CITY OF Salem AT YOUR SERVICE

MEMO

TO: Planning Commission

FROM: Lisa Anderson-Ogilvie, AICP
Deputy Community Development Director and
Planning Administrator

DATE: September 8, 2021

SUBJECT: **Fairview Refinement Plan Minor Amendment Case No. FRPA21-01; Open Record**

On August 17, 2021, the Planning Commission held a public hearing to consider the appeal of the Planning Administrator's June 22, 2021, decision approving Fairview Refinement Plan Minor Amendment Case No. FRPA21-01. The hearing was closed and the record subsequently left open until August 24, 2021 at 5:00 p.m. for anyone to submit additional written testimony. Following that deadline, there was an opportunity for anyone to submit rebuttal on any of the additional written testimony by August 31, 2021 at 5:00 p.m. The applicant had until September 7, 2021 at 5:00 p.m. to submit final written rebuttal.

During the first open record period there were four additional comments received **(Attachment A)**, followed by two comments submitted by the second open record period deadline **(Attachment B)**, then the Applicant submitted final rebuttal **(Attachment C)**. This memo, with attached comments, is being sent to the Planning Commission today, September 8, 2021.

Attachments:

A. Comments Submitted by August 24, 2021
B. Comments Submitted by August 31, 2021
C. Applicant Final Rebuttal

cc: FRPA21-01 File

Shelby Guizar

From: Steven W <steven.weiss1665@gmail.com>
Sent: Friday, August 20, 2021 10:33 PM
To: Shelby Guizar
Subject: Fwd: Appeal of the Planning Administrator's decision to approve a minor amendment to the Pringle Creek Community Refinement Plan

Subject: Appeal of the Planning Administrator's decision to approve a minor amendment to the Pringle Creek Community Refinement Plan
To: <BBishop@cityofsalem.net>

Mr. Bishop, Planning Commissioners;
RE Case No. FRPA21-01

My name is Steven Weiss, and I reside at 1881 Cousteau Lp SE, Salem, OR 97302 in the Pringle Creek Community.

After listening to the Commission meeting last Tuesday, I wish to provide an additional comment. I do not want to repeat the issues brought up by the residents opposing the Amendment, but I believe two points were not made during the meeting.

1) The amendment should be rejected, because it does not meet the requirement for a "minor" amendment. According to criterion B: "*The proposed amendment will not unreasonably impact surrounding existing or potential uses or development.*" It is incumbent upon the applicant, who has the burden of proof, to show how the amendment would satisfy this criterion.

The concentration of multifamily and commercial development being moved to section 3 of the development will certainly cause parking and traffic problems (including access by emergency vehicles) to the surrounding area. Simply stating that it will not, is not proof. It should be noted that Painter's Hall, also in that area, often hosts activities such as meetings, weddings, parties and community functions, often bringing additional traffic (sometimes with over 60 vehicles), which the applicants did not mention, much less take into consideration.

In any case, it is up to the applicant to provide evidence that their proposal will not, "...impact surrounding existing or potential uses,..." not those appealing the proposed amendment. The *applicants* have the responsibility to present the evidence, --and not the appellants -- and they have not done so. In fact, the applicants have provided *no evidence or studies* to show that they have met the burden of proof to qualify as a "minor amendment." To do so, at a minimum, they would need to provide a detailed parking and traffic plan to prove that the proposed concentration of housing and commercial development would not impact existing uses. Until this evidence is provided to the Commission, the amendment cannot be considered a "minor" one, and must be rejected upon these grounds alone.

2) Several of the community members who testified at the meeting complained about issues regarding Stafford, who is building out the residential lots. Those issues included the destruction of bio-swales and road borders, damage and removal of trees, construction trash, objectionable mulching, working on weekends, etc. The applicant (SI, etc.) stated that these complaints were irrelevant to their proposal, because they should instead be directed to Stafford.

However, these complaints *are relevant* to this proceeding. The reason for this is that the experience with Stafford must give everyone pause regarding whether SI can be trusted to hand over construction of the proposed apartments and commercial buildings to a contractor. SI handed control to Stafford, but has not required adequate safeguards for the community. SI has not provided enforcement of so-called agreements with Stafford to build with the community values in mind. Given this history of inadequate oversight that commenters witnessed, I am very skeptical of SI ensuring the proper oversight of this new development. Our community's experience with Stafford directly impacts our view of SI's ability, motivation and intent to enforce promises the applicants have made. We have seen how poorly the agreement with Stafford has worked out, and the reason for this falls squarely with SI. Simply put, without iron-clad enforcement mechanisms, SI's oversight cannot be trusted.

For these two reasons, I urge the Commission to reject this so-called "minor amendment," until:

> (A) a detailed parking and traffic plan is created that can handle the added off-street parking the development will require, including the anticipation of Painter's Hall events, and;
> (B) Enforcement mechanisms are in place to ensure that all construction follows the vision and details of the Refinement Plan.

