 & 6

Chapter 10: Multi-Family Residential District, Sections 2, 3, 4 & 5

Chapter 23: Planned Unit Development

Chapter 35: Access and Circulation, Sections 2-2, 2-3 & 2-5 through 2-14 and 3-1, 3-2, 3-3 & 3-4

Chapter 36: Public Facilities, 2-1 through 2-6, 2-8 through 2-23, & 3 through 8

Chapter 37: Lighting, Sections 2 through 6

Realization 2020 Florence Comprehensive Plan:

Chapter 2: General Subsection Policy 7, Residential Subsection Policies 1, 5, 10 & 11, Recommendation 1

Chapter 5: Open Spaces and Scenic, Historic, and Natural Resources, Policies 1, 3, 4 & 8

Chapter 7: Development Hazards and Constraints, Policies 1 & 2

Chapter 11: Stormwater Policies 1-22

Chapter 12: Transportation, Policies 6, 8, 9, 13, 14 & 23

VI. PROPOSED FINDINGS

Code criteria are listed in **bold**, with staff response beneath. Only applicable criteria have been listed.

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-5: LAND USE HEARINGS:

A. Hearings are required for quasi-judicial land use matters requiring Planning Commission review.

B. Notification of Hearing:

- 1. At least twenty (20) days prior to a quasi-judicial hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.**
- 2. Prior to a quasi-judicial hearing, notice shall be published one (1) time in a newspaper of general circulation.**

Notification of the quasi-judicial land use hearing for this planned unit development application was mailed on September 2, 2015, 20 days prior to the hearing, to all property owners within 300 feet of the subject property. A notice was also published in the Siuslaw News one time on September 16, 2015. The notification procedures meet the requirements of FCC 10-1-1-5.

C. Notice Mailed to Surrounding Property Owners - Information provided:

- 1. The notice shall:**
 - a. Explain the nature of the application and the proposed use or uses which could be authorized;**
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;**
 - c. Set forth the street address or other easily understood geographical reference to the subject property;**
 - d. State the date, time and location of the hearing;**
 - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;**
 - f. State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;**

- g. **State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;**
- h. **Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.**
- i. **Include the name of a local government representative to contact and the telephone number where additional information may be obtained.**

The notice mailed to surrounding property owners as described above contained information regarding the nature of the application and uses proposed; applicable criteria applying to the issue; the street address of the property; the date, time and location of the meeting; the need to "raise it or waive it" appeal rights; stated that the application and criteria were available for inspection at no cost and would be provided at reasonable cost; stated that a copy of the staff report would be available no less than seven days prior to the hearing regarding the item; included a statement of the requirements for submission of testimony; and included the name of the staff person to contact, telephone number for the Planning Department and an email address where questions or testimony could be sent. The application was properly noticed and these criteria are met.

D. Hearing Procedure: All quasi-judicial hearings shall conform to the procedures of Florence City Code Title 2 Chapter 10.

The Planning Commission will meet and decide upon the application in accordance with FCC (Florence City Code) 2-10.

E. Action by the Planning Commission:

- 1. **At the public hearing, the Planning Commission shall receive all evidence deemed relevant to the issue. It shall then set forth in the record what it found to be the facts supported by reliable, probative and substantive evidence.**
- 2. **Conclusions drawn from the facts shall state whether the ordinance requirements were met, whether the Comprehensive Plan was complied with and whether the requirements of the State law were met.**
- 4. **There is no duty upon the Planning Commission to elicit or require evidence. The burden to provide evidence to support the application is upon the applicant. If the Planning Commission determines there is not sufficient evidence supporting the major requirements, then the burden has not been met and approval shall be denied.**

The Planning Commission will receive all evidence deemed relevant at the public hearing. The Planning Commission may deny approval should they determine that insufficient evidence has been provided to support the application. The burden to supply such evidence is upon the applicant.

- F. **Notice of Decision by the Planning Commission:** A notice of the action or decision of the Planning Commission, and right of appeal shall be given in writing to the applicant. Any party who testified either in writing or verbally at the hearing must provide a mailing address in order to be noticed. The notice may be served personally, or sent by mail. The notice shall be deemed served at the time it is deposited in the United States mail.

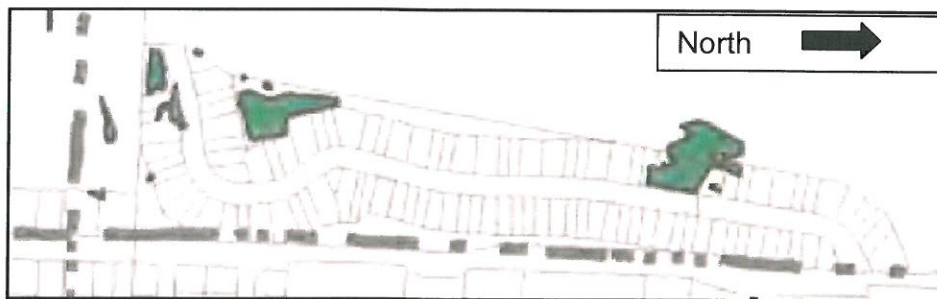
Notice of Decision shall be mailed to the applicant and all parties providing testimony either in writing or verbally at the hearing who provided a mailing address.

TITLE 10: CHAPTER 7: SPECIAL DEVELOPMENT STANDARDS

10-7-2: IDENTIFICATION OF WETLANDS AND RIPARIAN AREAS AND POTENTIAL PROBLEM AREAS: At minimum, the following maps shall be used to identify wetlands and riparian areas and potential problem areas

- B. **"Soils Map", Florence Comprehensive Plan Appendix 7. (Ord. 625, 6-30-80)**
- D. **2013 City of Florence Significant Wetlands Map and 2013 City of Florence Significant Riparian Reaches Map in Appendix A of the 2013 Florence Area Wetlands and Riparian Inventory (2013 Inventory) and in the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan (2013 Plan), in Comprehensive Plan Appendix 5.**

The Local Wetlands Inventory Map dated 6-13-2013 illustrates probable wetlands on the East Bank property. An excerpt is provided below. A wetland concurrence dated July 17, 2006 was received from the Department (Division) of State Lands. It was valid for 5 years and therefore has expired. It included all of the areas illustrated below except the "new" wetland in Open Space "A" and a portion in the Nandina Dr. right-of-way which was eliminated with the street's construction. The "Soils Map (Map C)", Florence Comprehensive Plan Appendix 7 illustrates the majority of the site to contain Yaquina Loamy type soil while the remainder is Waldport 0-12% slopes.



10-7-3: DEVELOPMENT STANDARDS FOR POTENTIAL PROBLEM AREAS: The following standards shall be applied to development in potential problem areas unless an approved Phase I Site Investigation Report or an on-site examination shows that the condition which was identified in the

Comprehensive Plan or Overlay Zoning Map does not in fact exist on the subject property. These standards shall be applied in addition to any standards required in the Zoning Districts, Comprehensive Plan, and to any requirements shown to be necessary as a result of site investigation. Where conflicts or inconsistencies exist between these Development Standards, City Code, and the Comprehensive Plan, the strictest provisions shall apply unless stated otherwise.

- D. 2013 City of Florence Significant Wetlands Map and 2013 City of Florence Significant Riparian Reaches Map in Appendix A of the 2013 Florence Area Wetlands and Riparian Inventory (2013 Inventory) and in the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan (2013 Plan), in Comprehensive Plan Appendix 5.
- I. Yaquina Soils and Wet Areas (except significant wetlands and riparian areas identified in the 2013 Wetland and Riparian Inventory, as amended): In areas with seasonal standing water, construction of a drainage system and/or placement of fill material shall be required according to plans prepared by a registered engineer and approved by the City. (Ord. 625, 6-30-80; amd. Ord. 669, 5-17-82) (Amended Ord. 10, Series 2009)

The applicant proposes a project in an area with Yaquina soils and wetlands. Wetlands in the proposed area have been identified as probable since the delineation has expired. The wetlands are not categorized as "Significant". The site has an approved and installed storm water drainage system that was designed by a registered engineer. A signed Hold Harmless agreement to be signed by the owner was required under a previous condition of approval associated with the storm water system. As of this writing staff has been unable to locate it. Staff finds the combination of the Hold Harmless agreement and completed and approved 2007 storm water management analysis and design and installation meet the requirements for addressing the on-site Yaquina soils situation since the soils map is the same utilized during the previous approval. However, since the 2006 wetland delineation has expired the identification of wetlands require further review and consideration from the applicant. Prior to any development or site disturbance on lots with probable wetlands the applicant shall request a wetland determination from the Department of State Lands. If the determination reveals that wetlands are likely, a wetland delineation must be submitted to the Department of State Lands for review and concurrence prior to permit application for affected property. (Condition 24)

TITLE 10: CHAPTER 23: PLANNED UNIT DEVELOPMENT

10-23-1: PURPOSE: The Planned Unit Development authorization is intended to:

- A. Encourage the coordinated development of unplatted land.

- B. Encourage innovative land utilization through a flexible application of zoning regulations.
- C. Preserve the natural amenities of land and water.
- D. Create opportunities for a wide variety of life styles.
- E. Provide for the efficient use of public utilities, services and facilities.
- F. Result in a comprehensive development equal to or better than that resulting from traditional lot-by-lot land use development, in which the design of the overall unit permits increased freedom in the placement and uses of buildings and the location of open spaces, circulation facilities, off-street parking areas and other facilities.

10-23-2: DEFINITIONS: As used in this chapter, the following words shall mean:

COMMON IMPROVEMENTS: Include utilities and other facilities reserved in common ownership.

NET DEVELOPMENT AREA: Area of property exclusive of public or private roads, or parkland.

PUBLIC IMPROVEMENTS: Improvements that include utilities, parklands, and facilities that will be dedicated to the public and maintained by the City.

PLANNED UNIT DEVELOPMENT: Development of a unified site design for an area of land that allows deviation from specific site development standards while observing general purposes of the zoning regulations.

10-23-3: DEVELOPMENT OPTIONS: A PUD may include any of the following land uses, either singly or in combinations when they are compatible with each other and blend harmoniously with adjacent uses:

B. For all other districts:

- a. All uses normal to the designated zoning district.
- b. Open Space and Parklands (Ord. No. 2, Series 2011)
- c. Commercial uses.
- d. Temporary use of vacant lots for RV use. (Ord 12, 1998)

For this PUD, the applicant has proposed a combination of uses compatible with the underlying zoning district for which it was proposed. The applicant proposes single-family residential dwellings, a permitted use in this zone, and open space associated with those dwellings. Commercial uses have not been proposed. But the applicant states that temporary RV use may be necessary for contractors and their subs during development of

their phase of construction. (Condition 3) No temporary RV use for is requested for lot owners. The proposal meets this criterion.

10-23-4: GENERAL CRITERIA: Applicant must demonstrate that the development conforms to all the following criteria:

A. The proposed development shall be compatible with the general purpose and intent of the Comprehensive Plan.

Conformance with the general purpose and intent of the Comprehensive Plan will be appraised as part of staff review of the applicable chapters and sections of the Florence Realization 2020 Comprehensive Plan.

B. The location, design and size are such that the development can be well integrated with its surroundings or will adequately reduce the impact where there is a departure from the character of adjacent land uses.

The applicant has proposed a Planned Unit Development which will utilize the approved layout of the final plat. His requested change to the PUD density should further reduce any impacts as the adjacent uses are mostly single family residential at similar densities. Reusing this layout will reduce the impact on the surrounding lands and minimize vegetation removal.

C. The location, design, size and land uses are such that traffic generated by the development will be accommodated safely and without congestion on existing or planned arterial or collector streets and will, in the case of commercial or industrial developments, avoid traversing local streets.

The applicant submitted a Traffic Impact Analysis to determine the impact of traffic generated by the development and the capability of the surrounding streets (Rhododendron Drive) to accommodate this traffic safely without congestion on existing or planned streets. City Engineer-of-Record Matt Wadlington, P.E., Civil West Engineering Services, reviewed this TIA and his conclusions are attached as part of Exhibit I. The TIA submitted by Damian Gilbert, P.E. of Branch Engineering Inc. is attached as Exhibit F.

The peer review concurred with the submitted TIA in that the applicant will not be required to provide vehicular improvements.

Other issues regarding traffic generation, access, and pedestrian improvements and access are reviewed as part of FCC 10-35: Access and Circulation.

D. The location, design, size and land uses are such that the residents or establishments to be accommodated will be adequately served by existing or planned utilities and services.

The utilities for this development have been installed and accepted by the city. The sidewalks within the development remain incomplete as do the pedestrian paths. Nandina Dr. is complete. The 2007 approval PC 07 24 SFP 02 identified that the completion of Nandina Dr. to its intersection with the Club House drive met the condition for connectivity.

Since the streets completion and the 2007 approval a gate has been added between the two developments. Absent this scenario the residents of East Bank will be adequately served by the existing and proposed services. This issue is discussed later in the report.

E. The location, design, size and uses will result in an attractive, healthful, efficient and stable environment.

The proposed open space areas and layout, including the location, design, size, and use of the PUD will continue to result in an attractive, healthful, efficient, and stable environment. This criterion is met.

The length of the PUD does not meet current code related to block length and thus has inefficient transportation design. The applicant does not propose to change the plat to address this.

10-23-5: DEVELOPMENT STANDARDS: To insure that a PUD fulfills the intent of this Chapter, the following standards and those of FCC 10-36 shall apply.

A. Minimum Size: Five (5) acres of contiguous land is the minimum for a PUD, unless the Planning Commission finds that a particular parcel of land less than five (5) acres is suitable as a planned unit development by virtue of its unique character, topography, landscape features, or by virtue of its qualifying as a special problem area.

The applicant proposes a PUD on parcels of contiguous land which total approximately 12.36 acres, meeting this criterion.

B. Building Coverage: In a residential PUD, not more than fifty percent (50%) of the land area being developed, exclusive of public or private streets, shall be covered by buildings. When the PUD is not entirely residential, maximum building coverage shall be consistent with the purpose and general criteria of this Chapter as determined by the Planning Commission.

The PUD continues to serve as an exclusive residential development. Building coverage is limited to 50% consistent with the PUD code and a maximum impervious coverage of 65% per lot grouping consistent with the zoning code. (Condition 4)

C. Perimeter Yards: The Planning Commission may require a yard at least as deep as that required by the front yard regulations of the district adjacent to the PUD on any, or all, sides of the PUD. Such a perimeter yard does not qualify as open space unless the Planning Commission finds that such a dual purpose use of land is desirable.

The applicant has not proposed any other yard regulations other than those required by the base zoning district. The Open Space areas along Oak St. and the golf course create perimeter yards for most of the lots. Staff does not see the need for additional PUD perimeter yard setbacks. The yard standards of the base zoning district shall apply to single family home construction on individual lot groupings.

- D. Maximum Building Height: Primary buildings shall not exceed the height limitations prescribed in the zoning district(s) in which the PUD is located. Accessory buildings shall not exceed the height limitations for primary buildings. (Ord 12, 1998)**

The applicant has not proposed building heights contrary to code. Maximum building height will not exceed that prescribed by the Multi-Family Residential zoning district for single family dwellings.

- E. Off-Street Parking: The requirements for off-street parking and loading shall be in accordance with Chapter 3 of this Title. The Planning Commission may allow one parking space for single family dwellings in a PUD. Parking spaces or garages may be grouped together when the Planning Commission determines that such grouping of parking spaces, and the location thereof, will be accessible and useful to the residents, guests and patrons of the PUD. (Ord 12, 1998)**

A reduction has not been requested. In accordance with FCC 10-3 two on-site covered parking spaces are required for each lot grouping/single family residence.

- F. Underground Utilities: All electrical, telephone, cable television, fire alarm, street light and other wiring, conduits and similar utility facilities and accessories shall be placed underground by the developer.**

The utilities were installed and approved by the city. Each dwelling/lot grouping can have one water and one sewer connection. The applicant proposes in his application the need for new water meters and the capping of the extra sewer laterals from the former townhouse development. The applicant will continue to work with Public Works to resolve utility needs and issues related to underground utilities. (Condition 5)

- G. Open Space: A minimum of 20% of the net development area shall be open space and must be platted for that purpose. (Easements are not acceptable). At least 25% of the 20% shall include an area designated and intended for recreation use and enjoyment. The required recreation area may be provided as:**

- **Public dedication for use by public in general, and/or**
- **Property owned by the Home Owners Association (or other legal entity) for use by residents of the development.**

The recreational area is required to be developed to satisfy one or more recreational needs identified in the latest Florence Parks and Recreation Master Plan. If the Master Plan or Comprehensive Plan shows a need for public recreation area in the location of the PUD (such as a trail connection or neighborhood park), the recreation area shall be dedicated to the public. If the recreation area is not meeting a need for public recreation, the city may choose not to accept dedication of the recreation area. (Ord. No. 2, Series 2011)

The applicant proposed a total of 119,198 square feet of open space, split among ten separate areas along all sides of the development. This is 6278 sq. ft. greater than previously approved due the addition of Lots 1 & 2 presently developed with golf course path and drainage. Staff calculated 319,628 sq. ft. of net development area from the recorded plat (minus Lots 1 & 2). The proposed open space represents 37% of the net area of the development, which meets the minimum 20% criterion. However open space is required by the above code to be platted. The applicant shall revise the subdivision plat to identify Lots 1 & 2 as Open Space. (Condition 6)

1. **Open space will be suitably improved for its intended use, except that common open space (outside the required 25% of recreation use area) containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements to be permitted in the common open spaces shall be appropriate to the uses, which are authorized for the open space.**

An open space plan was approved in 2007 that illustrated the preservation areas and landscape areas. Landscape areas included constructed wetlands, gate entry and the two OS areas along Nandina at its southern curve. The code has changed since the 2007 approval whereby 25% of the 20% must include recreational amenities. 25% of the required 63,925 sq. ft. of open space is 15,981 sq. ft. The applicant shall provide a recreational use area plan identifying the sq. ft. and the amenities of proposed recreation open space areas. Examples of recreational uses include: paths, benches, picnic tables, interpretive signage for the wetlands, gazebos, lawn games etc..... The recreational use plan shall be submitted for review and approval and improvements installed prior to issuance of an occupancy permit for a single family dwelling. (Condition 7)

2. **The development schedule which is part of the development plan shall coordinate the improvement of the open space and the construction of buildings and other structures in the open space with the construction of residential dwellings in the planned unit development.**

The applicant has not provided a detailed development schedule. Recreational Use Space plans are conditioned above.

3. **If buildings, structures or other improvements are to be made in the open space, City may require that the development provide a bond or other adequate assurance that the buildings, structures and improvements will be completed. In this case, the City Council shall release the bond or other assurances when the buildings, structures and other improvements have been completed according to the development plan.**

As stated above any buildings, structures, or other improvements to open space areas must be provided. A bond will be required if open space and turn-around areas are not completed prior to issuance of a building permit for a single family dwelling. (Condition 8).

4. **The following areas are not acceptable for recreation area required as part of a PUD: (Ord. No. 2, Series 2011)**

- a. **Hillsides over twenty-five (25) percent slope;**
- b. **Land in the floodway, floodplain, or required riparian or wetland buffer, unless trails, benches, picnic tables and similar above are incorporated;**
- c. **Roadside ditches;**
- d. **Monument entry areas and central landscaped boulevards;**
- e. **Stormwater retention or detention ponds that are designed to hold stormwater runoff from less than one hundred (100) year events;**
- f. **Parking areas and road rights-of-way that are located within the parkland, open space, or common area, except for parking that is required specifically for use of the parkland;**
- g. **Yards, court areas, setbacks, or other open areas required by the zoning and building ordinances and regulations shall not be included in the computation.**

The applicant shall provide a statement ensuring that the proposed areas of Open Space do not contain any of the listed conditions of FCC 10-23-5-G-4 as part of the required PUD recreation areas. (Condition 9)

10-23-6: DEDICATION AND MAINTENANCE OF FACILITIES: The City may require that space be set aside, improved, conveyed or dedicated for the following uses:

A. Easement necessary to accommodate existing or proposed public utilities.

No additional easements are required for this PUD modification.

B. Streets, bikeways and pedestrian paths necessary for the proper development of either the PUD or adjacent properties.

Pedestrian path easements are located in two locations, between Lots 57 & 58 and 40 & 41. The path between lots 57 & 58 is improved. The applicant did not submit improvement plans for the one between Lots 40 & 41. Plans shall be submitted to Public Works for review and approval and then constructed in accordance with City design standards in FCC 10-35 prior to issuance of an occupancy permit for a single family dwelling. (Condition 10)

C. Common open space, recreation facilities, parks and playgrounds necessary and appropriate for the owners, residents, patrons and employees of the PUD. Maintenance, repair, insurance and related obligations are the responsibility of either:

- 1. The developer; or**

2. **An association of owners or tenants, created as a nonprofit corporation under the laws of the state, which shall adopt and impose articles of incorporation and bylaws and adopt and impose a declaration of covenants and restrictions on the common open space that is acceptable to the Planning Commission as providing for the continuing care of the space. Such an association shall be formed and continued for the purpose of maintaining the common open space.**

The applicant has proposed within their narrative that proposed transportation facilities and Open Space areas will be the responsibility of the East Bank Homeowners Association. This is an acceptable responsible party for the maintenance, repair, insurance, and related obligations of the common open space, recreation facilities, parks, and playgrounds of the proposed PUD.