Thank you,
Steven Weiss
1881 Cousteau Lp SE

503-851-4054

Shelby Guizar

From: Terri Valiant <terri@betterbuildersoforegon.com>
Sent: Tuesday, August 24, 2021 12:55 PM
To: Bryce Bishop; Dean Chu
Cc: Lisa Anderson-Ogilvie; Shelby Guizar
Subject: Letter for Planning Commission and question for staff
Attachments: Aug 23 letter to Planning COmmission summarizing appeal issues.pdf; Morningside HOA letter for denial.pdf

Hi Bryce,

Attached please find my letter that includes 2 attachments:

- Opsis Architecture letter to City outlining MANDATORY requirements for financial assurances
- Draft Conditions of Approval

I'm also including a letter from the Morningside HOA to the City asking the application be denied. I believe you have received this from them but I am attaching it for the record as well.

There are several elements of the original Refinement Plan that were part of their proposal yet were never implemented. Since it was part of their proposal, there were no additional conditions of approval needed, nonetheless they are part of the package that was put forth. What is the City's position on enforcement for elements of their approved plan that require action and follow up by the then Developer, now applicant for the Minor Mod? Specifically, for the financial assurances issue, we would like to hear from the City on if/how the City will handle enforcing the applicant's specific 'mandatory requirement' they put forth which states they will be setting up a Conservation Trust and will provide funds to the Conservation Trust to be used along with our HOA due monies to pay for the maintenance and management of all the private infrastructure. Is this something the City will enforce and if so, how will this be handled procedurally?

Thank you,

Terri Valiant

Aug 23, 2021

City of Salem Planning Commission

RE: Appeal of the Minor Modification to the Pringle Creek Refinement Plan (FRPA21-01)

Dear Members of the Planning Commission,

We would like to take this opportunity to clarify a few issues, questions and statements made during the public hearing last week on this case:

SUMMARY OF REASONS FOR APPEAL:

- **Procedural errors** on the approval and implementation of the Refinement Plan should have precluded the applicant from applying for a Minor Modification.
  - **The Refinement Plan is still not in compliance with the City's conditions of approval.** The applicant failed to modify the Refinement Plan to meet the required conditions of approval. Furthermore, Staff modified the use tables for the applicant to address one condition for the commercial off street parking requirement. Why is staff doing the work/satisfying conditions of approval for the applicant?? Other conditions of approval are still not met.
  - **City staff failed to require the applicant to meet the conditions of approval prior to platting and development**.
    - The subdivision was approved in 2006 (a year later) with no conditions of approval from the Refinement Plan having been met. This shouldn't have happened.
    - The applicant was required to update the area acreages after platting. We haven't seen evidence that this has occurred either. So, we can't be certain their acreage/density #'s are correct.
  - The **applicant failed to implement the elements of the plan they included as part of the Refinement Plan:**
    - In response to the City's concern over financial assurances for how the extensive private infrastructure would be managed and maintained, the applicant (in a written letter to the City) stated they would establish a Pringle Creek Conservation Trust, provide funds for the trust and together with HOA fees, there would be financial assurances on the long-term maintenance and management of infrastructure. This never happened. They didn't set up the Conservation Trust and they didn't provide any funds.

        - They didn't complete the streets according to the street cross-section details or other details which call for emergency vehicle queuing lanes and bollards in some locations.
        - This shouldn't have been allowed to happen. They should have been required to implement the elements of the Refinement Plan they put forth as part of the overall plan.

- **Technical errors:**
    - **Application should have been considered a Major Modification** given the significant impacts to the infrastructure as a result of the residential density increase of 216% and 51% increase in commercial sq ft in Village Center/Area 3
        - The reduced width streets and the design and layout of the infrastructure confirm that Area 3 was never intended to accommodate the proposed increases.
        - The road widths are the narrowest in/out/around the Village Center/Area 3. To place the highest density in this area goes against basic planning and infrastructure design principles.
        - The fact that the overall maximum density number doesn't change is not an adequate measure of impact. Significant impact will be created in the Village Center / Area 3 as a result of the increased densities and sq ft.
    - **Staff has changed their interpretation of the off-street parking standard** from when they presented the project and their recommendation to the Planning Commission in 2005. In November 2005 Staff and the applicant stated during the Planning Commission hearing, and it is written in the Findings of Fact, that all residential units will have 1 off-street parking space. One (1) off street parking space per residential unit makes sense given the narrow streets. This standard should remain throughout the entire development.
    - **Staff's position that not all inconsistencies need to be cleaned up is irresponsible.** The applicant created the original Refinement Plan. Why should they not have to clean up all the remaining inconsistencies if they are 'clarifying' and 'updating' other areas? Not requiring them to clean up all the inconsistencies while they are proposing more changes to the Refinement Plan is neither in the public nor the community's best interest. We tried to talk to the applicant about the confusing /conflicting standards and the difficulty of gray areas with development, his response was 'we like the gray areas'. This shows their misleading approach is purposeful and a disgrace. The plan needs to be cleaned up.

Questions/Issues raised by the Planning Commission:

- Some issues seem to be between Developers and resident/owners. The applicant has failed to carry out many of the promises they made in the Refinement Plan and those made since the Refinement Plan. While some issues are more specifically governed by

CCRs/HOA documents, the residents of the community are concerned about parking and tree preservation given the increased density and commercial sq ft proposed. As with the other areas of concern, we'd like clarification from the City Attorney on what elements of a proposal are required to be complied with by the City. Does the City enforce the need/proof of financial assurances for the maintenance and management of private infrastructure when the City's review specifically called for this? (letter from applicant attached)

- Intent vs standard: The question of whether or not 95 units can be accommodated in the Village Center came up. The applicant may say it's not their 'intent' to build 95 units in the Village Center. They haven't fulfilled many of their 'intentions'. You can not base a decision on intent. They are proposing 95 units so your review needs to assume 95 units will be constructed.
- Road improvement and possible transit service: We called Cherriots Transport and they have no plans in their Capital Improvement Plan to provide transit service to Pringle Creek. They even clarified the issue further by saying even if and when they see a need for transit (which isn't anytime soon) they have no funding for additional routes that would serve Pringle Creek.
- City has ability to revisit the Refinement Plan: The city has the ability to call up the Refinement Plan for review and modification. Since the applicant/ex-Developer has shown no interest in modifying their plan consistent with the conditions of approval or clearing up all the existing inconsistencies in the Refinement Plan, the City has the ability to do this for them by calling for a review of Refinement Plan. We would welcome this and would like to be a part of this process.

Statements / issues raised by the Applicant:

- Minor Modification is '100% consistent' with original vision and intent. Their statement has not been supported by any fact. The Refinement Plan doesn't say anywhere that density needs to be concentrated in the Village Center – not in text, tables or graphics. The design and construction of the infrastructure is reflective of the original intent / density in the Village Center. The original intent was not 95 residential units and 45,200 sq ft of commercial, all with parking on the narrow ,reduced-width streets.
- The applicant's attorney stated we have issues with the original Refinement Plan / we are trying to appeal the Refinement Plan. **This is completely incorrect.**
    - We are very pleased and supportive of the original Refinement Plan, its vision and intent, sustainability goals, tree preservation plan, densities, layout, uses etc.
    - We would like the inconsistencies cleaned up so there isn't confusion about what standards apply.
    - We would like all requirements and standards applied equitably and all processes followed.
    - We would like parking standard to reflect what the staff, applicant and Planning Commission discussed and approved in 2005
    - We want the standards to be clear, fair and consistent.

SUMMARY:

- **Given the applicant's lack of compliance with the 2005 approval of the Refinement Plan, the application should be denied.**

- **If the proposed increases in residential density and commercial sq ft is allowed to go forward, it should be considered a Major Modification to the Refinement Plan and all necessary and supporting technical studies should be required: TIA, infrastructure capacity study, parking study, financial assurances guaranteed, etc.**

- **Recommended Conditions of Approval if proposal is approved, are attached.**

- **We support the Approved Refinement Plan's intent and vision, densities, uses and 1 off-street parking space per residence.**

The Pringle Creek community's primary goals are to:

- clarify the standards
- ensure inconsistencies within and between documents are cleaned up
- original vision and intent is protected
- standards are clear, equitable and consistent.

Toward this end, given the uncertain outcome of this review process, we have applied for a Pre-application conference to discuss the Pringle Creek Community of owner/residents' own Minor Modification to the Refinement Plan to:

- Update density ranges across site to ensure there is adequate infrastructure to support proposed density.
- Clarify off street residential parking requirement to eliminate ambiguity.
- Update and clarify the Tree Preservation Plan standards to ensure maximum protection of the trees identified as needing protection by the Refinement Plan and Subdivision.
- Provide details for how on-street parking shall be reviewed, inventoried, managed, and enforced.
- Clean up and clarify the edited language of the Design Standards of the Refinement Plan to reflect standards applicable to development today.

This might have some relevance when you are discussing the applicant's proposed changes which still do not bring the Refinement Plan in compliance with the 2005 approval.

Thank you for your time. We appreciate your thoughtfulness and efforts.