Prior to issuance of an occupancy permit for any residence or show home, the applicant shall create an association of owners or tenants, created as a nonprofit corporation under the laws of the state, which shall adopt and impose articles of incorporation and bylaws and adopt and impose a declaration of covenants and restrictions for the protection and maintenance of property, buildings, structures, and the common open spaces that is acceptable to the Planning Commission as providing for the continuing care of the above. (Condition 11)

10-23-7: PROFESSIONAL DESIGN: The developer is required to employ a design team to ensure that the project is well planned, and to coordinate the process of application. The design team shall include an Architect or Engineer, a Landscape Architect, a Planner, a Surveyor, and in some cases, a Soils Engineer. Designation of a professional coordinator doesn't prohibit the owner from taking part in the process.

The application for East Bank was prepared by the applicant Byron Roberts. Damian Gilbert, Professional Engineer submitted the TIA and Laurel Bay provided the landscape plans. No survey work was conducted as no changes to the plat were proposed. The work submitted included professionals from their respective fields.

10-23-8: GENERAL PROCEDURES: There shall be a three-stage review process for all PUD's. The first step is the application conference, followed by preliminary development review and approval and final review.

The applicant has attended a pre-application conference and has submitted a preliminary development review. The applicant has submitted most materials required for final review. There are a few amendments required and plans for recreation uses and turnaround required. These are required to be submitted materials for a final review prior to issuance of an occupancy permit for a single family dwelling.

10-23-10: PRELIMINARY APPROVAL: The Planning Commission shall hold a public hearing, and any continuance thereof, to discuss the PUD proposal. The public hearing shall not be held until the complete information listed below has been available for review by the Planning Commission's staff for at least thirty (30) days.

Preliminary Development Plan: A preliminary development plan shall be prepared and shall include the following information:

- 1. A map showing street systems, lot or partition lines and other divisions of land for management, use or allocation purposes.**

The applicant has submitted a map illustrating proposed new street turnaround and lot groupings. This criterion is met.

- 2. Areas proposed to be conveyed, dedicated or reserved for public streets, parks, parkways, playgrounds, school sites, public buildings and similar public and semi-public uses.**

No areas are to be conveyed to public or semi-public uses. This criterion does not apply.

- 3. A plot plan for each building site and common open space area, showing the approximate location of buildings, structures, and other improvements and indicating the open spaces around buildings and structures, excepting private single-family lots in a residential PUD.**

- 4. Elevation and perspective drawings of proposed structures.**

No buildings have been proposed with this preliminary PUD. Lot owners will be responsible for building single-family residences on their lots as they see fit to develop them. Open Space plans were addressed earlier in the report.

- 5. A development schedule indicating:**

- a. The approximate date when construction of the project can be expected to begin.**
- b. The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin.**
- c. The anticipated rate of development.**
- d. The approximate dates when each stage in the development will be completed.**
- e. The area, location and degree of development of common open space that will be provided at each stage.**

The PUD was originally approved in two phases. The 2007 modification included development in one Phase. The market dropped precipitously and the development stalled. The new owner/applicant is interested in continuing development of the PUD as soon as possible. This is illustrated by his work on the site to include installing the gate, entry landscaping and fencing. He would have pulled his first building permit if authorized. The market will govern the rate of development. No development schedule has been provided

by the applicant. The remaining improvements to include Recreational uses, pedestrian path and turn-around must be completed prior to issuance of an occupancy permit for a single family dwelling, or they must be bonded. (Condition 8)

6. Agreements, provisions or covenants which govern the use, maintenance and continued protection of the planned unit development and any of its common open space areas.

The applicant has proposed that a homeowners association will be responsible for the maintenance and continued protection of the PUD and the common open space areas. Amendments to the agreements, provisions, or covenants for the East Bank Homeowners Association have been provided. The applicable sections are reviewed throughout the staff report and conditioned as necessary for amendment.

7. The following plans and diagrams, insofar as the reviewing body finds that the planned unit development creates special problems of traffic, parking and landscaping.

- a. An off-street parking and loading plan.**
- b. A circulation diagram indicating proposed movement of vehicles, goods and pedestrians within the planned unit development and to and from thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or insure the safety of this circulation pattern shall be shown.**
- c. A landscaping and tree plan.**

Off-street parking is discussed in Section 10.8 of the CCRs and requires a minimum of 3 spaces to include garage and driveway. Two enclosed parking spaces are required elsewhere in the CCRs. City code requires a minimum of 2 covered parking spaces, the proposal meets city code.

Circulation: The CCRs do not permit on-street parking on Nandina Dr. and the applicant proposes a turn-around in Open Space "E". The 2005 and 2007 approvals required secondary access and included conditions stating that connectivity was required in conformance with city code. This condition was satisfied with the connection of Nandina to the driveway to the clubhouse. Since the construction of the street a gate has been installed on the driveway to the clubhouse preventing connectivity. Another gate is present at the 35th St. entry to the golf course. Either the Sandpines Golf Course gates must be altered to permit thru access during an emergency or a secondary vehicular access must be provided onto Oak St. (Condition 12)

Both an Open Space/Tree Preservation Plan and landscaping plans were submitted with the previous approval. Landscape areas include the gated entry, constructed wetlands, and Nandina OS. The applicant submitted a revised landscape plan for the 43rd St. entry. Updates as needed to the tree preservation and landscape plans shall be provided to the Planning Department prior to application of a building permit. (Condition 13)

After the public hearing, the Planning Commission shall determine whether the criteria and general intent of this section have been fulfilled. The Planning Commission may require such changes and impose such conditions as they determine to be prudent and desirable. The Planning Commission may, at its discretion, authorize submission of the final plan in stages, corresponding to the different phases or elements of the development, after receiving evidence assuring completion of the entire project on schedule.

10-23-12: ADHERENCE TO APPROVED PLAN: The final development plan shall continue to control the planned unit development after it is finished and the following shall apply:

1. The use of the land and the construction, modification or alteration of a building or structure within the planned unit development shall be governed by the approved final development plan.
2. An amendment to a completed planned unit development may be approved if it is required for the continued success of the planned unit development, if it is appropriate because of changes in condition that have occurred since the final development plan was approved or because there have been changes in the development policy of the community as reflected by the comprehensive plan or related land use regulations.
3. No modification or amendment to a completed planned unit development is to be considered as a waiver of the covenants limiting the use of the land, buildings, structures and improvements within the area of the planned unit development.

East Bank PUD received Final PUD approval August 30, 2007. The new owners wish to modify the PUD from townhouse to single family residential development. There were also many conditions of approval related to transportation that he thought would no longer apply with the reduction in dwelling units. The applicant has conducted a TIA that found no impacts to nearby transportation facilities. Criterion 2 above permits an amendment to a final PUD if required for continued success of the PUD. The residential market has changed considerably since their 2007 approval. There is presently an oversupply of attached single family residential dwellings in the Florence area. The requested change meets the criteria.

10-23-13: GUARANTEE OF PERFORMANCE: For public improvements, the City may require that a cash deposit, surety bond or other similar guarantee be posted to insure the full and faithful performance by the parties involved, not to exceed a period of two years after required improvements are completed.

Any private or public improvements to include streets, utilities, open space, or similar improvements not completed prior to issuance of an occupancy permit for a single family dwelling shall require a cash deposit, surety bond, or other similar guarantee reviewed and approved by the Public Works Director in order to insure the full and faithful performance by the parties involved not to exceed a period of two years after required improvements are completed. (Condition 8)

TITLE 10: CHAPTER 13: MULTI-FAMILY RESIDENTIAL DISTRICT

10-13-2: PERMITTED BUILDINGS AND USES:**Planned Unit Developments**

A PUD is defined as a “development of a unified site design for an area of land that allows deviation from specific site development standards while observing general purposes of the zoning regulations”. The applicant’s property is zoned Multi-Family Residential District. The applicant proposes smaller single family lots at a density of 7.3 units per developable acre within a Planned Unit Development. The High Density plan designation with its corresponding zoning of Multi-Family Residential seeks an 8.7 unit per acre density while the Medium Density plan designation seeks 6.7 units per acre. As such, the proposed single family uses at a higher density than Medium Density is consistent with the RM District.

The proposed PUD development is permitted.

10-13-4: LOT AND YARD PROVISIONS:

- A. Minimum Lot Dimensions:** To be designated a building site, a lot must be at least fifty feet wide and at least eighty feet in depth (50' x 80'). For new subdivisions and newly platted lots, the minimum width shall be sixty-five feet (65').

The plat for East Bank was recorded October 4, 2007 and included 99 townhouse lots. The applicant has submitted with this application a Declaration of Restrictions to create 54 ownership groupings for the construction of one single family dwelling per grouping. The proposed groupings consist of one, two or three of the original townhouse lots.

FCC 10-1 defines “lot width” is the horizontal distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines. The lot dimensions vary in width from 47.71 ft. (Lot 40) to 116.80 ft. (Lot grouping 57/58/59). Lot depths are defined as the horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines. The lot depths range from 83'-121'.

All of the lots meet the minimum depth to be considered a building site. Lot 40, a singular lot rather than a grouping of lots, is the only lot to not meet the minimum lot width to be considered a building site. The lot was approved in the final plat as one of the wider townhouse lots and since not combined with another lot is the narrowest of the groupings. The lot consists of over 53' of street frontage, greater than three other lot frontages. 37% of the 54 lots meet the 65' width and 63% meet the 50' width. The lot grouping widths and depths meet the general purposes of the zoning district.

- B. Minimum Lot Area:** To be designated a building site, a lot must be comprised of at least six thousand (6,000) square feet. For new subdivisions and newly

platted lots, the minimum square feet shall be six thousand five hundred (6500).

Lot areas range from 4,463 square feet to 12,077 square feet with a mean lot size of 5,919 sq. ft. As noted above, the PUD provisions allow for deviations of site specific development standards provided that overall intent of the district is maintained. Since the property is zoned as Multiple Family Residential, the intent of the district is to provide “a quality environment for high density urban residential uses.” In order to achieve this intent, smaller lot sizes with smaller lot dimensions would be likely. The district regulations of requiring a minimum parcel size of 6,500 square feet would provide for a density in the range of 6.7 dwelling units per acre if developed with detached single family dwelling units. The proposed PUD with a density of 7.3 dwelling units per acre is consistent with the intent of the district to provide a “high density urban residential use.”

C. Lot Coverage:

1. For single-family and duplex dwellings, the maximum coverage by all enclosed buildings shall not exceed thirty five percent (35%) of the lot area. The maximum coverage by all structures, driveways, parking spaces and surfaced area shall not exceed seventy five percent (75%) of the lot area.

FCC 10-23 Planned Unit Development says the following regarding lot coverage:

Building Coverage: In a residential PUD, not more than fifty percent (50%) of the land area being developed, exclusive of public or private streets, shall be covered by buildings. When the PUD is not entirely residential, maximum building coverage shall be consistent with the purpose and general criteria of this Chapter as determined by the Planning Commission.

The proposed PUD is exclusively residential and 50% building coverage is permitted.

D. Yard Regulations:

1. For single-family and duplex dwellings, front, side and rear yard regulations shall be the same as those in the Single-Family Residential District (Chapter 11 of this Title).

Chapter 11-4 regarding yard regulations is as follows:

D. Yard Regulations: Unless a variance is granted in accordance with Chapter 5 of this Title, minimum setbacks and yard regulations shall be indicated below:

- 1. Front Yards: No garage or parking structures shall be closer than twenty feet (20') from the front property line. All other buildings shall be set back at least twenty feet (20') in new subdivisions and twenty feet (20') in older, established neighborhoods.**
- 2. Side Yards: A yard of not less than five feet (5') shall be maintained on each side of the lot. Corner side yards shall not be used for clotheslines, incinerators, permanent storage of trailers, boats and**

recreational vehicles or of any materials, nor shall said yard be used for the regular or constant parking of automobiles or other vehicles.

3. **Rear Yards:** Dwelling units shall be set back not less than ten feet (10') from the rear property line. Accessory buildings shall be set back not less than five feet (5') from the rear property line. All patio structures and swimming pools shall be a minimum of five feet (5') from any side or rear property line.

The revised CCRs propose front yard setbacks of 10' for dwellings and 20' for garages and 5' and 10' side and rear yard setbacks respectively. The lots west of Nandina have a 10' wide public utility easement along the front of the lots and the lots east of Nandina have an 18' wide public utility easement along the front of the lots. Buildings are not permitted to be constructed within utility easements. Building footers/foundations extend outward from the building face. Additionally, sidewalks are proposed within the eastern 18' utility easement area. Vehicles parked within the 20' setback area would encroach into the sidewalk and street area.

The proposed CCR's shall be amended to permit 15' house setbacks and 20' garage setbacks along the west side of Nandina and 23' house and garage setbacks along the east side of Nandina. (Condition 14)

10-13-5: SITE DEVELOPMENT PROVISIONS:

A. Building or Structural Height Limitations:

1. **Residential Buildings:** The maximum building or structural height shall be twenty-eight feet (28').
2. **Accessory Buildings:** The maximum building or structural height shall be fifteen feet (15').

C. Fences: See Code Section 10-34-5 of this Title.

D. Vision Clearance: Refer to Section 10-1-4 and 10-35-2-13 of this Title for definition, and requirements.

E. Off-Street Parking: Refer to Chapter 3 of this Title (Off-Street Parking and Loading)

F. Access and Circulation: Refer to Section 10-35 of this Title for requirements.

G. Public Facilities: Refer to Section 10-36 of this Title for requirements.

H. Signs: Signs shall be in accordance with Title 4, Chapter 7 of this Code. (Ord. 4, 2011)

J. Open Space: N/A

K. Landscaping: Except for single-family and duplex dwellings, refer to Section 10-34 of this Title for requirements.

L. Lighting: Refer to Section 10-37 of this Title for requirements.

FCC 10-13-5 deals with development which meets the greater requirements of the base district. Subsections A through L of FCC 10-13-5 shall be met by developments within the East Bank Planned Unit Development and shall be reviewed at the time of submission of building permits application.

TITLE 10: CHAPTER 3: OFF-STREET PARKING AND LOADING

10-3-2: GENERAL PROVISIONS:

- A. The provision for and maintenance of off-street parking and loading spaces are continuing obligations of the property owners. No building or other permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking and loading space.**
- B. At the time of new construction or enlargement or change in use of an existing structure within any district in the City, off-street parking spaces shall be provided as outlined in this Chapter, unless requirements are otherwise established by special review or City Council action. Additional parking spaces shall meet current code.**

Each residence will be required to provide off-street parking spaces in accordance with FCC 10-3-3 and 10-3-4.

10-3-3: MINIMUM STANDARDS BY USE: The number of required off-street vehicle parking spaces shall be determined in accordance with the standards in Table 10-3-1. Where a use is not specifically listed in this table, parking requirements are determined by finding that a use is similar to one of those listed in terms of parking needs, or by estimating parking needs individually using the demand analysis option described below:

- A. Parking that counts toward the minimum requirement is parking in garages, carports, parking lots, bays along driveways, and shared parking. Parking in driveways does not count toward required minimum parking.**

Each residence shall be required to provide parking counting toward the minimum required number of parking spaces for single-family residences in garages or carports.

10-3-4: MINIMUM REQUIRED PARKING BY USE: During the largest shift at peak season, fractional space requirements shall be counted as the next lower whole space (rounded down). Square footages will be taken from the gross floor area (measurements taken from exterior of building). Applicants may ask the Design Review Board a reduction for parking spaces as part of their land use application.

The applicant will have to provide the burden of evidence to justify the reduction proposed. The Design Review Board and/or staff may require the information be prepared by a registered traffic engineer. Table 10-3-1 lists the minimum parking spaces required by use, with a minimum no less than two (2) spaces.

Table 10-3-1, Minimum Required Parking By Use:

A. Residential and Commercial Dwelling Types:

Single Family Dwelling Including attached and detached dwellings and manufactured homes	2 spaces per dwelling unit on a single lot
--	---

The applicant has proposed single-family dwellings for each proposed lot. Each dwelling unit shall be required to provide at least two spaces of covered parking.

10-3-8: PARKING AREA IMPROVEMENT STANDARDS: All public or private parking areas, loading areas and outdoor vehicle sales areas shall be improved according to the following: All required parking areas shall have a durable, dust free surfacing of asphaltic concrete, cement concrete , porous concrete, porous asphalt, permeable pavers such as turf, concrete, brick pavers or other materials approved by the City. Driveways aprons shall be paved for the first fifty feet (50') from the street.

- A. Parking for new single family dwellings and duplexes shall be provided as a carport or garage, unless the majority of existing dwellings within 100 feet of the property boundary of the proposed development do not have such covered parking facilities. The number of required covered parking spaces shall be based on the predominant number of covered spaces on the majority of lots within the 100 foot radius. Parking spaces shall measure nine (9) feet and six (6) inches wide by nineteen (19) feet long. No encroachments (such as water heaters, steps, door swings) are allowed into the required parking spaces.**

The applicant has proposed single-family residences as part of a Planned Unit Development. The applicant shall ensure that each single-family dwelling provides covered parking spaces suitable in area and dimension for two vehicles. No encroachments (such as water heaters, steps, door swings, etc.) into the required parking spaces shall be allowed. (Condition 15)

TITLE 10: CHAPTER 35: ACCESS AND CIRCULATION

10-35-2-2: Applicability: Section 10-35-2 applies to vehicle access and on-site circulation facilities in the City of Florence. This Section applies to any type of land use or development permit. Access to a designated state or county highway is subject to the provisions of this Section in addition to the requirements of the applicable roadway authority. Where regulations of the City conflict with those of the roadway authority the more restrictive requirements apply.

10-35-2-3: Access Approval Required: Access will generally be reviewed in conjunction with a land division or building permit. If a property owner wishes to access a public street (e.g., a new curb cut or driveway approach), or make improvements within the public right-of-way (e.g., install or replace sidewalk), the property owner must obtain a "Construction Permit in Right-of-Way". In either case, approval of an access shall follow the procedures and requirements of the applicable road authority.

No modification to the Oak St. and 43rd St. public access point is proposed. The development will take access from Nandina Dr. onto Oak St. at 43rd St. An access plan/construction permit for the pedestrian path connection between Lots 40 & 41 to Open Space Area B shall be submitted to Public Works for review and approval prior to site disturbance.

10-35-2-5: Traffic Study Requirements: The City may require a traffic study prepared by an Oregon registered professional engineer with transportation expertise to determine access, circulation, and other transportation requirements in conformance with FCC 10-1-1-4-D, Traffic Impact Studies.

A. The Traffic Impact Study shall:

1. Evaluate all streets where direct access is proposed, including proposed access points, nearby intersections, and impacted intersections with the state highway system.
2. Utilize the analysis procedures of the Highway Capacity Manual, latest edition.
3. Document compliance with Florence City Code, the goals and policies of the Transportation System Plan, and any other applicable standards.
4. Be coordinated with other affected jurisdictions and agencies such as Lane County, the Port of Siuslaw, and the Oregon Department of Transportation.
5. Identify mitigation measures that resolve the identified traffic safety problems, address the anticipated impacts from the proposed land use, and meet the city's adopted Level of-Service standards. The study shall also propose funding for the proposed mitigation measures.

B. The applicant shall consult with City staff to determine the content and level of analysis that must be included in the TIS. A pre-application conference is encouraged.

The applicant submitted a Traffic Impact Analysis which addressed the requirements of the above criteria. Review of this TIA was conducted by Civil West Engineering, who found that no additional mitigation for the increased traffic level was needed at this time.

C. **Conditions of Approval:** The City may deny, approve, or approve a development proposal with appropriate conditions needed to meet operations and safety standards and provide the necessary right-of-way and improvements to develop the future planned transportation system. Conditions of approval should be evaluated as part of the land division and site development reviews, and may include but are not limited to:

1. **Crossover or reciprocal easement agreements for all adjoining parcels to facilitate future access between parcels.**

If secondary access is taken through the golf course a reciprocal access agreement with Sandpines Golf Course Owners is required prior to issuance of an occupancy permit for a single family dwelling. Access easements and maintenance agreements shall be coordinated with the adjoining property owners of the golf course as needed for the secondary access. (Condition 12)

2. **Access adjustments, where proposed access points do not meet the designated access spacing standards and/or have the ability to align with opposing access driveways.**

Access points will be reviewed in conjunction with building permits and shall meet spacing standards in city code.