Terri Valiant,
on behalf of the Pringle Creek owners/residents who signed the appeal

opsis architecture LLP

920 nw 17th ave
portland oregon 97209
tel 503 525 9511
fax 503 525 0440

MEMORANDUM

Date: **9.30.05**

To: **Joe Parrott**
Deputy Chief
Salem Fire Department
370 Trade St. SE
Salem, OR 97301

From: **Mark Kogut**

Project: **Pringle Creek Community**

Project No.: **4261**

Reference: **Alternate Means and Methods Request**

Pringle Creek Community is developing a transportation network that is consistent with the City of Salem's approved Sustainable Fairview Master Plan that will incorporate narrow "Green Streets" as a defining feature for this sustainable community. It is understood that the narrow streets do not meet criteria for Fire Department access within the development, to this end, we are requesting an alternate methods and materials with the following mandatory requirements for all development within Pringle Creek Community:

1. Fire sprinklers of all habitable structures per NFPA standards for the application
    a. 13D for single family.
    b. 13R for multi-family/townhouse.
    c. 13 for commercial.
    d. An exemption will be provided for the existing Fuel Shed as long as it maintains it's unenclosed perimeter.
2. The fire sprinkler requirement will be a part of the deed of individual parcels and properties within Pringle Creek Community's development subdivision and platting process.
3. All blocks with a length greater than 200' will require a mid-block queuing space as indicated in the attachment.
4. See the attached street layout and street sections plans.
5. See location of fire hydrants per utility plans.
6. Fire department accessibility at B Street and the existing Fuel Shed / Boiler will either provide a R.O.W. for fire department access and connection to A Street or Parcel 5 will be designed to allow for a loop access thru a planned woonerf plaza in Parcel 5.
7. All private infrastructure will be owned and managed by a combination of the Pringle Creek Community Conservation Trust and Homeowners Association (HOA). Management responsibilities will be included in the Pringle Creek Communities Codes Covenants And Restrictions (CC+R's). Funding for the maintenance and management of infrastructure will be provided by the Community Conservation trust and dues from HOA members.

end of memorandum

PRINGLE CREEK REFINEMENT PLAN – CONDITIONS OF APPROVAL

1. Prior to any issuance of any further building permits, updated Area Tables shall be submitted to the City for review and approval. The updates shall include:
    - 1 off street parking space shall be required for every residential unit, except for multi-family which has its own standards, below.
    - Commercial parking shall be provided off street unless it can be demonstrated that adequate on-street spaces are available for a portion or all of the commercial use.
    - Off street parking for multi-family residential in Area 3 shall be provided at the following rates, consistent with the Multi-Family Housing Design Standards, as follows:
        - 3-12 units: 1 space per unit
        - 13+ units: Based on bedroom size of unit
            - Studio or 1-bedroom: 1 space per unit
            - 2+ bedrooms: 1.5 spaces per unit

2. Prior to issuance of any building permits lots in Area 3/Village Center, the Applicant shall prepare an updated Street Inventory Parking Plan. This Plan shall include base maps, based on the recorded plats and existing development patterns.
   Base maps should include the following:
    - readable scale
    - dimensions of street widths and parking spaces per city standard
    - utility overlays to show fire hydrant locations, bioswales and any utilities that may interfere with the ability to accommodate off street parking
    - mail boxes (adequate space for residents / postal workers to gain access to mail boxes)
    - walking paths
    - driveway locations;
    - 45' long emergency vehicle parking queuing area mid-block for every block over 200' in length
    - ADA spaces nearest to commercial uses – per City standards for on-street ADA access

   The Street Inventory Plan shall include implementation, monitoring, and updating provisions which detail how the review, monitoring and updating of the Street Inventory Plan will be conducted with individual lot development.

3. Prior to issuance of any building permits in Village Center/Area 3, the applicant shall post no parking signs along one side of Cousteau Loop.

4. The Design Standards section shall be updated to eliminate the edited text and replace with the appropriate standards.

5. Prior to issuance of any grading or building permit with a protected tree either on the lot for which development will happen or within the dripline of a tree on an adjacent lot, the Tree Preservation Plan Standards included the Refinement Plan shall be considered required standards for basic tree preservation. Review of grading permits for any site development shall be done against the tree preservation plan standards and include site review to ensure compliance with tree protection fencing, grading methods, excavation details, etc.

6. The Applicant shall provide documents demonstrating a Pringle Creek Conservation Trust has been legally established. The applicant shall demonstrate that adequate funds for the Conservation Trust have been provided for the sole purpose of maintenance and management of the private infastructure. The Conservation Trust and funds shall be completed and documents demonstrating compliance submitted to the City for review and approval prior to any future development within Area 3/Village Center.

Morningside Neighborhood Association

August 20, 2021

To: Bryce Bishop and Salem Planning Commission

From: Morningside Neighborhood Association

Pringle Creek Community Refinement Plan Amendment

Case No. FRPA21-01

MNA is the official neighborhood that includes Fairview.

MNA has been involved in the Fairview planning since the original design charette in 2000. Pringle Creek Community was the first phase and has a Master Plan and Policies that have to be adhered to and implemented. There is currently an effort to stray from those standards. For example there is a proposed 730% increase in density at the Village Center. That is inconsistent with the original plan and vision, and with the adopted 2005 Refinement Plan.

MNA is aware that the owners of 35 properties, including some who have lived in Pringle Creek Community from the beginning, have either signed an Appeal as applicants or put their names down as "Supporters of the Appeal." Many of those homeowners provided either oral or written testimony to the Planning Commission on August 17, 2021. MNA attended the hearing as observers but did not testify because a board position had not been established at that time.

Neighborhood Meeting Attendance:

Many neighbors had tried to attend the MNA monthly meeting, but were prevented from attending due to problems with the MNA Zoom link.

The Appellants, i.e. the neighbors and residents are asking the Planning Commission to rescind Staff's approval of the proposed amendment for the following reasons.

1. **It is based on an invalid refinement plan;**
2. **Sustainable Investments, LLC should be required to modify and re-submit the November 4, 2005 version of the refinement plan to (1) include the conditions imposed by the Planning Commission at their meeting of November 15, 2005;**
3. **The discrepancies in the various Land Use Tables should be corrected; and**
4. **A valid analysis of available parking and traffic flow, based on the corrected November 2005 refinement plan, should be provided.**

The above will resolve any inconsistencies that exist in the refinement plan, and negate the need to amend.

The Salem Planning Commission approved the refinement plan on November 15, 2005 with conditions contained in the Salem Planning staff's report of November 8, 2005. Key conditions included,

- "Commercial parking shall be provided off-street unless at the time of future development it can be demonstrated that adequate on-street parking exists to accommodate a portion or all of the off-street parking requirements."
- "One parking space per unit of single family detached and accessory dwelling units (Coach lane house). Cottage courtyard units are allowed to have remote detached garage parking. Attached dwelling units are to have one space per dwelling unit with the remaining dwelling unit."

Inconsistencies in the Refinement Plan

Sustainable Investments submitted a request in March 2021 to amend the refinement plan supposedly to eliminate inconstancies that they and the City had known about for years. The changes that SI made in their amendment request did not resolve any inconsistencies but will result in:

• a major change in the character of Areas 3 and 9;
• a significant increase in traffic flow in those areas; and
• a large increase in the number of required on-street parking.

Morningside Neighborhood Association

The streets in Pringle Creek Community are private and the Homeowners Association is responsible for their maintenance and upkeep. The large increase in traffic that will inevitably result from the increased density in Areas 3 and 9 will result in significantly higher street maintenance costs to the neighbors HOA.

The streets in Pringle Creek are narrow by design - approximately 13.5' wide. The large increase in required parking spaces caused by the significant increase in density will force cars to park on both sides of those narrow street thereby severely restricting travel lanes. This could be a matter of life and death if emergency vehicles, particularly ambulances, cannot reach their destination in time because of the restricted travel lanes on the community's narrow streets.

The original vision for the development as pertains to Area 3 and stated in the 2005 proposed refinement plans is clear:

Primary Use - regeneration of existing buildings into a mix of uses to support the community square activities with potential uses, but not limited to the following: cultural facilities, bed and breakfast, boutique hotels, interpretive museum, performing arts facility, artists studios, carpentry workshop, craft workshop, office, community storage, restaurants, day-care facility, cafe with performing arts events, community meeting hall, community cooperative uses, library, mixed-use commercial residential, bakery, artists galleries, classroom facilities, retail, open air pavilion for farmers market and commodity events

MNA believes that the proposed huge 730% increase in density at the Village Center is inconsistent with the original master plan, the vision, and even the 2005 Refinement Plan.

MNA recommends that these density changes and the 2021 Amendment should <u>not</u> be approved, and that these deficiencies should be corrected.

Sincerely,
The MNA Board
Pamela Schmidling
Chair of MNA

.

Morningside Neighborhood Assoc.
555 Liberty St SE Room 305
Salem, OR 97301

P - (503) 588-6207
W - MorningSideNA.org
E – MNAShared1@Gmail.com

GARRETT HEMANN ROBERTSON P.C.

Mailing Address:
P.O. Box 749
Salem, OR 97308-0749

Street Addres
1011 Commercial St. N.E.
Salem, OR 97301

Ph: (503) 581-1501
Fax: (503) 581
www.ghrlawyers.com

August 23, 2021

Via First Class Mail and
Via Email: bbishop@cityofsalem.net

Salem Planning Commission
City of Salem
c/o Bryce Bishop, Planner III
555 Liberty St. SE
Salem, OR 97301

Re: Our Client: Sustainable Investments, LLC
Land Use Appeal – Pringle Creek Community
File No. 82276007
Case No. FRPA21-01

Dear Commissioners:

This firm represents Sustainable Investments, LLC ("SI") regarding the appeal of the Planning Administrator's decision to approve SI's application for a Minor Amendment to the Pringle Creek Community Refinement Plan ("Refinement Plan") in Case No. FRPA21-01. At the August 17, 2021 Planning Commission hearing on this matter, appellants requested that the hearing remain open so that they could submit additional evidence. SI is taking this opportunity to submit further comments and materials in support of its minor amendment as approved by Salem's planning staff.

I. All Criteria for Approval of a Minor Amendment have been Met

As noted in its comments and presentation to the Commission, the decision of the Planning Administrator issued June 22, 2021, was comprehensive, based on the applicable standards, and correct. It should stand. The analysis and conclusions are again incorporated by reference as fully set forth.