3. **Right-of-way dedications for future improvements.**

The applicant has not proposed any right-of-way dedications and none are necessary. This criterion does not apply.

4. **Street improvements.**

The applicant shall submit construction plans illustrating the planned street improvement on Open Space E and construct the improvement prior to issuance of an occupancy permit for a single family dwelling.

5. **Turn restrictions such as “right in right out”.**

No turn restrictions were suggested by either the TIA submitted by the applicant or review of the TIA by Civil West Engineering. No turn restrictions will be required.

10-35-2-6: Conditions of Approval: The roadway authority may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways), development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting a land use or development approval or access permit, to ensure the safe and efficient operation of the street and highway system.

Conditions of approval regarding vehicular access have been or will be named as part of staff review of FCC 10-35.

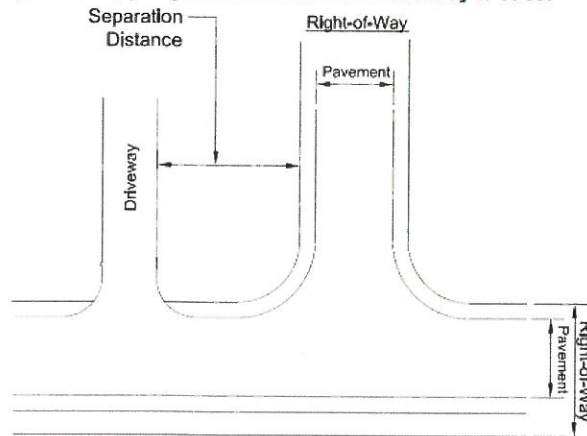
10-35-2-7: Intersection Separation; Backing onto Public Streets: New and modified accesses shall conform to the following standards:

- A. Except as provided under subsection B, below, the distance from a street intersection to a driveway shall meet the following minimum spacing requirements for the street's classification, as measured from side of driveway to street or alley pavement (see Figure 10-35(1)). A greater separation may be required for accesses onto an arterial or collector for compliance with ODOT or County requirements.

Separation Distance from Driveway to Pavement:

Alley	15 feet
Local Street	25 feet
Collector Street	30 feet
Arterial Street	50 feet

Figure 10-35(1): Separation Distance from Driveway to Street



- B. Where the City finds that reducing the separation distance is warranted, such as:

- no other alternatives exist (e.g., alley or shared access is not feasible, building lot is too narrow, existing building prohibits access at correct distance, etc.), or
- planned improvements or traffic circulation patterns show a different location to be efficient and safe,

the City may allow construction of an access connection at a point less than the dimensions listed above. In such case, the access should be as far away from the intersection as possible, and the total number of access points to the site shall be limited to the minimum necessary to provide reasonable access. The City may also require shared/joint access and/or impose turning restrictions (i.e., right in/out, right in only, or right out only).

- C. Access to and from off-street parking areas shall be designed to prevent backing onto a public street, except that single-family and duplex dwellings are exempt.**

Since no specific development has been proposed by the applicant, driveways constructed following approval of final PUD shall meet the requirements of FCC 10-37-2-7.

10-35-2-8: Access Standards: New development shall gain access primarily from local streets. Access onto arterials and collectors shall be evaluated based on access options, street classifications and the effects of new access on the function, operation and safety of surrounding streets and intersections and possible lower level street alternatives. Where such access to higher level street classification is necessary, shared driveways may be required in conformance with FCC 10-35. If vehicle access off a lower-level street is possible, then the City may prohibit access to the higher-level street.

Access is proposed onto Nandina Dr. a private local street.

10-35-2-9: Site Circulation: New developments shall be required to provide a circulation system that accommodates expected traffic on the site. Pedestrian and bicycle connections on the site, including connections through large sites, and connections between sites (as applicable) and adjacent sidewalks, trails or paths, must conform to the provisions in Section 10-35-3.

No pedestrian circulation changes are proposed. However, it should be noted that Open Space Areas B and C have no access easements. They can only be accessed by those houses that abut them. The same does not hold true for all other open space areas. If B or C are included in the plan to meet the PUD 25% recreational development requirement then access shall be included and developed in accordance with 10-35-3 in the existing drainage easements or other suitable arrangements (such as off Open Space H). (Condition 16)

The applicant proposes to add a turn-around within Open Space E. The previous approvals required secondary access. The then applicants proposed to provide it through the Sandpines club house driveway. Since the ownership change and construction of Nandina Dr. a gate has been constructed that prevents through access. Remedy of this situation has been conditioned to either obtain through access or another outlet be provided onto Oak St.

10-35-2-10: Joint and Cross Access – Requirement: When necessary for traffic safety and access management purposes, the City may require joint access and/or shared driveways in the following situations:

- B. For adjacent developments, where access onto an arterial street is limited and access spacing standards cannot otherwise be met;**

10-35-2-11: Joint and Cross Access – Easement and Use and Maintenance Agreement: Pursuant to this Section, the following documents shall be recorded with the deed for each parcel:

- A. An easement allowing cross-access to and from other properties served by the joint-use driveways and cross-access or service drive;
- B. An agreement that remaining access rights along the roadway for the subject property shall be dedicated to the City and pre-existing driveways will be closed and eliminated after construction of the joint-use driveway;
- C. A joint maintenance agreement defining maintenance responsibilities of property owners.

Secondary access was a requirement for the previous approvals. Accommodation for joint access and maintenance was not a consideration or mentioned in the previous applications. No public easement is required nor land required to be dedicated to the public. Access easements and maintenance agreements shall be coordinated with the adjoining property owners of the golf course as needed for the secondary access. (Condition 12)

10-35-2-12: Driveway Design: All openings onto a public right-of-way and driveways shall conform to the following: A. **Driveway Approaches.** Driveway approaches, including private alleys, shall be approved by the Public Work Director and designed and located with preference given to the lowest functional classification street. Consideration shall also be given to the characteristics of the property, including location, size and orientation of structures on site, number of driveways needed to accommodate anticipated traffic, location and spacing of adjacent or opposite driveways.

- B. **Driveways.** Driveways shall meet the following standards, subject to review and approval by the Public Works Director:
 - 1. Driveways for single family residences shall have a width of not less than ten (10) feet and not more than twenty-four (24) feet.
 - 2. Driveways shall have a minimum width of ten (10) feet, except where a driveway serves as a fire apparatus lane, in which case city-approved driveway surface of 12 feet minimum width shall be provided within an unrestricted, twenty (20) foot aisle, or as approved by the Fire Code Official.
 - 3. Where a driveway is to provide two-way traffic, the minimum width shall be 18 feet.
 - 4. One-way driveways shall have appropriate signage designating the driveway as a oneway connection. Fire apparatus lanes shall be so marked (parking prohibited).
 - 5. The maximum allowable driveway grade is fifteen (15) percent, except that driveway grades exceeding fifteen (15) percent may be allowed, subject to review and approval by the Public Works Director and Fire Code Official, provided that the applicant has provided an engineered plan for the driveway. The plan shall be stamped by a registered

geotechnical engineer or civil engineer, and approved by the Public Works Director.

- C. **Driveway Apron Construction.** Driveway aprons (when required) shall be constructed of concrete and shall be installed between the street right-of-way and the private drive, as shown in Figure 10-35(2). Driveway aprons shall conform to ADA requirements for sidewalks and walkways, which generally require a continuous unobstructed route of travel that is not less than three (3) feet in width, with a cross slope not exceeding two (2) percent, and providing for landing areas and ramps at intersections. Driveways are subject to review by the Public Works Director.
- D. **Fire access lanes with turnarounds** shall be provided in conformance with the Fire code. Except as waived in writing by the Fire Code Official, a fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or approved fire equipment access drive. The drive shall contain unobstructed aisle width of 20 feet and turn-around area for emergency vehicles. The fire lanes shall be marked as "No Stopping/No Parking." See figure 10-35(3) for examples of fire lane turnarounds. For requirements related to cul-de-sacs or dead-end streets, refer to FCC 10-36.

The applicant submitted dimensional information for the turn-around on Open Space E. The Fire Marshall has approved the plan and it meets the latest dimensioning requirements in Fire Code. The City Code is outdated. Driveway approach plans will be reviewed and approved at the time of building permit application. Driveway construction shall meet city design standards of FCC 10-35-2-12.

10-35-2-13: Vertical Clearances: Driveways, private streets, aisles, turn-around areas and ramps shall have a minimum vertical clearance of 13' 6" for their entire length and width.

Driveway approaches and the turn-around shall meet city design standards of FCC 10-35-2-13 for vertical clearance.

10-35-2-14: Vision Clearance: No visual obstruction (e.g., sign, structure, solid fence, or shrub vegetation) shall block the area between two and one-half feet (2 ½') and eight (8) feet in height in "vision clearance areas" on streets, driveways, alleys, mid-block lanes, or multi-use paths where no traffic control stop sign or signal is provided, as shown in Figure 10-35(4). The following requirements shall apply in all zoning districts:

- A. **At the intersection of two (2) streets,** minimum vision clearance shall be twenty feet (20').
- B. **At the intersection of an alley or driveway and a street,** the minimum vision clearance shall be ten feet (10').

- C. At the intersection of internal driveways, the minimum vision clearance shall be ten feet (10').**

The sides of the minimum vision clearance triangle are the curb line or, where no curb exists, the edge of pavement. Vision clearance requirements may be modified by the Public Works Director upon finding that more or less sight distance is required (i.e., due to traffic speeds, roadway alignment, etc.). This standard does not apply to light standards, utility poles, trees trunks and similar objects. Refer to Section 10-1-4 of this Title for definition.

The gated entrance driveway onto Oak St. shall meet the vision clearance requirements of Florence City Code 10-35-2-14. Future driveways within East Bank shall also meet the vision clearance requirements.

10-35-3: PEDESTRIAN ACCESS AND CIRCULATION: All new development shall be required to install sidewalks along the street frontage, unless the City has a planned street improvement, which would require a non-remonstrance agreement.

10-35-3-1: Sidewalk Requirements:

- A. Requirements: Sidewalks shall be newly constructed or brought up to current standards concurrently with development under any of the following conditions:**

1. Upon any new development of property.

East Bank interior sidewalks (those adjacent lots) shall be constructed as those lots receive building permits for single-family residences. The applicant shall provide sidewalks for the PUD 43rd St. entrance and all street facing common and Open Space areas on the east side of Nandina Dr. prior to issuance of an occupancy permit for a single family dwelling. (Condition 17)

- B. Exceptions: The Public Works Director may issue a permit and certificate allowing noncompliance with the provisions of subsection (A) of this section and obtain instead a nonremonstrance agreement for future improvements when, in the Public Works Director's determination, the construction of a sidewalk is impractical for one or more of the following reasons:**

- 1. Sidewalk grades have not and cannot be established for the property in question within a reasonable period of time.**
- 2. Future installation of public utilities or street paving would, of necessity, cause severe damage to existing sidewalks.**
- 3. Topography or contours make the construction of a sidewalk impractical.**
- 4. Physical improvements are present along the existing street that prevents a reasonable installation within the right-of-way or adjacent property.**

5. If the proposed development is in a residential zoning district and there are no sidewalks within 400 linear feet.
- C. **Appeals:** If the owner, builder or contractor considers any of the requirements impractical for any reason, s/he may appeal the decision to the Planning Commission.
- D. **Timing:** Sidewalks shall be constructed and approved by the Public Works Department prior to final inspection for the associated building permit. No certificate of occupancy may be issued until the required sidewalks are constructed or financially secured.

The exceptions listed are not anticipated for the PUD. Should the issues listed in FCC 10-35-3-1-D prevent construction of sidewalks within or adjacent to the East Bank PUD, the applicant or homeowner shall consult with the Public Works Director.

10-35-3-2: Site Layout and Design: To ensure safe, direct, and convenient pedestrian circulation, all developments shall provide a continuous pedestrian system. The pedestrian system shall be based on the standards in subsections A – C, below:

- A. **Continuous Walkway System.** The pedestrian walkway system shall extend throughout the development site and connect to all future phases of development, and to existing or planned offsite adjacent trails, public parks, and open space areas to the greatest extent practicable. The developer may also be required to connect or stub walkway(s) to adjacent streets and to private property with a previously reserved public access easement for this purpose in accordance with the provisions of Section 10-35-2, Vehicular Access and Circulation, and Section 10-36-2 Street Standards.

The recorded plat illustrates two pedestrian connections, one to Oak and the other to Open Space B. Other Open space areas do not have any connectivity. They could however be accessed within the stormwater easement. Staff has conditioned pedestrian continuity of these open spaces.

- B. **Safe, Direct, and Convenient.** Walkways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent streets, based on the following criteria:
 1. **Reasonably direct.** A route that does not deviate unnecessarily from a straight line or a route that does not involve a significant amount of out-of-direction travel for likely users.
 2. **Safe and convenient.** Routes that are reasonably free from hazards and provide a reasonably direct route of travel between destinations.
 4. **“Primary entrance”** for residential buildings is the front door (i.e., facing the street). For multifamily buildings in which units do not have their own exterior entrance, the “primary entrance” may be a lobby,

courtyard, or breezeway that serves as a common entrance for more than one dwelling.

The applicant shall provide for walkways which are safe, reasonably direct, and convenient. Each residence built within East Bank shall be required to have an entry walkway leading to the front door. (Condition 18)

C. Connections Within Development. Connections within developments shall be provided as required in subsections 1 – 3, below:

- 1. Walkways shall be unobstructed and connect all building entrances to one another to the extent practicable, as generally shown in Figure 10-35(5);**
- 2. Walkways shall connect all on-site parking areas, storage areas, recreational facilities and common areas, and shall connect off-site adjacent uses to the site to the extent practicable. Topographic or existing development constraints may be cause for not making certain walkway connections; and**

10-35-3-3: Walkway and Multi-Use Path Design and Construction: Walkways and multi-use paths shall conform to all applicable standards in subsections A – D, as generally illustrated in Figure 10-35(6):

- A. Vehicle/Walkway Separation. Except for pedestrian crossings (subsection B), where a walkway abuts a driveway or street it shall be raised six (6) inches and curbed along the edge of the driveway/street. Alternatively, the decision body may approve a walkway abutting a driveway at the same grade as the driveway if the walkway is protected from all vehicle maneuvering areas. An example of such protection is a row of decorative metal or concrete bollards designed to withstand a vehicle's impact, with adequate minimum spacing between them to protect pedestrians.**
- B. Pedestrian Crossing. Where a walkway crosses a parking area, or driveway, it shall be clearly marked with contrasting paving materials (e.g., light-color concrete inlay between asphalt), which may be part of a raised/hump crossing area. Painted or thermo-plastic striping and similar types of non-permanent applications may be approved for crossings of not more than twenty-four (24) feet in length.**
- C. Width and Surface. Walkway surfaces shall be concrete, asphalt, brick/masonry pavers, or other durable surface, as approved by the Public Works Director, at least five (5) feet wide, without curb. Multi-use paths (i.e., for bicycles and pedestrians) shall be concrete or asphalt, at least ten (10) feet wide. (See also, Section 10- 36-2)**
- D. Accessible routes. Walkways and multiuse paths shall conform to applicable Americans with Disabilities Act (ADA) requirements. The ends of all raised walkways, where the walkway intersects a driveway or street shall provide**

ramps that are ADA accessible, and walkways shall provide direct routes to primary building entrances.

Pedestrian walkways within East Bank leading to Open Space areas shall meet the requirements for pedestrian access and circulation contained within FCC 10-35. (Condition 16)

TITLE 10: CHAPTER 36: PUBLIC FACILITIES

10-36-1: PURPOSE AND APPLICABILITY:

- A. Purpose.** The purpose of this Chapter is to provide planning and design standards for public and private transportation facilities and utilities. [...]

10-36-2: STREET STANDARDS:

- C. Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance with this Section, and public streets shall be dedicated to the applicable road authority. Street location, width, and grade shall be determined in relation to existing and planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets.**

The applicant submitted plans for the street turnaround within Open Space "E". Construction drawing shall be submitted to Public Works for review and approval prior to the turnaround's construction. (Condition 19)

10-36-2-4: Creation of Access Easements: The City may approve or require an access easement when the easement is necessary to provide for access and circulation in conformance with Chapter 35, Access and Circulation. Access easements shall be created and maintained in accordance with the Oregon Fire Code and the City of Florence Standards and Specifications.

Access easements are discussed elsewhere in the report.

10-36-2-6: Cul-de-sacs: A cul-de-sac street shall only be used when the applicant demonstrates that environmental or topographical constraints, existing development patterns, or compliance with other standards in this code preclude street extension and through circulation. When cul-de-sacs are provided, all of the following shall be met:

- A. The cul-de-sac shall not exceed a length of 400 feet and the minimum throat length shall be 50 feet; the length of the cul-de-sac shall be measured where the centerline of the roadway from the near side of the intersecting street to the farthest point of the cul-de-sac pavement. The minimum right-of-way for a cul-de-sac may be reduced to 50 feet if approved by the City.**

- B. The cul-de-sac shall terminate with a circular or hammer-head turnaround meeting the Oregon Fire Code. Circular turnarounds shall have a radius of no less than 35 feet, and not more than a radius of 45 feet (i.e., from center to edge of pavement), subject to approval by the Public Works Director; except that turnarounds shall be larger when they contain a landscaped island or parking bay at their center. When an island or parking bay is provided, there shall be a fire apparatus lane minimum of twenty (20) feet in width.**

The applicant's turnaround schematic illustrates a throat length of less than 50 feet. The dimensions of the turnaround have been approved by the Fire Marshall.

Nandina Dr. is essentially one long cul-de-sac, much longer than the maximum 400 feet, and thus would require additional access onto Oak St. in its present configuration. The layout was approved under previous code which still required secondary access. Secondary access is discussed in other areas of the report.

10-36-2-8: Private Streets: Private streets shall conform to City standards of construction and shall include sidewalks or pathways as approved by the City. Private streets shall not be used to avoid public access connectivity required by this Chapter or the Transportation System Plan. Legal assurance for construction and maintenance shall be required of the developers and owners. Private streets shall connect with public streets to complete the City's transportation system grid where practical.

Nandina Dr.'s access onto Oak St. has been constructed and signed off by Public Works.

10-36-2-9: Street Location and Connectivity: Planned streets shall connect with surrounding streets to permit the convenient movement of traffic and to facilitate emergency access and evacuation. Proposed streets or street extensions shall be located to provide access to existing or planned commercial services and other neighborhood facilities, such as schools, shopping areas and parks.

Emergency Secondary Access is required and discussed elsewhere in the report.

- C. Mid-Block Connection/Multi-use Path Standards. Where a street connection in conformance with the maximum block length standards in Section 10-36-2-10 is impracticable, a multi-use path shall be provided at or near the middle of a block in lieu of the street connection, as generally shown in Figure 10-36(2). The City may also require developers to provide a multi-use path off a cul-de-sac. Such pathways shall conform to all of the following standards:**

- 1. Multi-use paths shall be no less than ten (10) feet wide and located within a twenty (20)- foot right-of-way or easement allowing public access and, as applicable, emergency vehicle access.**
- 2. If the streets within the subdivision or neighborhood are lighted, all pathways in the subdivision shall be lighted. Pathway illumination shall provide at least two (2)-foot candles and shall meet all other requirements in Title 10-37.**

3. All pathways shall conform to applicable ADA requirements unless precluded by topographic conditions.
4. The City may require landscaping, walls or terraces as part of the required pathway improvement to buffer pedestrians from adjacent vehicles, or to screen pathways from view of adjacent residences.

The development includes an improved pedestrian path to Oak St. between lots 57 & 58.

10-36-2-10: Block Length and Block Perimeter: In order to promote efficient vehicular and pedestrian circulation throughout the city, subdivisions and site developments shall be served by a connecting network of public streets and/or accessways, in accordance with the following standards (minimum and maximum distances between two streets or a street and its nearest accessway):

- A. **Residential Districts:** Minimum of 100-foot block length and maximum 600-foot length; maximum 1,400-foot block perimeter

Utilities and a street are already constructed in East Bank. Because of this, requiring the applicant to provide blocks which meet code for width would require the reinstallation of utilities, creating a hardship to the applicant.

10-36-2-11: Traffic Controls:

- A. Traffic signals/roundabouts shall be required with development when traffic control warrants are met, in conformance with the Highway Capacity Manual and Manual of Uniform Traffic Control Devices. Traffic signal/roundabout design shall be approved by City Engineer. The developer's financial responsibility and the timing of improvements shall be included as part of the development approval.
- C. The City may require the installation of calming features such as traffic circles, curb extensions, reduced street width (parking on one side), medians with pedestrian crossing refuges, and/or special paving to slow traffic in neighborhoods or commercial areas with high pedestrian traffic.
- D. Where the City TSP identifies future traffic signals, additional right-of-way shall be provided at the intersection to accommodate the signal apparatus.