The minor amendment is straightforward and limited in scope. It seeks to achieve three things to protect the sustainable vision for a multiple award-winning community:

1. Clarify the minimum and maximum number of allowed residential units. The amendment redistributes allowable residential units from the single-family areas of the community to the Village Center where it was always intended without increasing the overall number of units estimated in the approved refinement plan.

2. Updated minimum and maximum planned commercial square footages. The amendment redistributes commercial square footage from the single-family areas of the community to the Village Center where it was always intended. It does not increase the overall amount of non-residential square footage allowed by more than 20%.
3. Reduced the minimum building frontage requirements in certain areas. This is to allow greater flexibility in siting buildings on lots and likewise does not constitute more than a 20% change.

These minor changes are in line with all existing and intended uses as illustrated in the original illustrative plan (EXHIBIT E) of the refinement plan showing anticipated building footprints and open space and will not unreasonably impact those uses.

SRC 530.035(e)(1) states that a "Minor Amendment shall be approved if all of the following criteria are met: (A) the proposed amendment does not substantially change the Refinement Plan. (B) The proposed amendment will not unreasonably impact surrounding existing or potential uses for development.

As a result, SRC 530.035(e)(1) provides that the Minor Amendment shall be approved because the criteria were met.

II. The Minor Amendment Is True to and Consistent with the Vision Set Out in the Refinement Plan

Throughout the appellants' written testimony and the comments of those in support of the appellants' position, statements were made as to the intended vision of the community. The commentor's opinions of the future of Pringle Creek Community are inconsistent with the vision specifically delineated in the refinement plan. This was noted in the oral testimony of James Meyer, the architect of the plan. In addition, the same owner that established and has managed the original vision over the last 15 years is proposing the minor amendments.

In 2005, a team of local and national experts convened to create a community that took seriously the elements for the future of mixed-use development necessary to reduce man's impact on the environment. Specifically, the plan set out to "set new standards for excellence in sustainable development, both in Oregon and nationally." This was accomplished through the efforts of Sustainable Investments, local leaders, nationally recognized advisors, and the City of Salem's Planning Commission and staff. Since then, the community has received multiple awards for its sustainability, most notably 'Green Land Development of the Year' by the National Association of Home Builders in 2007.

The plan preserves the special environmental features of the property while adding community amenities, sustainable infrastructure, and a wide array of housing options. Over 10 acres of open space have been preserved to ensure protection of environmental features such as its namesake, Pringle Creek. Open space is an important element in assuring the sustainability of a higher density community. The community was thoughtfully designed to favor pedestrian and bicycle traffic by creating safe streets and introducing, to Salem, the idea of woonerf living streets. The

narrow intersections and streets, on street parking, changes in surface texture or color and gentle curves were intentional to naturally slow cars down creating neighborhood streets that are safer for pedestrians and bicyclists.

The minor amendment does not change the current approved residential unit number of 315, it simply redistributes allowable units within 32-acre development. Nothing in the minor amendment impacts the strong sustainable vision for the community that is set out in the refinement plan; however, the issues and demands presented by the appellants do have the potential to directly impact the sustainable vision of the community. Understandably it is what they have grown accustomed to and taken full advantage of over the years, living in a partially built out development with little to no density and an abundance of street parking. The vision of a community with an urban sprawl of single-family houses, traffic-centric development and over-abundance of street parking is simply not the vision outlined in the Refinement plan. If given any consideration, many of the presented viewpoints would negatively impact the sustainable vision memorialized in the Pringle Creek Community Design guidelines which showcase multiple dwelling types with no garages or parking pads. See Exhibit I for example of said dwelling type.

As stated by City Staff, the minor amendment does not propose any changes to the parking requirements of the refinement plan, nor does it request an amendment to the residential parking standards included in the refinement plan. Parking requirements in the refinement plan are consistent with the mixed-use and sustainability principles of the Fairview Plan promoting alternative modes of transportation and reduced dependence on automobiles. Those principles call for mixed-use development to encourage efficient use of land by facilitating compact, high-density development and minimizing the amount of land that is needed to accommodate automobile parking, as well as to facilitate development, land use mix, density, connectivity, design, and orientation, that reduces the need for, and frequency of, SOV trips and supports public transit, where applicable. Achieving a compact development pattern with higher population densities is an important element in increasing the feasibility of transit being provided through the Fairview site at some point in the future as originally envisioned in the plan.

III. The Minor Amendment Reflects SI's Desire to Continue to Improve and Develop a World-Class Sustainable Community

Clearly, the effort to develop Pringle Creek Community as a national example of sustainable development here in Salem, has been the overarching focus of SI as the original developer of the community. While the appellants maintain that as a developer proposing the minor amendment, SI's only focus is to turn a profit, and this is the only reason they proffered this minor amendment. Nothing could be further from the truth.

SI has financially managed and maintained the community for over 15 years without charging the community members an HOA fee. This was done even through an economic downturn, to assure that the approved vision and SI's promise to the citizens of Salem of creating an extraordinary sustainable place is fulfilled. SI's commitment is further illustrated by the donation of the Painters Hall, Pringle Creek Greenhouses, and the Geothermal Heating System to the

community at a value in excess of $1million. SI's priority is to ensure a lasting, vibrant sustainable community.

Pringle Creek Community is primarily a brownfield development. The AU code designation encourages existing building redevelopment aligned with new construction infill. In the Village Center which is part of the AU zone SI has preserved 3 of Fairview's existing buildings (Painters Hall, Root Cellar & Carpentry Hall) which are all but one of the buildings saved on the entire 275-acre development. The Village Center building sites and streets were laid out to specifically align with existing buildings and roads to minimize the need for removal of existing buildings or trees. There are 8 lots, with 3 existing buildings, generous open space and access to the creek. The remaining 5 lots were planned for infill developments as noted by the planning department and would need to meet all the city and refinement plan criteria.

Although SI now no longer controls the HOA and the day-to-day operation of the community, it is no less deterred in fulfilling the vision as written and illustrated in the Refinement Plan. Achieving this vision is the purpose of the minor amendment. SI has retained Design Review Approval of the 7 lots around the Village Center green to ensure that they are developed in accordance with the vision for PCC. The amendment assures that mixed-use buildings are placed where it was intended, that buildings are sited appropriately with relationships to the streets and open space, and that sufficient commercial space exists to allow for a variety of businesses to call the community home. Without these elements, it may not be possible to limit the impact a car centric development has on local transportation, open space, and the environment.

The density numbers in the amendment discussed in the hearing are the maximum estimated units. It is important to remember that these are maximums and do not necessarily reflect the number of units that will be built. These proposed maximum numbers do not drastically increase the density of the community as the appellants imply. The max residential unit number remains the same at 315. The amendment's purpose is to clarify and redistribute the density ithin the community. The AU zoning in the Village Center identifies the maximum number of residential units as 135, based on gross acreage, as illustrated in the refinement plan on page 13. With this minor amendment, SI has undertaken to update the refinement plan reducing the maximum number of residential units in the area to a more current estimate.

Now that development of the Village Center has started, this amendment clarifies the true estimated range of residential units and mixed-use space. These updated numbers ensure the sustainable vision of economically diverse housing options (multi-family) and mixed-use commercial spaces. The proposed minimum number of residential units has been kept at 4 and maximum non-residential square footage has been increased to 45,200 to allow for more commercial development. While alternatively the maximum number of residential units has increased to 95 and the minimum square footage of commercial space has been reduced to 11,700. This flexibility allows SI to ensure that the vision of a vibrant mixed use Village Center is built and not the 'Grove Apartment Complex'.

IV. Appellants' Objections and Claims

Through hours of testimony and pages of comments the appellants have tried to detract from the true purpose of the minor amendment throwing in every potential concern they could think of unrelated to the amendment before the Planning Commission. SI's position is that the evidence and topics unrelated to the Minor Amendment criteria should be excluded from the record and not used to assess its application pursuant to SRC's procedure. SI also requests the right to rebut any additional submissions submitted during the time in which the record is kept open. While the amendment meets the criteria for approval and, therefore, must be approved, SI takes to heart the comments of the community. As a result, SI will address some of those concerns raised.

1. Fire Safety

   The commenters maintain that the minor amendment somehow negates the requirements placed on development of Pringle Creek regarding fire safety. There is nothing in the minor amendment that impacts the requirements for fire safety in the community. The footnote on page 10 of the plan provides that automatic fire suppression systems are required for all structures built at PCC and that one queuing space per block is required to facilitate fire department access. In addition, the plan illustrates adequate turning radiuses for fire truck turn around. See Exhibit A to the refinement plan. All buildings at PCC are subject to the city's fire codes and regulations. Sign postage and code compliance on community land (the streets) is the responsibility of the HOA not an individual landowner such as SI. The use of fire sprinklers in each house confirms PCC as one of the safest residential developments in the nation.

2. Parking

   The appellants maintain that the minor amendment will create significantly increased demand for parking. This claim is based solely on speculation.

   The refinement plan and the community as-built provides for an abundance of on-street parking with most of it being in the Village Center. The intention of the Village Center development is further illustrated by PCC As-Built Street sections (Exhibit F) which clearly shows the developable street sections 15, 17 & 18 as being the widest in the development with on-street parking on all streets.

   The appellants' implied in their oral testimony that woonerf design, an important design component of developing PCC as a pedestrian oriented community, is simply not an effectual part of assuring safety for pedestrians. This shows the appellants' misunderstanding of the woonerf concept which, as its very purpose and effect, is to calm traffic, create a social place for community members, and assure low vehicular speed to protect pedestrians.