No traffic signals have been identified for the immediate area. In consultation with the City Engineer-of-Record, the proposed PUD will not require improvements at nearby intersections. The proposal meets these criteria.

10-36-2-14: Intersection Angles: Streets shall be laid out so as to intersect at an angle as near to a right angle as practicable, except where topography requires a lesser angle. In no case shall the centerline angle be less than 80°; elbow or knuckle

corners are not allowed (see Figures 10-36(3) and (4) for illustrations). In addition, the following standards shall apply:

- A. Streets design shall provide a minimum of 50 feet of straight centerline tangent past the intersecting right-of-way unless a lesser distance is approved by the Public Works Director (see Figure 10-36(5) for illustration).
- B. Intersections that are not at right angles shall have a minimum corner radius of 20 feet along the right-of-way lines of the acute angle.

10-36-2-15: Grades and Curves: Unless otherwise approved by the City due to topographical conditions, grades shall not exceed 6% on arterials, 10% on collector streets, or 12% on all other streets. Grades in excess of 10% require Fire Code Official approval.

- A. Centerline curve radii shall not be less than 700 feet on arterials, 350 feet on collectors, or 100 feet on other streets.
- B. Streets intersecting with a collector or greater functional classification street, or streets intended to be posted with a stop sign or signalization, shall provide a landing averaging 5% slope or less. Landings are that portion of the street within twenty (20) feet of the edge of the intersecting street at full improvement. See Figure 10-36(6) for example.
- C. Existing conditions may warrant additional design criteria. All streets and intersection designs shall be subject to the approval of the Public Works Director.

The applicant has reconstructed the Nandina Dr. entry at the intersection at 43rd St. and Oak St. Public Works has signed off on its construction

10-36-2-16: Sidewalks, Planter Strips, Bicycle Lanes: Sidewalks, planter strips, and bicycle lanes shall be installed in conformance with applicable provisions of the Florence Transportation System Plan, Comprehensive Plan, adopted street plans, City of Florence Standards and Specifications and the following standards:

- A. Sidewalks may be placed adjacent to the street or at the property line with planter strips where practicable, or as otherwise directed by the Public Works Director.

The applicant has not indicated where sidewalks will specifically be located as lots within East Bank are developed. The applicant shall specify and make clear where sidewalks will be located, either adjacent to the street or at the property line for future residents of East Bank and include the location in the PUD CC&Rs. Sidewalks to be completed along and within common areas and easements shall be provided on plans submitted to Public Works for approval and constructed prior to issuance of an occupancy permit for a single family dwelling. (Condition 17)

- D. **Sidewalks shall be provided on both sides of the street for all arterial and collector streets. Sidewalks shall be provided on at least one side of the street for local streets. Exceptions may be granted if the City determines that hillsides, drainage facilities, ditches, waters of the state, or natural landscapes are to be preserved, then sidewalks on one side or a multi-use path may be approved. Sidewalks are not required on T-courts (hammer-head).**

Nandina Dr., a local street, is proposed to have one sidewalk along its east side.

- E. **Where practical, sidewalks shall be allowed to meander around existing trees if in conformance with the requirements of the Americans with Disabilities Act.**

It is unknown if any trees are standing within the Nandina Dr. right-of-ways. If existing trees are otherwise standing where a sidewalk would be placed, the applicant may provide a meandering sidewalk that meets ADA requirements.

- F. **Maintenance of sidewalks and planter strips in the right-of-way is the continuing obligation of the adjacent property owner.**

Maintenance of sidewalks and planter strips will be the responsibility of the adjacent property owner or the East Bank PUD Homeowners Association.

10-36-2-19: Street Names: The developer shall submit proposed street names to the City of Florence Community Development Department for review and submittal to the Lane County Road Naming Committee for approval prior to recording final plat. No new street name shall be used that duplicates or could be confused with the name of an existing street in the County. Street names shall be in conformance with FCC 8-2-1-1.

The street is recorded with the county as Nandina Dr. Because no building permits for structures have been issued a name change is permitted as long as it conforms with the Pacific Northwest theme as outlined in FCC 8-2-1-1. Any proposed street name change will be required prior to application of the first building permit. (Condition 20)

10-36-2-22: Mail Boxes: Plans for mail boxes shall be approved by the United States Postal Service.

The applicant coordinated with the USPS and has installed the community mail box within the East bank entrance area.

10-36-2-23: Street Light Standards: Street lights shall be provided in all developments within the City and shall be provided in accordance with Resolution 16, Series 1999. The Planning Commission during site design review may add street lights at other locations and authorize specific exceptions to the above priorities when necessary in order to enhance the public safety and welfare; actual locations may be varied slightly depending on placement of Central Lincoln PUD poles. Streetlights shall be installed in accordance with City of Florence Standards and Specifications. Where a private street intersects a public street, a street light shall be installed.

The street lights have been installed along Nandina Dr. FCC 10-37 applies to the application and is reviewed later in the report.

10-36-4: EROSION CONTROL: In addition to standard City requirements for stormwater, erosion control and sand management, projects that disturb one (1) or more acres of land over a period of time, a National Pollution Discharge Elimination System (NPDES) Permit must be obtained from the Department of Environmental Quality prior to the issuance of a development permit or land use permit based on appropriate criteria.

The property received an NPDES permit in 2006/2007 for removal of fill for construction of utility and road improvements. The applicant shall submit an application for an NPDES permit and obtain approval as necessary prior to commencing any site improvements warranting a NPDES. (Condition 21)

10-36-5: UTILITIES:

A. Underground Utilities:

1. Generally. All new utility lines including, but not limited to, those required for electric, communication, lighting, and cable television services and related facilities shall be placed underground, except for temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above.
2. Subdivisions. In order to facilitate underground placement of utilities:
 - a. The developer shall make all necessary arrangements with the serving utility to provide the underground services. Care shall be taken to ensure that all above ground equipment does not obstruct vision clearance areas for vehicular traffic.
 - b. The City reserves the right to approve the location of all surface-mounted facilities.
 - c. All underground utilities, including water, sanitary sewers and storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets.
 - d. Stubs for service connections shall be long enough to avoid disturbing the street improvements when service connections are made.

- C. Exception to Undergrounding Requirement:** An exception to the undergrounding requirement may be granted due to physical constraints, such as steep topography, sensitive lands, or high water table or existing development conditions.

Utilities have already been installed and are provided for East Bank with the exception of water utilities for several lot groupings as indicated by the applicant in his application materials. Additionally, 45 sewer laterals require capping. These requirements are conditioned elsewhere in the report.

10-36-6: EASEMENTS:

- A. Provision:** Dedication of easements for storm water, sewers, water and for access thereto for maintenance, in order to safeguard the public against flood damage and the accumulation of surface water; dedication of easements for sanitary sewers, and for access thereto for maintenance; and dedication of easements for other public utilities may be required of the land divider by the Planning Commission along lot rear lines, lot side lines or elsewhere as necessary to provide needed facilities for present or future development of the area in accordance with the purpose of this Title. Easements for utility lines shall be not less than fifteen feet (15') in width and the utility shall be located in the center of the easement. Before a partition or subdivision can be approved, there shall appear thereon a restriction, providing that no building, structure, tree, shrubbery or other obstruction shall be placed or located on or in a public utility easement. The City may require an additional five foot (5') easement for utility lines along street frontages when necessary.
- B. Recordation:** As determined by the City all easements for sewers, storm drainage and water quality facilities, water mains, electric lines, or other public utilities shall be recorded with the final plat.

10-36-7: CONSTRUCTION PLAN APPROVAL AND ASSURANCES:

- A. Plan Approval and Permit:** No public improvements, including sanitary sewers, storm sewers, streets, sidewalks, curbs, lighting, parks, or other requirements shall be undertaken except after the plans have been approved by the City Public Works Director, permit fee paid, and permit issued.
- B. Performance Guarantee:** The City may require the developer or subdivider to provide bonding or other performance guarantees to ensure completion of required public improvements.

10-36-8: INSTALLATION:

- A. Conformance Required:** Improvements installed by the developer either as a requirement of these regulations or at his/her own option, shall conform to the requirements of this Chapter, approved construction plans, and to improvement standards and specifications adopted by the City.
- B. Adopted Installation Standards:** The Standard Specifications for Public Works Construction, Oregon Chapter APWA, are hereby incorporated by reference; other standards may also be required upon recommendation of the Public Works Director.

- C. **Commencement:** Work shall not begin until the City has been notified in advance in writing.
- D. **Resumption:** If work is discontinued for more than one month, it shall not be resumed until the City is notified in writing.
- E. **City Inspection:** Improvements shall be constructed under the inspection and to the satisfaction of the City Public Works Department. The City may require minor changes in typical sections and details if unusual conditions arising during construction warrant such changes in the public interest. Modifications to the approved design requested by the developer may be subject to City review. Any monuments that are disturbed before all improvements are completed by the subdivider shall be replaced prior to final acceptance of the improvements; it shall be the responsibility of the developer's registered professional land surveyor to provide certification to the City that all boundary and interior monuments have been reestablished and protected.
- F. **Engineer's Certification and As-Built Plans:** A registered civil engineer shall provide written certification in a form required by the City that all improvements, workmanship, and materials are in accord with current and standard engineering and construction practices, conform to approved plans and conditions of approval prior to City acceptance of the public improvements, or any portion thereof, for operation and maintenance. The developer's engineer shall also provide two (2) sets of "as-built" plans along with an electronic copy, in conformance with the City Engineer's specifications, for permanent filing with the City.
- G. **Acceptance of Public Improvements:** Public improvements shall only be accepted by the City after the "as-built" plans and actual improvements are approved, and all easements are recorded. Upon acceptance of public improvements, the City will accept ownership and maintenance responsibility.
- H. **Warranty of Public Facilities:** All public improvements shall be warranted against defects in materials and workmanship for a period of one year following acceptance of the improvements by the City. Once accepted, a minimum one (1) year warranty agreement on materials and workmanship shall be initiated between the City of Florence and the developer. A warranty bond or other financial security acceptable to the City in the amount of 12 percent of the original public improvement construction cost shall be maintained throughout the warranty period.

Easements and construction plans for any utilities and road or pedestrian improvements shall be approved by the Planning Director and Public Works Director prior to site disturbance or installation. (Condition 22)

TITLE 10: CHAPTER 37: LIGHTING

10-37-2: APPLICABILITY: Section 10-37 applies to installation of all lighting fixtures as of the effective date of this Ordinance, except as exempted by provision of this Ordinance. Devices include but are not limited to, lights for: buildings and structures, recreational areas, parking lot and maneuvering areas, landscape areas, streets and street signs, product display areas, building overhangs and open canopies, holiday celebrations, and construction lights.

- A. Resumption of Use -** If a property with non-conforming lighting is abandoned for a period of one year or more, then all exterior lighting shall be brought into compliance with this Ordinance before any further use of the property occurs.

The applicant has proposed a resumption of the development process for the East Bank PUD. On April 28, 2008 the then property owner filed for three building permits for the first set of townhomes. In October, 2008 the building permit expired due to no activity. No applications have been filed since then for the property. Lighting within the development shall be brought up to current code. (Condition 23)

10-37-3: LIGHTING PLANS REQUIRED: All applications for building permits and land use planning review which include installation of exterior lighting fixtures, not exempted, shall include the number of luminaires, the number of lamps in each luminaire, a photometric report for each type of luminaire and a site plan with the photometric plan of the lumen output.

The City shall have the authority to request additional information in order to achieve the purposes of this Ordinance.

The applicant may need to retrofit existing lighting on the site in order to bring these fixtures into compliance. The applicant shall submit a plan demonstrating the location of lighting fixtures, the number of luminaires, the number of lamps in each luminaire, a photometric report for each type of luminaire and a site plan with the photometric plan of the lumen output prior to issuance of an occupancy permit for a single family dwelling. (Condition 23)

10-37-4: LIGHTING STANDARDS:

- A. All exterior lighting fixtures subject to this code section must be designed as a full cut-off fixture or have a shielding method to direct light emissions downward below the horizontal plane onto the site and does not shine illumination or glare skyward or onto adjacent or nearby property.**
- C. Lighting in or adjacent to residential zones or residential uses shall not exceed twenty feet in height as measured from the adjacent grade to the top of the light fixture. Heights in other zoning districts shall not exceed 25 feet unless the Design Review Board adopts findings that the higher light fixtures are necessary to achieve proper illumination levels.**

It is currently unknown what type or height of lighting has been installed within East Bank. The applicant shall provide this information as part of their lighting plan submittals.

- D. Main exterior lights for commercial, institutional, and industrial buildings, landscaping and parking lots shall be extinguished at end of business hours**

with a minimum lighting remaining for personal and building security and safety after hours.

The applicant has not provided information regarding landscaping or lighting that may be added as part of that landscaping. The applicant shall submit landscape lighting information prior to issuance of an occupancy permit for a single family dwelling which demonstrates that those lights will be extinguished after hours. (Condition 23)

- E. A thirty-day review period beginning with the first day in business using the new lighting system shall be required to evaluate and adjust illumination levels of lighting. The City may ask for lighting to be adjusted in this time period based on public comments or staff inspections.**

The applicant shall be subject to a 30-day review period following the installation of the modified lighting or following the operation of the lighting system to ensure that the lighting system does not need adjustment. The applicant shall inform staff when the lighting system becomes operational. (Condition 23)

- F. All externally lit commercial signs should shine from the top and point down toward the ground. Signs with uplighting must be shielded so that illumination is restricted to the sign face and glare is eliminated.**

- G. Lighting for roadway signs and pedestrian ways must be designed or have an opaque shielding method to direct light emissions downward and below the horizontal plane of the fixture in the permanently installed position.**

The applicant has not provided any information regarding their entrance or roadway signage, but any lighting for signage within East Bank or at the entrance or in common areas shall meet the standards of FCC 10-37. (Condition 23)

FLORENCE REALIZATION 2020 COMPREHENSIVE PLAN

CHAPTER 2: LAND USE

POLICY 7. The City shall determine estimated additional usage and the impacts of proposed development upon maximum capability for sewer, water and stormwater systems. This information is to be included in subdivision and design review staff reports.

As utilities for the subdivision have already been installed, the additional usage has been calculated and found to be within the capacity of the sewer and water systems.

RESIDENTIAL

POLICY 1. The City shall encourage the use of residential planned unit development subdivisions and may trade off some conventional zoning requirements and density limitations in order to achieve:

- high quality, innovative residential lot and building design,
- incorporation of unique land forms into the final subdivision design,
- significant open space,
- on-site amenities reflecting the value for both active and passive recreational facilities,
- natural resource protection, where identified as part of a preliminary site investigation report,
- a mix of dwelling unit types and densities, and a mix of residential, commercial, and recreational uses, where appropriate.

The applicant has proposed a 54-dwelling PUD meeting some requirements of zoning code, and with higher density and significant open space areas. The application also proposes to make use of a previously approved and abandoned subdivision, maximizing the use of land within the UGB designated for residential uses.

5. Residential developers shall, in order to obtain planned unit development approval, to provide recreational area as a percentage of the required open space consistent with the amount indicated in Florence City Code. The recreation area shall satisfy one or more recreational needs identified in the latest Florence Parks and Recreation Master Plan.

The applicant did not provide any plans to support this policy. The approval includes a condition to do so.

10. Single family residential uses (including manufactured homes) shall be located in low and medium density residential areas, and shall be discouraged from high density residential areas to protect that land for the intended uses.

The property was rezoned from Medium Density to High Density in 2003 to allow for development in conformance with their revised PUD. The applicant in keeping with the intent of the High Density designation is proposing a density of 7.3 units per acre which is greater than Medium Density's 6.7 units per acre. Golf course fronting property is not going to be developed with typical high density development such as work force housing.

RECOMMENDATION 1. During construction of residential infrastructure for new subdivisions, clearing and grading activities should be limited to that work required to build streets, water and sewer lines, electric, cable and phone, and stormwater management improvements, leaving residential lots, common areas and other open space undisturbed until subsequent City approvals are obtained for housing development.

Because some improvements have been previously made, there should be very little clearing and grading that should be needed. Any clearing or grading proposed outside that proposed in the Open Space Plan requires the proper authorizations from the City, either with a Vegetation Clearing Permit or Grading Permit unless the work is accompanied by a building permit. Refraining from clearing residential lots also prevents the spread of invasive species such as scotch broom and gorse.

CHAPTER 5: OPEN SPACES AND SCENIC, HISTORIC, AND NATURAL RESOURCES

1. For the purpose of land planning and initial wetland and riparian identification within the Florence Urban Growth Boundary (UGB), the City and Lane County shall rely on the 2013 Florence Local Wetland and Riparian Area Inventory (2013 Inventory), approved by the Oregon Division of State Lands, and as amended hereafter. The 2013 Inventory within the Florence UGB, as amended, is adopted as part of this Comprehensive Plan and is physically located in Appendix 5.

3. In accordance with ORS 215.418, the City and County shall notify DSL when wetlands are present on a property that is subject to a local land use or building permit approval. The City shall notify DSL when riparian areas are present on a property that is subject to a local land use or building permit approval.

4. The City and County shall consider formal wetland delineation reports approved by the Oregon Department of State lands as a valid source of wetland information specific to a land use action or limited land use action. Such reports, if approved by DSL, will be incorporated by reference into the City's 2013 Florence Area Local Wetlands and Riparian Inventory.

8. The City shall encourage restoration and protection of privately-owned wetlands and riparian areas through Code incentives, and, as resources allow, through education and partnership with the Siuslaw Watershed Council and the Siuslaw Soil and Water Conservation District.

Determination of findings regarding the wetlands on the site were derived from the 2013 Local Wetland Inventory. DSL was sent notification of the land use action. The formal delineation submitted for the 2007 approval expired after 5 years. This approval includes a condition for wetland determination and possible delineation as required by DSL. The Siuslaw Watershed Council may be able to assist the property owner in selecting suitable plants for the wetland construction areas.

CHAPTER 7: DEVELOPMENT HAZARDS AND CONSTRAINTS

POLICY 1. The City shall restrict or prohibit development in known areas of natural hazard or disaster in order to minimize risk to citizens, reduce the hazard of loss of life and economic investments, the costs of expensive protection works, and public and private expenditures for disaster relief

POLICY 2. Prior to development taking place in known areas of potential natural hazard, applicants shall provide a Site Investigation Report which clearly determines the degree of hazard present and receive City approval for the measures to be taken to reduce the hazard.

The applicant has proposed development in an area with Yaquina soils as identified by Map C, Appendix 7 of the Comprehensive Plan and wetlands as found on the local wetlands inventory map of 2013. A Storm Water Management Plan was engineered in and improvements constructed in 2007 to address the movement of storm water throughout and through the site to the south. Extensive soils investigation was conducted in the study and the detention areas engineered to accept flows.

CHAPTER 11: UTILITIES, FACILITIES, AND SERVICES

STORMWATER MANAGEMENT

Water Quality

POLICY 1. Protect water quality in ground and surface waters from the effects of urbanization through land use and development policies and procedures.

POLICY 2. Protect the quality of water in surface waters, i.e., the estuary, significant wetlands and riparian corridors, lakes, and ocean/beach, from contamination threats that could impair the quality of the water for fish and wildlife habitat and human recreation.

POLICY 3. Manage or enhance waterways and open stormwater systems to reduce water quality impacts from runoff and to improve stormwater conveyance.

POLICY 4. Include measures in local land development regulations that minimize the amount of impervious surface in new development in a manner that reduces stormwater pollution, reduces the negative effects from increases in runoff, and is compatible with Comprehensive Plan policies.

POLICY 5. Stormwater shall be managed in as close proximity to the development site as is practicable, and stormwater management shall avoid a net negative impact on nearby streams, wetlands, groundwater, and other water bodies. The quality of stormwater leaving a site after development shall be equal to or better than the quality of stormwater leaving the site before development, as much as is practicable.

POLICY 6. Land use activities of particular concern as pollution sources shall be required to implement additional pollution controls, including but not limited to, those management practices specified in Florence City Code Title 9 Chapter 5.

POLICY 7. Use natural and simple mechanical treatment systems to provide treatment for potentially contaminated runoff waters.

POLICY 8. Require containment and/or pretreatment of toxic substances.

POLICY 9. Require containment to minimize the effects of chemical and petroleum spills.

Water Quantity (Flow Control)

POLICY 10. Prevent adverse flooding conditions through natural storage and slow release of surface water and runoff.

POLICY 11. Development shall mitigate all project impervious surfaces through retention and on-site infiltration to the maximum extent practicable. Where on-site retention is not possible, development shall detain stormwater through a combination of provisions that prevent an increased rate of flow leaving a site during a range of storm frequencies as specified in Florence City Code. Surface water discharges from onsite facilities shall be discharged to an approved drainage facility.

POLICY 12. The quantity and flow rate of stormwater leaving the site after development shall be equal to or less than the quantity and flow rate of stormwater leaving the site before development, as much as is practicable.

POLICY 13. Maintain flood storage capacity within the floodplain, to the maximum extent practical, through measures that may include reducing impervious surface in the floodplain and adjacent areas.

Stormwater Management Facilities and Design

POLICY 14. Stormwater management facilities are required for public and private development and shall be designed, installed and maintained in accordance with Florence City Code Title 9 Chapter 5 and the policies of the Comprehensive Plan.

POLICY 15. Foster and support the design and use of innovative stormwater management practices, including the incorporation of properly-designed constructed wetlands into public and private stormwater systems.

POLICY 16. Tailor stormwater management plans and practices for new development and redevelopment to the Oregon coastal environment in a manner that can adapt to changes in temperature and precipitation, and other notable climate change impacts.**

POLICY 17. Promote water conservation through efficient landscape and irrigation, including water reuse and recycling, and other strategies to reduce water consumption, to reduce the need for new drinking water sources and/or expanded water storage.**

POLICY 18. Implement changes to stormwater facilities and management practices to reduce the presence of pollutants regulated under the Clean Water Act and to address the requirements of the Endangered Species Act.

POLICY 19. All local, state, and federal permit requirements related to implementation of stormwater management facilities must be met by the owner/operator prior to facility use.

POLICY 20. Regulate site planning for new development and construction to better manage pre- and post-construction storm runoff, including erosion, velocity, pollutant loading, and drainage.

POLICY 21. Increase storage and retention and natural filtration of storm runoff to lower and delay peak storm flows and to settle out pollutants prior to discharge into waterways.

POLICY 22. Reduce street-related water quality and quantity problems caused by stormwater run-off;

Maintenance

POLICY 27. Maintenance of stormwater facilities is critical to their functioning, especially with natural systems. The City shall ensure that adequate measures are available to provide, or to require developers and homeowners to provide, on-going maintenance.

The Stormwater Management system has been installed and approved by the city. The above criteria are new since the stormwater plan was approved. The stormwater system is a private system and shall be maintained by the East Bank PUD Homeowners system.

CHAPTER 12: TRANSPORTATION

POLICY 6. The City shall continue to require new development to pay its share of costs of development of, or improvements to, transportation facilities which will serve the proposed development.

POLICY 8. The City shall protect the function of existing and planned transportation systems as identified in the TSP through application of appropriate land use and access management techniques.

- Pursuant to the State Transportation Planning rule, any land use decisions which significantly affect a transportation facility shall ensure that allowed land uses are consistent with the function, capacity, level of service of the facility.

POLICY 9. Land development shall not encroach within setbacks required for future expansion of transportation facilities. At the time of land development or land division, the City shall require dedication of adequate right-of-way or easements consistent with the adopted TSP in order to achieve connectivity; maintain adequate street widths, bikeways and walkways; and to accommodate transit facilities.

- New development and redevelopment shall accommodate on-site traffic circulation on the site. For new development and redevelopment, “backing out” maneuvers onto all streets shall be avoided for uses other than single-family and duplex homes. “Backing out” maneuvers shall also be avoided for new single-family and duplexes accessing arterial and collector streets.

POLICY 13. Streets, bikeways and walkways shall be designed to meet the needs of pedestrians and cyclists to promote safe and convenient bicycle and pedestrian circulation within the community. To promote bicycling and walking, marked bicycle lanes and sidewalks are required on all arterial and collector streets (other than those collectors identified as scenic drives) when those streets are newly constructed, reconstructed, or widened to provide additional vehicular capacity. For collector streets that are identified as scenic drives, provision shall be made to adequately accommodate bicycles and pedestrians when those streets are newly constructed, reconstructed, or widened to provide additional vehicular capacity.

- Development shall provide adequate on-site circulation for vehicles, buses, bicycles, and pedestrians and shall provide off-site transportation improvements necessary to ensure that the incremental demands placed on the transportation system by the development are met.

POLICY 14. Streets shall be designed to efficiently and safely accommodate emergency service vehicles.

- In partnership with the School District, the City shall work toward a safe and convenient transportation system that accommodates school buses; children walking to and waiting at a bus stop; and children walking and riding their bicycles to school.
- The City shall accommodate local freight traffic accessing the industrial areas along Kingwood Avenue via 9th, 27th, and 35th Streets by maintaining adequate clear street widths (unimpeded by parking or overhanging signs/trees), adequate turning radii, and visibility.

POLICY 23. All transportation improvements shall be consistent with the requirements for stormwater in Chapter 11 of the Comprehensive Plan.

Transportation has been discussed previously in these findings.

VI. ALTERNATIVES

1. Approve the application based on the findings of compliance with City regulations.
2. Modify the findings, reasons or conditions, and approve the request as modified.
3. Deny the application based on the Commission's findings.
4. Continue the Public Hearing to a date certain if more information is needed.

VII. CONCLUSIONS AND RECOMMENDATIONS

Staff finds that the proposed application meets the requirements of City Code with the and recommends approval with the following conditions:

VIII. CONDITIONS OF APPROVAL

The application, as presented, meets or can meet applicable City codes and requirements, provided that the following conditions of approval are met.

1. Approval for shall be shown on:

- "A" *Findings of Fact*
- "B" Land Use Application
- "C" Applicant Submittal
- "D" Applicant Letter
- "E" Site Plan
- "F" Traffic Impact Analysis
- "G" Proposed Turnaround
- "H" Utility Changes
- "K" Landscaping Plan
- "M" Tree Preservation Plan

Findings of Fact attached as Exhibit "A" are incorporated by reference and adopted in support of this decision. Any modifications to the approved plans or changes of use, except those changes relating to Building Codes, will require approval by the Community Development Director or Planning Commission/Design Review Board.

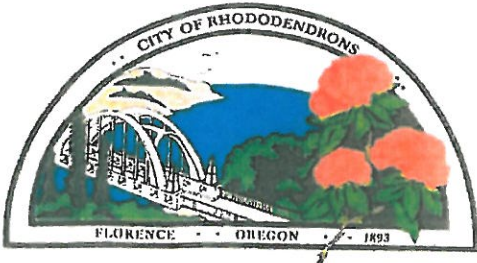
- 2.** Regardless of the content of material presented for this Planning Commission, including application text and exhibits, staff reports, testimony and/or discussions, the applicant agrees to comply with all regulations and requirements of the Florence City Code which are current on this date, EXCEPT where variance or deviation from such regulations and requirements has been specifically approved by formal Planning Commission action as documented by the records of this decision and/or the associated Conditions of Approval. The applicant shall submit to the Community Development Department a signed "Agreement of Acceptance" of all conditions of approval prior to issuance of a building permit.
- 3.** Temporary RV use is allowed for contractors and their subs during development of their phase of construction for which they have been issued building, electrical or public works development permits.
- 4.** Building coverage is limited to 50% consistent with the PUD code and a maximum impervious coverage of 65% per lot grouping consistent with the zoning code.
- 5.** The applicant will continue to work with Public Works to resolve utility needs and issues related to underground utilities.

6. The applicant shall revise the subdivision plat to identify Lots 1 & 2 as Open Space.
7. A recreational use plan identifying the sq. ft. and the amenities of proposed recreation open space areas shall be submitted for review and approval and improvements installed prior to issuance of an occupancy permit for a single family dwelling.
8. The remaining improvements to include Recreational uses, pedestrian path and turn-around must be completed prior to prior to issuance of an occupancy permit for a single family dwelling. If they are not they shall require a cash deposit, surety bond, or other similar guarantee reviewed and approved by the Public Works Director in order to insure the full and faithful performance by the parties involved not to exceed a period of two years after required improvements are completed..
9. The applicant shall provide a statement ensuring that the proposed areas of Open Space do not contain any of the listed conditions of FCC 10-23-5-G-4 as part of the required PUD recreation areas.
10. Plans for pedestrian improvement between Lots 40 & 41 shall be submitted to Public Works for review and approval and then constructed in accordance with City design standards in FCC 10-35 or by direction of the Public Works Director prior to issuance of an occupancy permit for a single family dwelling.
11. Prior to issuance of an occupancy permit for any residence or show home, the applicant shall create an association of owners or tenants, created as a nonprofit corporation under the laws of the state, which shall adopt and impose articles of incorporation and bylaws and adopt and impose a declaration of covenants and restrictions for the protection and maintenance of property, buildings, structures, and the common open spaces that is acceptable to the Planning Commission as providing for the continuing care of the above.
12. Either the Sandpines Golf Course gates must be altered to permit thru access during an emergency or a secondary vehicular access must be provided onto Oak St. Access easements and maintenance agreements shall be coordinated with the adjoining property owners of the golf course as needed for the secondary access.
13. Updates as needed to the tree preservation and landscape plans shall be provided to the Planning Department prior to application of a building permit.
14. The proposed CCR's shall be amended to permit 15' house setbacks and 20' garage setbacks along the west side of Nandina and 23' house and garage setbacks along the east side of Nandina.
15. The applicant shall ensure that each single-family dwelling provides covered parking spaces suitable in area and dimension for two vehicles. No encroachments (such as water heaters, steps, door swings, etc.) into the required parking spaces shall be allowed.

16. If Open Spaces B or C are included in the plan to meet the PUD 25% recreational development requirement then pedestrian access shall be included and developed in accordance with 10-35-3 in the existing drainage easements or other suitable locations (such as thru Open Space H). Pedestrian walkways within East Bank leading to Open Space areas shall meet the requirements for pedestrian access and circulation contained within FCC 10-35.
17. The applicant shall submit sidewalk construction plans to Public Works for approval. Sidewalks shall be constructed for the PUD 43rd St. entrance, and along all street facing common open spaces on the east side of Nandina Dr. prior to issuance of an occupancy permit for a single family dwelling.
18. Each residence built within East Bank shall be required to have an entry walkway leading to the front door.
19. Pedestrian walkways within East Bank leading to Open Space areas shall meet the requirements for pedestrian access and circulation contained within FCC 10-35.
20. Any proposed street name change will be required prior to application of the first building permit.
21. The applicant shall submit an application for an NPDES permit and obtain approval as necessary prior to commencing any site improvements warranting a NPDES.
22. Easements and construction plans for any utilities and road or pedestrian improvements shall be approved by the Planning Director and Public Works Director prior to site disturbance or installation..
23. Lighting within the development shall be brought up to current code. The applicant may need to retrofit existing lighting on the site in order to bring these fixtures into compliance. The applicant shall submit a plan demonstrating the location of lighting fixtures, the number of luminaires, the number of lamps in each luminaire, a photometric report for each type of luminaire and a site plan with the photometric plan of the lumen output prior to issuance of an occupancy permit for a single family dwelling. The applicant shall submit landscape lighting information prior to prior to issuance of an occupancy permit for a single family dwelling which demonstrates that those lights will be extinguished after hours. The applicant shall be subject to a 30-day review period following the installation of the modified lighting or following the operation of the lighting system to ensure that the lighting system does not need adjustment. The applicant shall inform staff when the lighting system becomes operational. Any lighting for signage within East Bank or at the entrance or in common areas shall meet the standards of FCC 10-37.
24. Prior to any development or site disturbance on lots with probable wetlands the applicant shall request a wetland determination from the Department of State Lands. If the determination reveals that wetlands are likely, a wetland delineation must be submitted to the Department of State Lands for review and concurrence prior to permit application for affected property.

IX. EXHIBITS

"A" Findings of Fact
"B" Land Use Application
"C" Applicant Submittal
"D" Applicant Letter
"E" Site Plan
"F" Traffic Impact Analysis
"G" Proposed Turnaround
"H" Utility Changes
"I" TIA Review
"J" 2006 Wetlands Concurrence
"K" Landscaping Plan
"L" Resolution PUD 05 05
"M" Tree Preservation Plan
"N" Resolution PC 07 24 SFP 02
"O" Table of Lots



City of Florence
Community Development Department
250 Highway 101
Florence, OR 97439
Phone: (541) 997 - 8237
Fax: (541) 997 - 4109
www.ci.florence.or.us

Type of Request

☒ **Modification to Planned Unit Development (PUD)** (Florence City Code Title 10, Ch-23)

Applicant Information

Name: Byron Roberts Phone 1: _____
E-mail Address: _____ Phone 2: _____
Address: _____
Signature: _____ Date: 7-28-15
Applicant's Representative (if any): _____

Property Owner Information

Name: S&C Investments, LLC Phone 1: _____
E-mail Address: _____ Phone 2: _____
Address: _____
Signature: _____ Date: 7-28-15
Applicant's Representative (if any): _____

NOTE: If applicant and property owner are not the same individual, a signed letter of authorization from the property owner which allows the applicant to act as the agent for the property owner must be submitted to the City along with this application. The property owner agrees to allow the Planning Staff and the Planning Commission onto the property. Please inform Planning Staff if prior notification or special arrangements are necessary.

For Office Use Only:

Received

Approved

Exhibit

EXHIBIT B

Property Description

Assessor's Map No.: _____ - _____ - _____ - _____ Tax lot(s): _____

Zoning District(s): _____

Conditions & land uses within 300 feet of the proposed site that is one-acre or larger and within 100 feet of the site that is less than an acre OR add this information to the off-site conditions map (FCC 10-1-1-4-B-3): _____

Project Description

Lot Size: _____ Number of single family ~~lots~~ proposed: 54

Proposed Building Coverage if a PUD: _____

parcels

Is any project phasing anticipated? (Check One): ☐ Yes ☒ No

Timetable of proposed improvements: _____

Proposal: (Describe the project in detail, what is being proposed, size, objectives, and what is desired by the project. Attach additional sheets as necessary)

See attached

For Office Use Only:

Date Submitted: _____ Fee: _____

Received by: _____

Paid

Changes to the East Bank PUD CC&R's

Cover page and all of document: Most references to East Bank PUD and Sandpines Development, LLC will be changed to Sandpines East PUD/HOA and S&C Investments, LLC. References to the plat will remain East Bank PUD.

Page 1: See above

Page 2: Same

Page 3: Section 1.12 strike ~~plots~~ and replace with "created groupings of lots – single or multiple as indicated in Exhibit "A". While there are 99 lots there will only be 54 parcels that will be sold because certain lots have been grouped together. For purposes of this declaration a lot shall mean the 54 parcels and there shall only be 54 votes.

Page 4: see cover page note

Page 5: none

Page 6: none

Page 7: see cover page note

Page 8: none

Page 9: none

Page 10: none

Page 11: none

Page 12: none

Page 13: none

Page 14: none

Page 15: none

Page 16: see cover page note

Page 18: none

Page 19: none

Page 20: none

Page 21: Section 9.5 strike existing and replace with: "While there are 99 lots there will only be 54 parcels that will be sold because certain lots have been grouped together. For purposes of this declaration a lot shall mean the 54 parcels and there shall only be 54 votes."

Page 22: Section 10.4.4 strike ~~fifteen (15)~~ and replace with “five (5)”. In Section 10.4 add “In all cases signs shall conform with Florence City codes.”

Page 23: none

Page 24: strike ~~four (4)~~ and replace with “two (2)” and change EAST BANK reference

Page 25: Section 10.10 strike ~~fifteen percent (15%)~~ and replace with twenty percent (20%) In section 10.11 strike ~~chain link~~ and insert two lines below- “, that **black** chain link fences may...”

Page 26: Section 10.12 Strike first two sentences and replace with “Decorative ground cover shall consist of bark dust/mulch, lawn, plantings suitable to the climate and area. In Section 10.13 title area strike “Solar Collectors” and in the body strike “~~or solar collector panels~~”. Add, “Exterior colors must be selected from a list provided by the ACC”

Page 27: Section 10:17 Add at the beginning “Community” and replace “~~upon areas~~” with “at the entry area as”. In section 10.19 After “in conformity with” strike the rest of the sentence and add “the following setback standards: Front of house - 10 feet, garage – 20 feet, side of house – 5 feet, rear of house – 10 feet.

Page 28: none

Page 29: Section 10.27 strike “~~vinyl~~”. Section 10.29 after the “planting “ add “or allowing to grow”

Page 30: Section 12.1 Strike all of second sentence

Page 31: none

Page 32: none

Page 33: see cover page note

Page 34: none

Page 35: none

Page recording page or 36: see cover page note

Exhibit “A” : none (it should be referred as EAST BANK PUD on this page), but add copies of Quitclaim Deed and Declaration of Restrictions.

Table of Contents to remain the same.

The By-laws of the East Bank PUD H.O.A will be changed to reflect the changes to Sandpines East HOA and the new members/officers. It will remain a Non Profit Corporation.

Division of Chief Deputy Clerk
Lane County Deeds and Records

2007-068664



\$266.00

00948087200700686640490494

10/04/2007 09:11:47 AM

RPR-REST Cnt=1 Ctn=1 CASHIER 05
\$245.00 \$10.00 \$11.00

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR
EAST BANK PUD**

DECLARANT: SANDPINES DEVELOPMENT, LLC,
an Oregon limited liability company

After recording return to
Lane County Surveyors

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
EAST BANK PUD**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for EAST BANK PUD (this "Declaration"), to be effective upon its recording in Lane County, Oregon, is made and executed on the date hereinafter set forth by SANDPINES DEVELOPMENT, LLC, an Oregon limited liability company ("SD"). SD is referred to herein as the "**Declarant.**"

WITNESSETH

Declarant is the owner of certain real property in the City of Florence, Lane County, Oregon, described on Exhibit "A" attached hereto and incorporated herein by reference; and

Declarant desires to create a Class I planned community known as EAST BANK on the land described on Exhibit "A" as shown on the duly recorded plat of EAST BANK PUD and on such other land as may be added thereto pursuant to the terms and provisions of this Declaration. The community shall be subject to ORS 94.550 to 94.783.

NOW THEREFORE, the Declarant declares that the real property described on attached Exhibit "A" shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions, and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of the Owner thereof.

ARTICLE I - DEFINITIONS

Section 1.1 "Association"

"Association" shall mean the East Bank PUD Homeowners' Association, an Oregon nonprofit corporation established for the purposes set forth herein.

Section 1.2 "Board"

"Board" shall mean the Board of Directors of the East Bank PUD Homeowners' Association, Inc.

Section 1.3 "Bylaws"

"Bylaws" shall mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be adopted pursuant to ORS 94.625 and recorded in the Deed Records of Lane County, Oregon. A copy of the Bylaws is attached hereto as Exhibit "B".

Section 1.4 "City"

"City" shall mean the City of Florence, Oregon.

Section 1.5 "Common Areas"

"Common Areas" as used herein, shall mean only that portion of the Property, if any, that is established for the common benefit of EAST BANK PUD that is owned by the Association for the use and benefit of the Owners.

"Common Maintenance Areas" shall mean the Common Areas, and also shall mean any areas within public rights-of-way, Tracts or other property that the Board is required to maintain pursuant to this Declaration or that the Board deems necessary or appropriate to maintain for the common benefit of the members, including without limitation, those areas described in Sections 5.4 and 5.5.

Section 1.6 "Conversion Date"

"Conversion Date" shall be the date upon which Class "B" membership shall cease and be converted to Class "A" membership. Such date shall be the date which is the earlier of (i) the date at which seventy-five percent (75%) of the total Lots anticipated to be created within the subdivision have been conveyed to Class "A" members; (ii) ten (10) years after conveyance of the first Lot to a Class "A" member; or (iii) upon election in writing by Declarant.

Section 1.7 "County"

"County" shall mean Lane County, Oregon.

Section 1.8 "Declarant"

"Declarant" shall mean SD, an Oregon limited liability company, its successors and assigns if such successor or assign acquires all of the Declarant rights under this Declaration pursuant to a recorded instrument executed by Declarant. All rights of Declarant hereunder or under the Bylaws shall be several; provided that the parties constituting Declarant must unanimously agree to matters requiring Declarant consent hereunder or pursuant to the Bylaws.

Section 1.9 "Declaration"

"Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for East Bank PUD and any amendments and supplements thereto made in accordance with its terms.

Section 1.10 "Directors"

"Directors" shall mean the Board of Directors of the Association.

Section 1.11 "Improvement"

"Improvement" shall mean every structure or improvement of any kind, including, but not limited to, a Unit, landscaping, fences, wall, driveways, fixtures, shelters, or other product of construction efforts (including painting, alterations, and reconstruction) on or with respect to EAST BANK PUD.

Section 1.12 "Lot"

"Lot" shall mean any of the plots of land indicated upon the recorded subdivision map of the Property or any part thereof creating single-family home sites, with the exception of the Common Areas, Tracts and areas deeded to a governmental authority or utility, together with all Improvements thereon.

Section 1.13 "Owner"

"Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.14 "Plat"

"Plat" shall mean the duly recorded plat of East Bank PUD, recorded in the Plat Records of Lane County, Oregon contemporaneously herewith.

Section 1.15 "Private Utilities"

"Private Utilities" shall mean utilities including but not limited to gas, electric, water, sewer, storm water, cable, and telecommunication service lines that are not public utilities.

Section 1.16 "Property"

"Property" shall mean the real property described on the attached Exhibit "A", and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 1.17 "Tract"

"Tract" shall mean a parcel of land, if any, shown on the Plat and denoted by the word "Tract."

Section 1.18 "Turnover Meeting"

"Turnover Meeting" shall be the meeting of the Owners called by the Declarant pursuant to the Bylaws, to turn over control of the Association to the Class A members.

Section 1.19 "Unit"

"Unit" shall mean any residential dwelling situated upon any Lot.

ARTICLE II – EAST BANK PUD HOMEOWNERS' ASSOCIATION

Section 2.1 Membership

The Declarant and every Owner of a Lot by virtue of ownership of such Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. There shall be two (2) classes of membership, Class A and Class B as described in Section 2.2.

Section 2.2 Voting Rights

The Association shall have two (2) classes of voting membership:

2.2.1 Class A

Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners, including Declarant) and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot. If the co-Owners of a Lot cannot agree upon the vote, the vote of the Lot shall be disregarded in determining the proportion of votes with respect to the particular matter at issue.

2.2.2 Class B

The Class B member shall be the Declarant, who shall be entitled jointly to three (3) votes for each Lot they own. The Class B membership shall cease and be converted to Class A membership within 90 days following the Conversion Date.

Section 2.3 Suspension

All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to Article III or is otherwise in default under this Declaration, the Bylaws or the Rules and Regulations of the Association.

Section 2.4 The Association Board of Directors

The Association's Board of Directors shall be elected as provided in the Bylaws.

Section 2.5 Turnover Meeting

The Declarant shall call the Turnover Meeting within ninety (90) days following the Conversion Date for the purposes of turning over control of the Association to the Owners. The Turnover Meeting shall be conducted in accordance with the Bylaws.

Section 2.6 Immunity of the Board

No individual member of the Board shall have any personal liability to any Owner or any other person for the acts or omissions of the Board if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the Association, the Board or any member thereof arising from such acts or omissions.

Section 2.7 Clarification of Role of Association

The Association shall have the general powers and duties of a nonprofit corporation pursuant to the Oregon Nonprofit Corporations Act, and of a homeowners' association pursuant to the Oregon Planned Community Act, as well as the specific powers and duties set forth in the provisions of this Article and the other provisions of this Declaration that expressly relate to the Association, as well as pursuant to the Articles of Incorporation of the Association ("Articles") and the Bylaws. However, unless expressly set forth herein or in the Articles or the Bylaws, the Association shall not act in the capacity of settling disputes between Owners or resolving problems that Owners may experience. Disputes or problems experienced by Owners to which the Association has no express authority or role as set forth in this Declaration shall be resolved by private, lawful means chosen by the affected Owners and there shall be no recourse to the Association.

Section 2.8 Liability. To the fullest extent permitted by law, neither the Association nor any officer or member of the Board or the Architectural Control Committee nor Declarant or any officers, members, employees or agents shall be liable to any Member for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers, or any member of the Board or the Design Review Committee or Declarant or any of Declarant's officers, members, employees or agents, provided only that the officer or Board or Architectural Control Committee member or Declarant or any of Declarant's officers, members, employees or agents has acted in good faith in accordance with the actual knowledge possessed by such person.

Section 2.9 Indemnification. The Association shall indemnify every officer, director, Architectural Control Committee member, or other member of a committee established under or pursuant to the Bylaws against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, so long as the officer, director or

committee member acted or failed to act in good faith with regard to the act or omission at issue. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Community Association shall, as a common expense, maintain adequate officers' and directors' liability insurance to fund this obligation.

Section 2.10 Association Rules and Regulations. The Board from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots, Units and the Common Maintenance Area as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property; provided that the Board may not adopt rules or regulations prohibiting lawful activities within the Property if such activities are not otherwise prohibited in this Declaration. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof, shall be delivered by the Board promptly to each Member and shall be binding upon all Members and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws.

ARTICLE III- COMMON MAINTENANCE AREAS/ASSESSMENTS

Section 3.1 Funding

Subject to the terms of this Article III, the Declarant for each Lot owned within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) annual or periodic assessments or charges; and (ii) special assessments for capital improvements to the Common Areas and Common Maintenance Areas, such assessments to be established and collected as hereinafter provided. The annual or periodic assessments shall include any reserve assessments necessary to establish and maintain any reserve funds created under Section 3.5. Such assessments will remain effective for the full term (and extended term, if applicable) of the within covenants. The annual and special and other assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them, in writing.

Section 3.2 Annual Assessment or Charge on Lots Owned by Class A Members

Subject to the terms of this Article, each improved Lot is hereby subject to an initial assessment in an amount not to exceed an amount determined by the Board (until such assessment charge shall be modified as provided in the Bylaws of the Association), for the purpose of creating a fund to be designated and known as the "maintenance fund" for matters described under Section 3.4, the "Reserve Fund" for matters described under Section 3.5, as well as any other funds contemplated under this Declaration, such as funds for assessments and

charges: (i) on public access areas, as well as (ii) a fund established to hold funds from Limited Assessments (defined below), or any other fund called for by this Declaration or a Declaration of Annexation. Charges and assessments for funding such funds will be paid by the Owner or Owners of each such Lot in advance in monthly, quarterly or annual installments, commencing as to all Lots upon conveyance of the first Lot from Declarant to an Owner. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each assessment period. Said rate may be adjusted within the limit permitted by the Bylaws from time to time by the Board as the needs of the Association may, in the judgment of the Board, require. Assessments shall be assessed equally as between Lots that benefit from the services or Improvements giving rise to the assessment, except where expressly provided in this Declaration or any Declaration of Annexation for EAST BANK PUD. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

Section 3.3 Units on Lots Owned by Declarant

The Declarant owning unimproved Lots or Units that are not occupied shall pay assessments at the same rate as the annual assessment charged to Owners so long as there is a Class B membership as set forth in Section 2.2.

Section 3.4 Purposes of Maintenance Fund

The Association shall establish a maintenance fund composed of annual maintenance assessments and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Maintenance Areas for the benefit of all members of the Association. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: (i) normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping) and the improvements to such Common Maintenance Areas, such as sprinkler systems, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas; (ii) perpetual maintenance, repair, and enhancement for any fences, columns, walls, grounds, landscaping, lights, irrigation systems, and entry monuments in the Common Maintenance Areas; (iii) payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the property to which the maintenance fund applies; (iv) payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; and (v) all other activities necessary or desirable in the opinion of the Board to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the Board in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith.

Section 3.5 Reserve Funds

3.5.1 Reserve Fund for Replacing Common Maintenance Areas.

Declarant shall in addition establish a reserve fund account in the name of the Association for replacement, in whole or in part, of the Common Maintenance Area and any improvements located in, on, or under the Common Maintenance Area for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years ("Reserve Fund"). The Reserve Fund need not include those items that could reasonably be funded from the maintenance fund or for which one or more Owners are responsible for maintenance and replacement under this Declaration or the Bylaws. Assessments for the Reserve Fund under this Section shall begin accruing from the date the first Lot is conveyed by Declarant to an Owner. Declarant may elect to defer payment of the amounts due for the Reserve Fund on Lots they own until the date of the conveyance of the Lot to an Owner. However, the Declarant may not defer such payment beyond the date of the Turnover Meeting, or if no Turnover Meeting is held, the date on which administration of the Association is turned over to the Class A Members. The book and records of the Association shall reflect the amount owing from the Declarant for all Reserve Fund assessments.

For purposes of funding the Reserve Fund, Declarant initially, and thereafter the Association, shall impose an assessment to be called the "Reserve Fund Assessment" against each Lot, which assessment shall be spread equally over the Lots. The Reserve Fund Assessment determined by Declarant shall be based upon the reserve study described below, and other sources of reliable information. Nothing in this Section 3.5 shall limit the authority of Declarant or the Association to establish other separate or unrelated reserve funds that are funded by assessments. The Reserve Fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section. However, after the Turnover Meeting, the Board may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other unexpected increases in expenses. Funds borrowed under this Section shall be repaid from regular annual or special assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. The Association shall administer the Reserve Fund and may adjust the amount of the periodic payments into it to reflect changes in current replacement costs over time as indicated by the reserve study or update (as discussed in Section 3.5.2 below), and may provide for other reserve items that the Board, in its discretion, deems appropriate. Following the second year after the Turnover Meeting, future assessments for the Reserve Fund may be reduced or increased by an affirmative vote of Owners of at least seventy-five percent (75%) of the Lots. Any funds established for any of the purposes mentioned in this Section shall be deemed to be for the Reserve Fund notwithstanding that it may not be so designated by the Board. The amount of the Reserve Fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner.

Section 3.6 Limited Assessments

In addition to the other assessments set forth herein, the Association shall have the authority to levy assessments to satisfy the common expenses of a particular project or effort undertaken by the Association that benefits some, but less than all, of the Lots (such assessments, "Limited Assessments"). Limited Assessments shall be levied against the Owners of those Lots that benefit from the project or effort undertaken by the Association. An example, for illustrative purposes only and not as a limitation, of a project or effort giving rise to a Limited Assessment, is maintenance or repair of a tract of property that benefits and serves certain Lots, but not other Lots.

Section 3.7 Additional Assessments

In addition to the periodic assessments described in this Article III, the Association shall have the authority to assess an Owner for costs and expenses incurred by the Association for corrective action which is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees. Each such additional assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, a continuing lien upon the Lot, and the personal obligation of the Owner in the manner described in Section 3.1 for annual and special assessments.

Section 3.8 Non-payment of Assessments: Remedies of the Association

Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the highest rate of interest allowed by Oregon law at the time of the non-payment. The Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of Owner's property.

Section 3.9 Subordinated Lien to Secure Payment

To secure the payment of the maintenance charge and assessment established hereby and to be levied on individual Lots as provided in this Article III and the payment of interest, late charges, attorney fees or other charges against Owners provided for in this Declaration or the Bylaws, there is hereby reserved a lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such

notice, which shall be sent to the nearest office of such first mortgage lienholder by prepaid U.S. registered mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 94.709 shall apply to the Association's lien. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of such Association in the Official Public Records of Lane County, Oregon.

Section 3.10 Reallocation Upon Annexation of Property

When additional property is annexed to the Property, the Association shall, within sixty (60) days after the annexation, recompute the budget based upon the additional Lots and Common Areas and Common Maintenance Areas and recompute all applicable assessments for each Lot. Newly annexed Lots shall be subject to assessment from the time of annexation of such Lots to the Property. The Association shall send notice of any applicable assessment to the Owners of newly annexed Lots not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws. If additional property is annexed to the Property during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots which were within the Property prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. To the extent that any adjustment results in a credit with respect to assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

ARTICLE IV - GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS

Section 4.1 Interim Board

Declarant shall have the right to appoint an interim board of from one (1) to three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting.

Section 4.2 Purpose of Maintenance Fund

The Board, for the benefit of the Owners, shall provide and shall pay for out of the maintenance fund provided for in Article III above the following:

4.2.1 Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.

4.2.2 Maintenance, repairs, and enhancement of the Common Maintenance Areas and any improvements therein.

4.2.3 The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager; provided that a management agreement entered into prior to the Turnover Meeting shall not have a term in excess of two (2) years and shall be terminable without penalty if the Board gives not less than thirty (30) days written notice of termination to the other party not later than sixty (60) days after the Turnover Meeting.

4.2.4 Legal and accounting services.

4.2.5 A policy or policies of insurance insuring the Association and/or its Board and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided herein in Article V.

4.2.6 Workers compensation insurance to the extent necessary to comply with any applicable laws.

4.2.7 Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

4.2.8 Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

Section 4.3 Powers and Duties of Board

The Board, on behalf of the Association for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Articles of Incorporation (the "Articles") and the Bylaws of the Association and the powers and duties of a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act and a homeowners' association pursuant to ORS 94.630:

4.3.1 To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

4.3.2 To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

4.3.3 To enter into contracts, maintain one (1) or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

4.3.4 To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

4.3.5 To make reasonable rules and regulations for the operation of the Property and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Property, by the Owners in the portions affected.

4.3.6 To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

4.3.7 To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

4.3.8 To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

4.3.9 To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

Section 4.4 Board Powers Exclusive

The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and Reserve Fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

Section 4.5 Maintenance Contracts

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

ARTICLE V- COMMON MAINTENANCE AREAS

Section 5.1 Conveyance

Declarant shall convey the Common Areas, if any, to the Association, free and clear of financial liens and encumbrances upon recording of the Plat. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Areas, which may be hereafter established. Nothing contained herein shall create an obligation on the part of Declarant to establish any Common Area. Following the conveyance of the Common Areas to the Association, the dedication, mortgage, or conveyance of any Common Areas shall require the affirmative vote of at least seventy five percent (75%) of the outstanding votes.

Section 5.2 Liability Insurance; Casualty Insurance

From, on and after the date on which title to or responsibility for any Common Area vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its members, covering occurrences on the Common Areas and in the Common Maintenance Areas. The policy limits shall be as determined by the Board of the Association, but shall include public liability insurance of at least One Million Dollars (\$1,000,000.00) per occurrence. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of the Board, the Owners and other insureds, as their interests may be determined by the Board, ensuring all against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association shall be received, held in a segregated account and distributed to all interested parties, as their interests may be determined. In addition, from and after the date on which the Common Area vests in the Association, the Board shall obtain in the Common Areas and in the Common Maintenance Areas, insurance for all insurable improvements against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief.

Section 5.3 Condemnation

If there is a condemnation or a sale in lieu thereof of all or any portion of the Common Areas or Common Maintenance Areas owned by the Owners, the Association shall represent the Owners in negotiations with the condemning authority. The funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas or Common Maintenance Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. If the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Areas or Common Maintenance Areas or for whatever reason, any remaining funds may be distributed to each Owner based on an equal amount per Lot.

Section 5.4 Maintenance of Common Maintenance Areas

Without limitation to the Association's overall maintenance and other obligations, the Association will permanently maintain and repair the following Common Maintenance Areas as necessary:

5.4.1 The entry monument signage and related lighting, landscaping and irrigation;

5.4.2 The private roads, entry gates and private storm drainage facilities located in and serving the Property; and

5.4.3 Any area determined by the Board to be in the interest of the Association to maintain.

Section 5.5 Prohibited Activities

The following activities are expressly prohibited within any Common Maintenance Area or Common Area: (i) the removal of any tree within the Common Area by the Owners and the removal of any tree greater than six (6) inches diameter breast height by the Association without the written consent of the ACC, and the written opinion of a certified arborist that the tree is diseased and will not survive, or the tree poses a substantial threat of property damage or personal injury; (ii) the removal, alteration or enhancement of any other vegetation by any Owner, provided that the Association may remove such vegetation with the written consent of the City, except that no City consent is required for the Association to remove dead, dying, or diseased vegetation that is replaced with like vegetation, (iii) the disposal or placement of any debris, refuse, soil, rock, landscape debris or other deleterious materials by anyone; (iv) parking, storage, repair, or disposal of any motor vehicle by anyone; and (v) motor vehicle access, except as may be necessary for planting, repairs or maintenance approved by the Board or in conjunction with maintenance of public or private utilities.

ARTICLE VI - ARCHITECTURAL REVIEW

Section 6.1 Architectural Control Committee

A committee to be known as the Architectural Control Committee (the "ACC") shall be established consisting of the number of members as determined by the Board, except that the ACC shall consist of not less than three (3) members. The members of the ACC need not be members of the Association. The Board is encouraged to appoint persons experienced in one of the physical design professions, such as civil engineer, architect, land planner or licensed contractor.

6.1.1 The members of the ACC shall be appointed, terminated and/or replaced by the Declarant so long as there is Class B membership. Thereafter the Board shall appoint the members of the ACC. Members of the ACC may be terminated and/or replaced by the Board with or without cause after termination of the Class B membership.

6.1.2 The purpose of the ACC is to enforce the architectural standards of the community and to approve or disapprove plans for improvements proposed for the Lots.

6.1.3 The ACC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

Section 6.2 Architectural Manual

The Board may adopt, and from time to time, amend modify, or revise an Architectural Manual to supplement the terms of this Declaration. Adoption of the Architectural Manual may occur without the consent of anyone prior to conveyance of the first Lot to an Owner other than the Declarant. Amendments, modifications, or revisions to the Architectural Manual may be made by the Declarant, without the consent of anyone prior to conveyance of the first Lot to an Owner other than the Declarant. Thereafter the ACC shall have the right to amend, modify, or revise the Architectural Manual, subject to the approval of the Board. No such amendments, modifications, or revisions shall affect any prior ACC approval.

Section 6.3 Scope of Review

No building, fence, wall, patio, deck, outbuilding, landscaping, pool, athletic facility or other structure or improvement shall be erected, altered, added onto or repaired upon any portion of the Property without the prior written consent of the ACC, provided however, that improvements erected, altered, added onto or repaired by Declarant shall be exempt from the provisions of this Article VI.

Section 6.4 Submission of Plans

Before the initiation of construction upon any Lot, the Owner thereof shall first submit to the ACC two (2) complete sets of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACC for the performance of its function pursuant to the procedure outlined in the Architectural Manual (if any). In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. In the event an Owner submits plans or specifications to the ACC that are not adequate to permit the ACC to make an informed determination under this Article, the Board shall have the authority to require the Owner submitting the inadequate plans or specifications to retain, at the Owner's expense, the services of a professional engineer, architect, designer, inspector or other person to assist in the preparation of a sufficient submittal to the ACC.

Section 6.5 Plan Review

Upon receipt by the ACC of all of the information required by this Article VI, it shall have thirty (30) days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ACC: (i) the improvements will be of an architectural

style and material that are compatible with the other structures in the Property; (ii) the improvements will not violate any restrictive covenant or encroach upon any easement or cross building set back lines; (iii) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (iv) the individual or company intended to perform the work is acceptable to the ACC; and (v) the improvements will be substantially completed, including all cleanup, within three (3) months of the date of commencement (six (6) months for the construction of a complete house). If the ACC fails to issue its written approval, or rejection, within thirty (30) days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ACC's approval shall be deemed to have been granted without further action.

Section 6.6 Non-conforming Structures

If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article VI to the same extent as if erected without prior approval of the ACC. The ACC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

Section 6.7 Immunity of ACC Members

No individual member of the ACC shall have any personal liability to any Owner or any other person for the acts or omissions of the ACC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ACC or any member thereof arising from acts or omissions of the ACC committed in good faith and without malice.

Section 6.8 Limited Review

Any review and approval made by the ACC is limited to compliance with the intent of the architectural standards of the neighborhood as may from time to time be established by the Board, this Declaration and/or the Architectural Manual. The review and approval made by the ACC is not to be construed as superseding, replacing, or modifying any review, approval, or permit required by any local, state or federal jurisdictional agencies. It is the applicant's responsibility to obtain and comply with any permits that may be required by any local, state, or federal jurisdictional agency.

Section 6.9 Address for Notice

Requests for ACC approval or correspondence with the ACC shall be addressed to East Bank PUD Architectural Control Committee or such other address as may be designated from time to time by the ACC. No correspondence or request for approval shall be deemed to have been received until actually received by the ACC in a form satisfactory to the ACC.

ARTICLE VII - EASEMENTS

Section 7.1 Utility Easements

As long as the Declarant own a Lot, the Declarant hereby reserve the right to grant perpetual, nonexclusive easements for the benefit of Declarant or their designees, upon, across, over, through and under any portion of the Common Area for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television. Declarant, for themselves and their designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. The Association shall also have the right to grant the easements described herein, subject to the approval of the Declarant so long as Declarant own a Lot.

Section 7.2 Declarant's Easement to Correct Drainage

Declarant hereby reserve for the benefit of Declarant a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

Section 7.3 Entry Easement

If the Owner of any Lot fails to maintain the Lot as required herein, or if there is an emergency, the Association shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

Section 7.4 Reserved Easements

Easements for installation and maintenance of utility and storm water retention/detention ponds are reserved as may be shown on the recorded Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

Section 7.5 Temporary Completion Easement

All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon adjacent Lots within the Property, provided that such easement shall terminate twenty-four (24) months after the date such Lot is conveyed to the Owner by the Declarant.

Section 7.6 Perimeter Fence Easement

An easement is hereby declared for the benefit of the Declarant, its employees, subcontractors, successors and assigns as may be expedient or necessary for the construction of fencing along the perimeter of the Property. Declarant is not obligated to construct any perimeter fencing.

Section 7.7 Maintenance Easements

An easement is hereby granted and reserved in favor of the Association and its successors, assigns, contractors, property managers, agents and employees over, across, upon, and under the Common Areas and any Common Maintenance Areas or other areas of the Property necessary or appropriate for purposes of accomplishing the maintenance, repair, and replacement by the Association of Improvements or the other obligations of the Association hereunder.

Section 7.8 Plat Easements

The Property shall be subject to all easements delineated on the Plat.

ARTICLE VIII- USE, OCCUPANCY, CASUALTY, AND INSURANCE

Section 8.1 Residential Use

All Lots and Units shall be kept and maintained primarily for single family residential purposes.

Section 8.2 Commercial, Institutional, or Other Non-Residential Uses

No commercial, institutional, or other non-residential use (including residential day care facilities) shall be conducted on any Lot without the written approval of the Board. The Board shall not unreasonably withhold consent to a non-residential use if only normal residential activities would be observable outside of the Unit and the activities would not be in violation of applicable ordinances nor create additional traffic or the need for additional parking. The Board shall not allow a use that diminishes the residential character of the Lot or neighborhood or imposes a nuisance on the neighborhood. Any such use must comply with all the use restrictions of this Declaration and all applicable law, including, without limitation, zoning requirements. Any Owner wishing to conduct any commercial, institutional, or other non-residential uses on

any Lot shall first apply to the Board for approval of such use and shall provide to the Board any information deemed necessary by the Board to evaluate the impacts of such use on the neighborhood. The decision of the Board shall be final and conclusive. The Board may review, and repeal, any such approval from time to time at the discretion of the Board if, in the opinion of the Board, the use has changed or increased to a level not consistent with the original approval. In no event shall the decision of the Board as to permissibility of a requested non-residential use be construed as a representation of the legal permissibility of such use. This Section 8.2 does not restrict the right of an Owner to maintain Owner's professional personal library, keep Owner's personal business or professional records or accounts or handle Owner's personal business or professional telephone calls in Owner's Unit.

Section 8.3 Garage Sales

The provisions of this Article shall not apply to garage sales conducted entirely on an Owner's Lot in accordance with the guidelines (if any) established by the Association, provided that no Owner shall conduct more than one (1) garage sale of no more than three (3) days duration during any six (6) month period.

Section 8.4 Declarant Use

The provisions of this Article shall not apply to the use of any Lot or Unit by the Declarant as i) a model home, sales office, or construction office; or ii) the use of any Lot as a site for a sales office trailer or construction office trailer.

Section 8.5 Owner Insurance

Each Owner of a Lot is encouraged to obtain, and maintain in effect, from a reputable insurance company authorized to do business in the State of Oregon, public liability and property damage insurance with respect to such Lot, fire and extended coverage casualty insurance with respect to the Owner's Unit in an amount equal to one hundred (100) percent of the replacement cost thereof. Each Owner shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to that Owner's personal property. No Owner shall be obligated to obtain any of the insurance coverages described herein or in Section 5.2, nor shall any insurance coverage obtained by an Owner (or such Owner's mortgagee) be brought into contribution with insurance obtained by the Association.

Section 8.6 Casualty

In the event of damage to or destruction of a Unit, the Owner of the Unit shall repair, reconstruct, and rebuild the damaged or destroyed portions of the Unit to substantially the same condition that existed prior to the damage or destruction. All repair, reconstruction, or rebuilding shall begin within six (6) months following the damage or destruction, and shall be diligently pursued to completion within twelve (12) months following the damage or destruction, unless work is delayed by causes beyond the reasonable control of the Owner.

ARTICLE IX- PROPERTY RIGHTS

Section 9.1 Owner's Use and Occupancy

The Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot subject to this Declaration, the Plat and any other encumbrances of record. As such rights of an Owner of a Lot with respect to the Unit on such Owner's Lot is subject to the rights of the Association under this Declaration, Declarant, the ACC and any representative of the Association authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass, conversion, or otherwise create any right of action in the Owner of such Lot.

Section 9.2 Common Areas; Rights of Association

Every Owner shall have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

9.2.1 The right of the Association to establish and publish rules and regulations governing the use of the Common Areas affecting the welfare of Association members.

9.2.2 The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

9.2.3 The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for public right-of-way purposes. Any other transfer or mortgage of Common Areas requires the consent of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as Declarant owns a Lot.

9.2.4 All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

Section 9.3 Effect of Declaration

Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

Section 9.4 Rezoning Prohibited

No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the prior written consent of the Board and Declarant so long as Declarant owns a Lot, which may be withheld in the Board's or Declarant's sole discretion, as applicable. Declarant or the Board may enforce this covenant by obtaining an injunction against any non-approved rezoning at the expense of the enjoined party.

Section 9.5 Lot Consolidation and Division

No Lot may be consolidated with another Lot and no Lot may be subdivided.

Section 9.6 Drainage Alteration Prohibited

The surface water drainage contours of each Lot shall conform to the approved grading plan established by the Declarant. No Owner shall fill or alter any drainage swale established by the Declarant, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the Declarant without the prior, written approval of the ACC.

Section 9.7 Damage or Destruction By Owner

If damage to any Common Area or Common Maintenance Area is directly attributable to an Owner or the family members, invitees, licensee, or guest of an Owner, then that Owner shall repair such damage or destruction as soon as reasonably practicable, but in no event later than fifteen (15) days after the date the damage occurred, at his or her sole expense and without a right of reimbursement. If an Owner fails to repair such damage timely, the Association shall have all rights of enforcement and remedies set forth under this Declaration. Nothing in this Section 9.7 shall relieve an Owner of the responsibility to repair damage or destruction by the Owner or the family members, invitees, licensees, or guests of an Owner to Improvements that constitute common elements required by the state building code as defined in ORS 455.010.

ARTICLE X- USE RESTRICTIONS

Section 10.1 Nuisances

No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. The Board shall have the sole authority to determine nuisances and their decision shall be final and conclusive.

Section 10.2 Development Activity

Notwithstanding any other provision herein, Declarant and its successors and assigns, shall be entitled to conduct on the Property all activities normally associated with and

convenient to the development of the Property and the construction and sale of dwelling units on the Property.

Section 10.3 Temporary Structures

No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

Section 10.4 Signs

No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the subdivision or carried by any person or by any other means displayed within the subdivision except as provided below:

10.4.1 "For Sale" Signs

An Owner may erect one (1) sign not exceeding two (2) feet by three (3) feet in dimension, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale.

10.4.2 "For Rent" Signs

An Owner may erect one (1) sign not exceeding three (3) square feet in area advertising the property for rent. Such signs shall be visible from the front of the Unit only, and shall be displayed from within the Unit. No such sign shall be erected within a lawn or landscape area on any Lot, or attached to the outside of the Unit.

10.4.3 Declarant's Signs

Signs or billboards may be erected by the Declarant and are exempt from the provisions of this Section.

10.4.4 Political Signs

Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

10.4.5 Subdivision Identification Signs

Signs, monumentation or billboards may be erected by the Declarant or the Association to identify the subdivision, with approval from the local jurisdictional authority, if applicable.

10.4.6 Commercial Vehicle Emblems

Vehicles displaying commercial emblems shall not be kept or parked on any Lot except as provided in Section 10.5. The foregoing restrictions shall not be deemed to prohibit the display of the flag of the United States by an Owner or occupant of a Lot if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. § 1 *et seq.* The Board may adopt reasonable rules and regulations consistent with federal flag display law regarding the placement and manner of display of such flag and the location and size of the flagpole.

Section 10.5 Campers, Boats, Recreational Vehicles, Commercial Vehicles, and other Non-Passenger Vehicles

No campers, boats, boat trailers, recreational vehicles, commercial vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories shall be kept or stored on any Lot except (i) with the Board's approval, and (ii) as provided below:

10.5.1 Campers, boats, boat trailers, recreational vehicles, recreational trailers, and other non-passenger vehicles, equipment, implements, or accessories shall not be stored or kept on any Lot unless the same are fully enclosed within the garage located on such Lot and/or said vehicles and accessories are in an operable condition and are screened from view by a screening structure approved by the Board.

10.5.2 No commercial vehicle bearing commercial insignia or names shall be kept or stored on any Lot unless approval of the Board is granted. Commercial vehicles bearing commercial insignia or names that are (i) temporarily parked on any Lot for the sole purpose of serving such Lot, or (ii) kept within an Owner's garage at all times are exempt from this restriction. The Board, as designated in this Declaration, shall have the absolute authority to grant approval for storing or keeping a commercial vehicle on a Lot. Notwithstanding the foregoing, the Board shall not unreasonably withhold consent to keep a commercial vehicle bearing insignia or names where such vehicle is driven by an Owner pursuant to Owner's primary job. Any Owner wishing to keep a commercial vehicle on any Lot shall apply for approval to the Board, and shall provide such information as the Board, in their sole authority, may require. The Board may from time to time in their sole discretion review the approval to keep a commercial vehicle on any Lot to determine if the vehicle complies with the intent of the original approval. Upon an adverse determination by the Board, any commercial vehicle shall be removed and/or otherwise brought into compliance with the requirements of this section.

10.5.3 No disabled vehicles, campers, boats, boat trailers, recreational vehicles, recreational trailers, or other types of non-passenger vehicles equipment, implements, or

accessories may be kept or stored on any street within the Property for any period in excess of forty-eight (48) hours.

10.5.4 The Board, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by said Board, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this section.

10.5.5 No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in the streets within the Property, or in any driveway or yard adjacent to a street, or that is not screened from view.

Section 10.6 Pets, Livestock and Poultry

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, than no more than four (4) adult animals may be kept on a single Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. Owners shall be responsible for cleaning up after their pets' waste in EAST BANK PUD. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Board, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

Section 10.7 Garbage and Refuse Disposal

No Lot, Tract, or Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, or disposed of, on any Lot or Common Area except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, debris, or recyclable materials shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage, rubbish, or recyclable materials, and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day.

Section 10.8 Parking

No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas and/or Common Maintenance Areas, or on any easement unless in use for maintaining such Common Maintenance Areas. This restriction shall not apply to driveways, or paved areas intended for parking use. Notwithstanding anything in this Section 10.9, parking of

vehicles is prohibited on any public or private street within the Property that is signed or otherwise marked for "No Parking" by a governmental authority. The Owner of each Lot shall maintain off-street parking on its Lot (inclusive of its garage and driveway) able to accommodate at least three automobiles.

Section 10.9 Commercial or Institutional Use

No Lot, and no building erected or maintained on any Lot shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes, except as set forth in Article VIII.

Section 10.10 Detached Buildings

No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior written approval of the ACC. Every outbuilding, inclusive of such structures as storage buildings, greenhouses, doghouses, or children's playhouses shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. Outbuildings shall be of a one (1) story design and not exceed fifteen (15) feet in height measured from existing grade or have total floor area in excess of fifteen percent (15%) of the first floor area of the main dwelling (excluding the area of the garage).

Section 10.11 Fences and Hedges

No fence, wall or hedge shall be erected or maintained on any Lot nearer to the street than the building setback lines for the front yard, except for fences erected by the Declarant in conjunction with model homes, or sales offices, or subdivision entry walls and fences, monumentation and landscaping, or by governmental requirement. Except as may be necessary to maintain the vision distances required by Section 10.8, side yard and rear yard fences may be erected along the property line of the Lots. All fences shall be constructed of one of the pre-approved designs specified by the ACC, or as may otherwise be approved by the ACC, except for fences erected by the Declarant in conjunction with model homes, sales offices, subdivision entry walls and fencing, monumentation and landscaping, and except as otherwise provided in this Section. All fences shall be a maximum of six (6) feet in height except fences for sales offices, model homes, subdivision entry walls and fencing, monumentation and landscaping or as otherwise approved by the ACC. No chain-link, metal cloth or agricultural fences may be built or maintained on any Lot, except as required by governmental authority; provided however, that chain link fences may be installed, with the prior approval of the ACC, for domestic pet runs. Notwithstanding the foregoing, the ACC shall have the right and authority to approve variances for reasonable cause or to alleviate hardship as determined in the sole judgment of the ACC; provided however, the ACC may not approve a variance which contradicts the zoning and/or subdivision ordinances of the local governmental jurisdictional authority unless the jurisdictional authority has previously approved the variance. Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent lots shall be owned and maintained by the Owner on whose Lot the fence exists, or if the location is

indefinite, such fence will be maintained by the Owners whose Lots are involved jointly, with expenses being shared equally.

Section 10.12 General Landscaping and Exterior Maintenance

Decorative ground cover consisting of bark dust/mulch or rock in the front and side yard may not exceed fifty percent (50) percent of the total area of the front, side and rear yards, excluding side yards, decks, patios, or sidewalks, unless otherwise approved by the ACC or designated by the Declarant, the Board or a governmental authority. The remainder of the yard shall be lawn or sod. Owners shall maintain one (1) street tree for each street frontage of his or her Lot. Growth of grasses in lawns must be properly maintained not to exceed four (4) inches in height. All landscaping located on any Lot not maintained by the Association pursuant to this Declaration shall be properly maintained at all times by the Lot Owner. Each Lot Owner shall keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. All improvements upon any Lot not maintained by the Association pursuant to this Declaration shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Lot Owner. Declarant, the Association, and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to paint, repair, or otherwise maintain any improvements in need thereof, and to charge the cost thereof to the Lot Owner.

Section 10.13 Antennae, Satellite Dishes and Solar Collectors

No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view along the public street right-of-way directly in front (and side, in the case of a corner Lot) of the house erected on such Lot; and no such apparatus shall be erected without the prior written consent of the ACC. The ACC, as designated in this Declaration, shall have the absolute authority to determine whether an accessory is adequately screened from public view. The foregoing restriction and the authority of the ACC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

Section 10.14 Clothes Hanging Devices

Clothes hanging devices exterior to a dwelling shall be temporary, unaffixed structures not exceed six (6) feet in height and shall not be placed nearer to any street abutting the Lot than the side yard setback line or the back of the Unit constructed on the Lot. Clothes hanging devices shall be screened from public view by a fence approved by the ACC.

Section 10.15 Window Treatment

No aluminum foil, reflective film, newspaper or similar treatment shall be placed on windows or glass doors.

Section 10.16 Oil and Mining Operations

No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

Section 10.17 Mailboxes

Mailboxes shall be erected and maintained upon areas determined by the U.S. Postal Service in accordance with the current postal authority standards. Street access to mail boxes shall be continuously maintained between 8:00 a.m. and 5:00 p.m.

Section 10.18 Garages

Lots must have an enclosed garage able to accommodate at least two (2) automobiles. The openings of such garages must be situated within the setback lines set out in Section 10.19 below. Garages may be used as Declarant's sales offices before permanent occupancy of the main structure, however, sales offices must be converted to garages before permanent occupancy. With the exception of periods when garages are used by the Declarant as sales offices, a garage shall be maintained solely for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door. Residences constructed with garage space greater than two automobiles in size providing storage space and/or parking of a third automobile may be enclosed or otherwise used for habitation in all or part of this additional garage space only with the approval of the ACC pursuant to Article VI. In no case shall a doorway, other than overhead garage door, be located in such space, which faces a front yard.

Section 10.19 Setback Lines

All buildings or other structures (including fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback standards imposed by the local governmental jurisdictional authority.

Section 10.20 Athletic and Recreational Facilities

Outdoor athletic and recreational facilities such as basketball goals, swing sets and sport courts of a permanent nature shall not be placed on any Lot in the subdivision between the street right-of-way and the front of a Unit; placement of these facilities in a permanent nature elsewhere on the Lot shall be approved by the ACC pursuant to Article VI. Temporary facilities including outdoor athletic and recreational facilities such as basketball goals, hockey goals, etc. shall not be placed within any street on the Property.

Section 10.21 Security

Neighborhood security patrols may be provided by independent contractors through the Association, from time to time; however the Association is not responsible for security of the neighborhood or any Unit and the Owners are exclusively responsible for security of their home and property.

Section 10.22 Water and Sewage Systems

No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks.

Section 10.23 Exterior Holiday Decorations

Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly observed holiday between December 1 and December 31 of any year, may not be displayed before November 15th of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday.

All lights and decorations that are not permanent fixtures of the Unit which are part of the original construction or have been properly approved as permanent improvements by the ACC shall be removed within thirty (30) days after the holiday has ended. The Board shall have the right, but not the obligation, upon thirty (30) days prior written notice to designate a party to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Board, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion, or damages of any kind except intentional misdeeds and gross negligence.

Section 10.24 Construction Activities

This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by a Lot Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area and any rules promulgated by the ACC. The ACC shall have the right to promulgate reasonable rules and restrictions regulating such construction activities; provided that Declarant shall be exempt therefrom. In the event that construction upon any Lot does not conform to any ACC rule or the usual construction practices in the area as determined by the ACC in its sole good faith judgment, the ACC shall have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of

debris of any kind which is offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Lot Owner shall be liable for all expenses incurred in connection therewith.

Section 10.25 Unit Height

All residential building units shall be limited to two (2) stories in height and the highest point of any structure shall not violate any height restrictions imposed by the zoning ordinances of the local governmental jurisdictional authority. The ACC, in its sole discretion, shall determine whether a Unit meets the criteria of a two-story building. Units built by Declarant shall be exempt from this Section.

Section 10.26 Retaining Walls

No retaining wall may be constructed on a Lot unless otherwise approved in advance by the ACC. Retaining walls may extend into the required front, side or rear setback lines of a Lot. The ACC may require any retaining wall which exceeds two (2) feet in height be designed by a qualified Professional Engineer licensed to practice engineering in the State of Oregon. Retaining walls constructed by the Declarant shall be exempt from this Section.

Section 10.27 Exterior Finish

All exterior walls of all dwellings, garages and approved accessory buildings shall be completely finished with wood, vinyl, stucco, brick, stone, paneling or other material acceptable to the Board. Notwithstanding the foregoing, the Board is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the neighborhood.

Section 10.28 Limitation on Square Feet

The minimum square footage area of Units erected on the Lots, exclusive of open porches and/or garages, shall be not less than one thousand (1,000) square feet.

Section 10.29 Prohibited Plants

Owners shall be prohibited from planting the following species of plants on the Lots:

- (a) Cystisus scoparius, commonly known as Scotch broom;
- (b) Hedera helix, commonly known as English ivy;
- (c) Lythrum salicaria, commonly known as purple loosestrife;
- (d) Phalaris arundinacea, commonly known as reed canarygrass; and

- (e) Rubus discolor, commonly known as Himalayan blackberry.

Section 10.30 Household Chemicals

Owners shall be prohibited from dumping or otherwise disposing of household chemicals within the Property, including, but not limited to cleaning agents, automotive fluids, paint, solvents and other toxic chemicals.

ARTICLE XI- PICKETING AND DEMONSTRATIONS

Section 11.1 Prohibitions

By acceptance of the deed to any Lot covered by this Declaration, the Owner covenants and agrees with the Owners of all other Lots within the subdivision, that no Owner or resident of any Lot shall engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards within public view, upon any Lot or within any Common Area, easement or street right-of way adjacent to any Lot, or affixed to any vehicle or apparatus upon or adjacent to any Lot. This prohibition shall not affect the right of any person to participate in any other form of public protest conducted outside the area depicted on the recorded subdivision Plat. No Owner or resident of any Lot shall engage in conduct that tends to vilify, ridicule, denigrate, or impugn the character of any other Owner or resident if such conduct occurs on any Lot, Common Area, easement or street depicted on the subdivision Plat.

Section 11.2 Acceptance of Prohibitions

Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on his or her constitutional right of free speech and to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; the right to engage in a profession, business or life-style of their own choosing provided that the conduct of such profession, business or life-style is not illegal and does not otherwise violate any provision of this Declaration.

ARTICLE XII- ANNEXATION

Section 12.1 Annexation by Declarant

At any time during the initial term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 99 Lots in the subdivision, including the Lots shown on the Plat, and Lots expected to be created in property to be annexed to the subdivision, but this number may be adjusted at the sole discretion of Declarant. Declarant shall have no obligation of any kind to annex any additional property to the Property.

12.1.1 Eligible Property

Any or all of certain real property in Lane County included on the Plat or located adjacent to ("adjacent" property shall include property on the other side of a street) or contiguous with the Property shall be eligible for annexation. There is no limitation on the number of Lots which Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals.

12.1.2 Consent or Joinder Not Required

No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

12.1.3 Declaration of Annexation

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

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

(b) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of such annexed property; and/or

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

12.1.4 Voting Rights; Allocation of Assessments

Upon annexation, additional Lots so annexed shall be entitled to the voting rights as set forth in Section 2.2, and assessments shall be reallocated and reapportioned in the manner set forth in Section 3.10.

Section 12.2 Annexation by Action of Members

At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved by at least seventy-five percent (75%) of the outstanding votes and by

Declarant so long as Declarant own at least one (1) Lot. Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 12.1.3 above executed by the parties herein described.

Section 12.3 No Duty to Annex

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

ARTICLE XIII - GENERAL

Section 13.1 Remedies

If any default by any Owner under the provisions of the Declaration, Bylaws or rules and regulations of the Association shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, but in all cases subject to the limitations and requirements of the Oregon Planned Community Act. To the extent allowed by law, notwithstanding any other provision of this Declaration or the Bylaws, the Association shall not expend in excess of \$5,000 for attorney fees and costs for any reason unless such expenditure is first approved by at least 75% of the outstanding votes of the Owners. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under this Declaration, the Bylaws or Rules and Regulations, actions to appoint a receiver; actions to summarily abate, enjoin and remove a structure or condition that violates this Declaration or the Bylaws; or for the defense of the Association of an action or proceeding brought against the Association (except for non-mandatory counterclaims). No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law but, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency, from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective maintenance assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Lot and upon all of his additions and improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

Section 13.2 Fines Imposed by the Association

In addition to any other remedies available to the Association hereunder and subject to the requirements of ORS 94.630(1)(n), the Association shall have the right to impose reasonable fines upon an Owner who violates the Declaration, Bylaws and any rules or regulations of the Association, in the manner and amount the Board deems appropriate in relation to the violation.

Section 13.3 Term and Amendments

The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding is presented to the Board or other duly appointed and authorized persons, which shall authorize the Board, or other duly appointed and authorized persons, to execute and properly record a notice of termination of this Declaration in the Deed Records of Lane County, Oregon. This Declaration may be amended at any time during the first thirty (30) year period or any extension thereof, by a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as the Declarant owns a Lot in the Property or have the right to annex additional property to EAST BANK PUD. Notwithstanding the foregoing, no amendment to this Declaration shall change the boundaries of any Lot or any uses to which any Lot or Unit is restricted or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot unless the Owners of affected Lots or Units unanimously consent to the amendment. Upon approval of an amendment as provided herein, the president and secretary shall execute an instrument amending this Declaration and certifying that the amendment was adopted in accordance with this Declaration and ORS 94.590, which certification shall be properly acknowledged in the manner of acknowledgment of deeds, and the Board, or other duly appointed and authorized persons, shall record the instrument amending this Declaration. For purposes of voting on an amendment to this Declaration pursuant to this Section 13.3, Declarant shall be treated as Class A member with one (1) vote per Lot owned, except as otherwise provided by ORS 94.585. Subject to the provisions of Section 13.4, notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of anyone, modify, amend or repeal this Declaration at any time before the closing of the sale on the first Lot, provided said amendment, modification, or repeal is in writing and properly recorded in the Deed Records of Lane County, Oregon. In no event shall an amendment pursuant to this Section create, limit, or diminish Declarant's special rights without Declarant's written consent or change the boundaries of any Lot or any use to which any Lot is restricted unless the Owners of the affected Lots consent to the amendment.

Section 13.4 Regulatory Amendments

Notwithstanding the provisions of Section 13.3, until the Turnover Meeting described in the Bylaws and subject to applicable laws, Declarant shall have the right to amend this Declaration or the Bylaws in order to comply with the requirements of any applicable

statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community or to comply with the Oregon Planned Community Act.

Section 13.5 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

Section 13.6 Rights and Obligations

The provisions of this Declaration and the Articles of Incorporation and Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and Bylaws, whether or not mention thereof is made in said deed.

Section 13.7 Miscellaneous Provisions

Any provision of the within Declaration or of the Articles of Incorporation and Bylaws to the contrary notwithstanding, the following provisions shall control:

13.7.1 Notice to Institutional Holders of First Mortgage Liens

The following actions will require notice to all institutional holders of first mortgage liens: (i) abandonment or termination of the Association; or (ii) material amendment to the Declaration.

13.7.2 Notice to Institutional Holders of First Mortgage of Default or Liens

Upon the request of any first mortgagee of a dwelling on a Lot, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such dwelling in the performance of such Owner's obligations under the within Declaration or the Bylaws or Association rules or regulations which is not cured within thirty (30) days. Any first mortgagee of a dwelling who comes into possession of the said dwelling pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which accrued before the time such holder comes into possession of the dwelling.

13.7.3 Consent of Institutional Holders of First Mortgage Liens

Unless at least seventy-five percent (75%) of the first mortgagees (based upon one (1) vote per Lot for each mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(a) by act or omission seek to abandon, partition, encumber, or transfer the Common Areas, if any, or any portion thereof or interest therein except for the purpose of dedication for public right of way. (The granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause.);

(b) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the Units or maintenance of the Units or Lots;

(d) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Areas on a current replacement cost basis in an amount not less than one hundred (100) percent of the insurable value (based on current replacement costs).

Section 13.8 Personal Pronouns

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

Section 13.9 Headings

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 13.10 Conflicts

If there is a conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

Section 13.11 Partial Invalidity

The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of this 1ST day of OCTOBER, 2007.

DECLARANT:

SANDPINES DEVELOPMENT LLC, an Oregon
limited liability company

By: [Signature]

Its: Member

STATE OF OREGON)

) ss.

COUNTY OF LANE)

The foregoing instrument was acknowledged before me the 1ST day of OCTOBER, 2007, by JOE STURTEVANT MEMBER of Sandpines Development LLC, an Oregon limited liability company, on behalf of the company.

Pamela S. Card

Notary Public, State of Oregon

My Commission Expires: _____

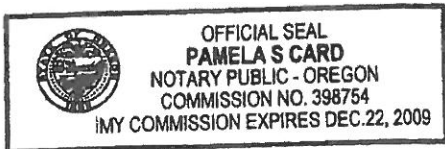


EXHIBIT "A"

PROPERTY SUBJECT TO DECLARATION.....	1
TABLE OF CONTENTS.....	2

EXHIBIT "A"

PROPERTY SUBJECT TO DECLARATION

The property known as EAST BANK PUD is Lots 1 through 99, as shown on the duly recorded plat of EAST BANK PUD located in the City of Florence, Lane County, Oregon, according to the plat recorded in the Plat Records of Lane County, Oregon, contemporaneously herewith.

TABLE OF CONTENTS

ARTICLE I - DEFINITIONS	1
Section 1.1 "Association"	1
Section 1.2 "Board"	1
Section 1.3 "Bylaws"	2
Section 1.4 "City"	2
Section 1.5 "Common Areas"	2
Section 1.6 "Common Maintenance Areas"	2
Section 1.7 "Conversion Date"	2
Section 1.8 "County"	2
Section 1.9 "Declarant"	2
Section 1.10 "Declaration"	2
Section 1.11 "Directors"	3
Section 1.12 "Improvement"	3
Section 1.13 "Lot"	3
Section 1.14 "Owner"	3
Section 1.15 "Plat"	3
Section 1.16 "Private Utilities"	3
Section 1.17 "Property"	3
Section 1.18 "Tract"	3
Section 1.19 "Turnover Meeting"	4
Section 1.20 "Unit"	4
ARTICLE II – EAST BANK PUD HOMEOWNERS' ASSOCIATION	4
Section 2.1 Membership	4
Section 2.2 Voting Rights	4
Section 2.3 Suspension	4
Section 2.4 The Association Board of Directors	5
Section 2.5 Turnover Meeting	5
Section 2.6 Immunity of the Board	5
Section 2.7 Clarification of Role of Association	5
Section 2.8 Liability	5
Section 2.9 Indemnification	5
Section 2.10 Association Rules and Regulations	6
ARTICLE III – COMMON MAINTENANCE AREAS/ASSESSMENTS	6
Section 3.1 Funding	6
Section 3.2 Annual Assessment or Charge on Lots Owned by Class A Members	6
Section 3.3 Units on Lots Owned by Declarant	7
Section 3.4 Purposes of Maintenance Fund	7
Section 3.5 Reserve Funds	8
Section 3.6 Limited Assessments	9
Section 3.7 Additional Assessments	9
Section 3.8 Non-payment of Assessments: Remedies of the Association	9

Section 3.9	Subordinated Lien to Secure Payment	9
Section 3.10	Reallocation Upon Annexation of Property	10
ARTICLE IV - GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS.....		10
Section 4.1	Interim Board	10
Section 4.2	Purpose of Maintenance Fund	10
Section 4.3	Powers and Duties of Board	11
Section 4.4	Board Powers Exclusive	12
Section 4.5	Maintenance Contracts.....	12
ARTICLE V - COMMON MAINTENANCE AREAS		13
Section 5.1	Conveyance	13
Section 5.2	Liability Insurance; Casualty Insurance.....	13
Section 5.3	Condemnation	13
Section 5.4	Maintenance of Common Maintenance Areas.....	14
Section 5.5	Prohibited Activities	14
ARTICLE VI - ARCHITECTURAL REVIEW		14
Section 6.1	Architectural Control Committee	14
Section 6.2	Architectural Manual	15
Section 6.3	Scope of Review	15
Section 6.4	Submission of Plans	15
Section 6.5	Plan Review	15
Section 6.6	Non-conforming Structures	16
Section 6.7	Immunity of ACC Members	16
Section 6.8	Limited Review.....	16
Section 6.9	Address for Notice	16
ARTICLE VII - EASEMENTS		17
Section 7.1	Utility Easements.....	17
Section 7.2	Declarant's Easement to Correct Drainage.....	17
Section 7.3	Entry Easement	17
Section 7.4	Reserved Easements.....	17
Section 7.5	Temporary Completion Easement	18
Section 7.6	Perimeter Fence Easement.....	18
Section 7.7	Maintenance Easements.....	18
Section 7.8	Plat Easements	18
ARTICLE VIII - USE, OCCUPANCY, CASUALTY, AND INSURANCE		18
Section 8.1	Residential Use	18
Section 8.2	Commercial, Institutional, or Other Non-Residential Uses	18
Section 8.3	Garage Sales.....	19
Section 8.4	Declarant Use.....	19
Section 8.5	Owner Insurance	19
Section 8.6	Casualty.....	19
ARTICLE IX - PROPERTY RIGHTS		20

Section 9.1	Owner's Use and Occupancy	20
Section 9.2	Common Areas; Rights of Association	20
Section 9.3	Effect of Declaration.....	20
Section 9.4	Rezoning Prohibited.....	21
Section 9.5	Lot Consolidation and Division	21
Section 9.6	Drainage Alteration Prohibited	21
Section 9.7	Damage or Destruction By Owner.....	21
ARTICLE X - USE RESTRICTIONS		21
Section 10.1	Nuisances	21
Section 10.2	Development Activity	21
Section 10.3	Temporary Structures.....	22
Section 10.4	Signs.....	22
Section 10.5	Campers, Boats, Recreational Vehicles, Commercial Vehicles, and other Non-Passenger Vehicles	23
Section 10.6	Pets, Livestock and Poultry.....	24
Section 10.7	Garbage and Refuse Disposal	24
Section 10.8	Parking	24
Section 10.9	Commercial or Institutional Use.....	25
Section 10.10	Detached Buildings.....	25
Section 10.11	Fences and Hedges.....	25
Section 10.12	General Landscaping and Exterior Maintenance	26
Section 10.13	Antennae, Satellite Dishes and Solar Collectors.....	26
Section 10.14	Clothes Hanging Devices.....	26
Section 10.15	Window Treatment	26
Section 10.16	Oil and Mining Operations	27
Section 10.17	Mailboxes.....	27
Section 10.18	Garages	27
Section 10.19	Setback Lines.....	27
Section 10.20	Athletic and Recreational Facilities.....	27
Section 10.21	Security	28
Section 10.22	Water and Sewage Systems	28
Section 10.23	Exterior Holiday Decorations	28
Section 10.24	Construction Activities	28
Section 10.25	Unit Height.....	29
Section 10.26	Retaining Walls.....	29
Section 10.27	Exterior Finish	29
Section 10.28	Limitation on Square Feet.....	29
Section 10.29	Prohibited Plants	29
Section 10.30	Household Chemicals	30
ARTICLE XI - PICKETING AND DEMONSTRATIONS.....		30
Section 11.1	Prohibitions	30
Section 11.2	Acceptance of Prohibitions	30
ARTICLE XII - ANNEXATION.....		30
Section 12.1	Annexation by Declarant	30

Section 12.2	Annexation by Action of Members.....	31
Section 12.3	No Duty to Annex.....	32
ARTICLE XIII - GENERAL.....		32
Section 13.1	Remedies.....	32
Section 13.2	Fines Imposed by the Association	33
Section 13.3	Term and Amendments.....	33
Section 13.4	Regulatory Amendments	33
Section 13.5	Severability	34
Section 13.6	Rights and Obligations.....	34
Section 13.7	Miscellaneous Provisions.....	34
Section 13.8	Personal Pronouns.....	35
Section 13.9	Headings	35
Section 13.10	Conflicts.....	35
Section 13.11	Partial Invalidity.....	35

EXHIBIT "B"

**BYLAWS OF EAST BANK PUD
HOMEOWNERS' ASSOCIATION**

BY-LAWS OF EAST BANK PUD H.O.A. **A NOT-FOR-PROFIT CORPORATION**

ARTICLE I ORGANIZATION

1. The name of the organization shall be EAST BANK PUD H.O.A.
2. The organization may at its pleasure by a vote of the membership body change its name.

ARTICLE II PURPOSES

This organization is formed for the purpose of managing the East Bank PUD community and homeowner's association.

ARTICLE III MEMBERSHIP

Membership in this organization shall be open to all who own title to a lot of home in East Bank PUD.

ARTICLE IV MEETINGS

The annual membership meeting of this organization shall be held on the 15th day of January each and every year except if such day be a legal holiday, then and in that event, the Board of Directors shall fix the day but it shall not be more than two weeks from the date fixed by these By-Laws.

The Secretary shall cause to be mailed to every member in good standing at his address as it appears in the membership roll book in this organization a notice telling the time and place of such annual meeting.

The presence of not less than fifty (50%) percent of the members shall constitute a quorum and shall be necessary to conduct the business of this organization; but a lesser percentage may adjourn the meeting for a period of not more than two weeks from the date scheduled by these By-Laws and the secretary shall cause a notice of this scheduled meeting to be sent to all those members who were not present at the meeting originally called. A quorum as herein before set forth shall be required at any adjourned meeting.

Special meetings of this organization may be called by the president when he deems it for the best interest of the organization. Notices of such meeting shall be mailed to all members at their addresses as they appear in the membership roll book at least ten (10) days before the scheduled date set for such special meeting. Such notice shall state the reasons that such meeting has been called, the business to be transacted at such meeting and by whom it was called. At the request of sixty six (66%) percent of the members of the Board of Directors or twenty five (25%) percent of the members of the organization, the

president shall cause a special meeting to be called but such request must be made in writing at least ten (10) days before the requested scheduled date.

No other business but that specified in the notice may be transacted at such special meeting without the unanimous consent of all present at such meeting.

ARTICLE V VOTING

At all meetings, except for the election of officers and directors, all votes shall be by voice. For election of officers, ballots shall be provided and there shall not appear any place on such ballot that might tend to indicate the person who cast such ballot.

At any regular or special meeting, if a majority so requires, any question may be voted upon in the manner and style provided for election of officers and directors.

At all votes by ballot the chairman of such meeting shall, prior to the commencement of balloting, appoint a committee of three who shall act as "Inspectors of Election" and who shall, at the conclusion of such balloting, certify in writing to the Chairman the results and the certified copy shall be physically affixed in the minute book to the minutes of that meeting.

No inspector of election shall be a candidate for office or shall be personally interested in the question voted upon.

ARTICLE VI ORDER OF BUSINESS

1. Roll Call.
2. Reading of the Minutes of the preceding meeting.
3. Reports of Committees.
4. Reports of Officers.
5. Old and Unfinished Business.
6. New Business.
7. Adjournments.

ARTICLE VII BOARD OF DIRECTORS

The business of this organization shall be managed by a Board of Directors consisting of 3 members, together with the officers of this organization. At least one of the directors elected shall be a resident of the State of the East Bank PUD development.

The directors to be chosen for the ensuing year shall be chosen at the annual meeting of this organization in the same manner and style as the officers of this organization and they shall serve for a term of one year.

The Board of Directors shall have the control and management of the affairs and business of this organization. Such Board of Directors shall only act in the name of the organization when it shall be regularly convened by its chairman after due notice to all the directors of such meeting.

Sixty (60%) percent of the members of the Board of Directors shall constitute a quorum and the meetings of the Board of Directors shall be held regularly on the [DATE].

Each director shall have one vote and such voting may not be done by proxy.

The Board of Directors may make such rules and regulations covering its meetings as it may in its discretion determine necessary.

Vacancies in the Board of Directors shall be filled by a vote of the majority of the remaining members of the Board of Directors for the balance of the year.

The President of the organization by virtue of his office shall be Chairman of the Board of Directors.

The Board of Directors shall select from one of their members a secretary.

A director may be removed when sufficient cause exists for such removal.

The Board of Directors may entertain charges against any director. A director may be represented by counsel upon any removal hearing. The Board of Directors shall adopt such rules for this hearing as it may in its discretion consider necessary for the best interests of the organization.

ARTICLE VIII OFFICERS

The initial officers of the organization shall be as follows:

President:	Andrew Hennen
Secretary:	Kristin Clark
Treasurer:	Kathleen Hetzel

The President shall preside at all membership meetings.

He shall by virtue of his office be Chairman of the Board of Directors.

He shall present at each annual meeting of the organization an annual report of the work of the organization.

He shall appoint all committees, temporary or permanent.

He shall see all books, reports and certificates required by law are properly kept or filed.

He shall be one of the officers who may sign the checks or drafts of the organization.

He shall have such powers as may be reasonably construed as belonging to the chief executive of any organization.

The Vice President shall in the event of the absence or inability of the President to exercise his office become acting president of the organization with all the rights, privileges and powers as if he had been the duly elected president.

The Secretary shall keep the minutes and records of the organization in appropriate books.

It shall be his duty to file any certificate required by any statute, federal or state.

He shall give and serve all notices to members of this organization.

He shall be the official custodian of the records and seal of this organization.

He may be one of the officers required to sign the checks and drafts of the organization.

He shall present to the membership at any meetings any communication addressed to him as Secretary of the organization.

He shall submit to the Board of Directors any communications which shall be addressed to him as Secretary of the organization.

He shall attend to all correspondence of the organization and shall exercise all duties incident to the office of Secretary.

The Treasurer shall have the care and custody of all monies belonging to the organization and shall be solely responsible for such monies or securities of the organization. He shall cause to be deposited in a regular business bank or trust company a sum not exceeding \$ 5,000 and the balance of the funds of the organization shall be deposited in a savings bank except that the Board of Directors may cause such funds to be invested in such investments as shall be legal for a non-profit corporation in this state.

He must be one of the officers who shall sign checks or drafts of the organization. No special fund may be set aside that shall make it unnecessary for the Treasurer to sign the checks issued upon it.

He shall render at stated periods as the Board of Directors shall determine a written account of the finances of the organization and such report shall be physically affixed to the minutes of the Board of Directors of such meeting.

He shall exercise all duties incident to the office of Treasurer.

Officers shall by virtue of their office be members of the Board of Directors.

No officer shall for reason of his office be entitled to receive any salary or compensation, but nothing herein shall be construed to prevent an officer or director for receiving any compensation from the organization for duties other than as a director or officer.

ARTICLE IX SALARIES

The Board of Directors shall hire and fix the compensation of any and all employees which they in their discretion may determine to be necessary for the conduct of the business of the organization.

ARTICLE X COMMITTEES

All committees of this organization shall be appointed by the Board of Directors and their term of office shall be for a period of one year or less if sooner terminated by the action of the Board of Directors.

ARTICLE XI DUES

The dues of this organization shall be \$ 150 per annum and shall be payable on 5th day of January each year.

ARTICLE XII AMENDMENTS

These By-Laws may be altered, amended, repealed or added to by an affirmative vote of not less than fifty (50%) percent of the members.

Adopted by the directors of East Bank PUD H.O.A.

On this date of 8/20, 2007

By: [Signature]

Name : Andrew Hennen

By: [Signature]

Name : Kathleen Hetzel

STATE OF Washington
County of Clark :SS

I certify that I know or have satisfactory evidence that Andrew Hennen and Kathleen Hetzel are the people who appeared before me, and said persons acknowledged that he and she signed this instrument on oath, stated that he and she were authorized to execute the instrument and acknowledged it as the President and Treasurer of East Bank PUD H.O.A. and East Bank PUD H.O.A.

To be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

Dated: 8/20/07



[Signature]
Notary Public in and for the State of WA, residing
At 2005 Broadway
My Commission expires 4/1/08