As parcels in the Village Center are developed, they are subject to SI's design review approval. Each project is looked at individually to ensure that it is line with communities architectural and sustainable vision. Parking is an integral part of that review process, and acceptable projects will have either on-site parking or on-street parking or a combination of both. To dispel some of this speculation an example of SI's design review parking considerations can be found on a public listing at this link: https://tinyurl.com/4eejf74r. This is also illustrated in Exhibit G. These publicly available images and descriptions show an SI commissioned conceptual design showcasing how a combination of onsite and offsite parking on the Village Center could work.

The language regarding commercial parking that was omitted from the 2005 Refinement Plan unbeknownst to the city & SI until recently is still part of the Refinement Plan as the staff report correctly notes. Upon learning of this condition SI immediately agreed with the city to include it in the refinement plan. To date there has been no commercial development at PCC so this condition has not been violated and will be met in future development. Adherence to parking requirements will be determined at the time an actual permit is submitted and are not relevant to this appeal.

All designs will still require permit review including a review of the adequacy of parking. Therefore, appropriately, the sufficiency of parking for each project will ultimately be reviewed and determined by the City as it is proposed.

Given the level of community concern about parking SI has since communicated with the HOA in support of a parking study. It would be the responsibility of the HOA (not a private landowner) to conduct this study and SI is happy to cooperate with such as study.

3. Communication

There was testimony claiming a lack of communication in regard to the proposed minor amendment. To clarify, the community, neighborhood association, and transit authority all had sufficient notice regarding SI's intent to file for a minor amendment.

SI went beyond simply what was required to do and sent out a letter to the community explaining the purpose and reasoning for the amendment and invited community members to contact them directly with any questions and concerns. See Exhibit G. SI engaged with multiple community members via email, conference calls and face to face conversations regarding this amendment and received a lot of thanks for the clarification along with a few retractions of concerns already voiced to the city staff.

SI further engaged with the Morning Neighborhood Association through Geoff James, land-use chair, and satisfied any concerns, to the extent that they had no comment and did not require SI to present at their monthly meeting. SI also engaged with the HOA and Stafford Land company multiple times prior to filing of the

amendment to reach an agreement on the proposed re-allocation of density throughout the whole community.

4. Village Center Infrastructure

   The ability of the infrastructure in the Village Center being able to support the proposed density was challenged in appellants' testimony. This is simply not true, not only can the infrastructure of the Village Center support the proposed density it was designed to.

   It has wider streets and more on-street parking, as illustrated in Exhibit F, than any other area. The streets around the Village Center are made of pervious concrete vs the pervious asphalt used elsewhere in the community. Pervious concrete is much more durable than asphalt allowing it to handle more traffic and creates a distinct change in surface color and texture that naturally slows cars down to compliment the woonerf street concept.

   Additionally, the communities highly efficient and sustainable Geothermal loop runs directly through the Village Center and was designed and recently refurbished by SI to have the capacity to handle all potential development on the Village Center mixed use properties. This appropriate capacity was built in specifically to service the density vision of the Village Center.

5. Buildings and Development Potential

   SI has proposed that a maximum of 95 residential units in the Village Center area be permitted. Because of lot sizes, setback requirements, and height restrictions, the actual number of units that can be built will most realistically be 50 to 60. As I stated in my response to the Commission's question, SI has set the number of units at 95 to maintain the 315 number of total units that can be built at Pringle Creek and to help ensure that additional density will not be added to the single-family areas of the community.

6. Tree Preservation

   Another matter raised by the appellants and commentors is their concern for trees designated for preservation under Pringle Creek Community's tree preservation plan. Nothing in the minor amendment alters the City requirements for tree preservation and removal. It is expected and encourage that these continue to be enforced as preserving the natural environment is a key concern for SI and the community.

7. Home Owners Association

   As a point of clarification SI is solely a member of the HOA as a landowner. All issues regarding streets, access, fire, signage etc. is the responsibility of the HOA and

not SI. The majority, if not all, of the issues presented by appellants and community testimonies are issues related to the frustration our neighbors have with the current HOA and have no bearing on this minor amendment.

V. Conclusion

The city staff did an excellent job in responding to all the concerns at the hearing. Their action was appropriate and focused on the three items that were submitted for a minor amendment, and that they did note significantly impact the community. We felt they accurately clarified that the appellants are asking for adjustments that would require a major amendment, which falls outside the scope of this minor amendment.

PCC was never envisioned to become a car centric suburban development and to have to pave over green spaces for more cars, or to become a typical suburban single-family home development that eliminates the opportunity for socio-economic diversity in housing and community members.
Nothing proposed in the minor amendment and its filing violates the refinement plan, the amendment process and city requirements. There has not been an increase in density, there has not been a change in the developable area or building footprints, there has not been a change to open spaces. All future development is still required to meet all city code requirements and is subject to city planning approval.
We ask that the Planning commission support the minor amendment and help Sustainable Investments and the Pringle Creek community realize the full possibilities of a truly sustainable development.

Sincerely,

J. Michael Keane
mkeane@ghrlawyers.com

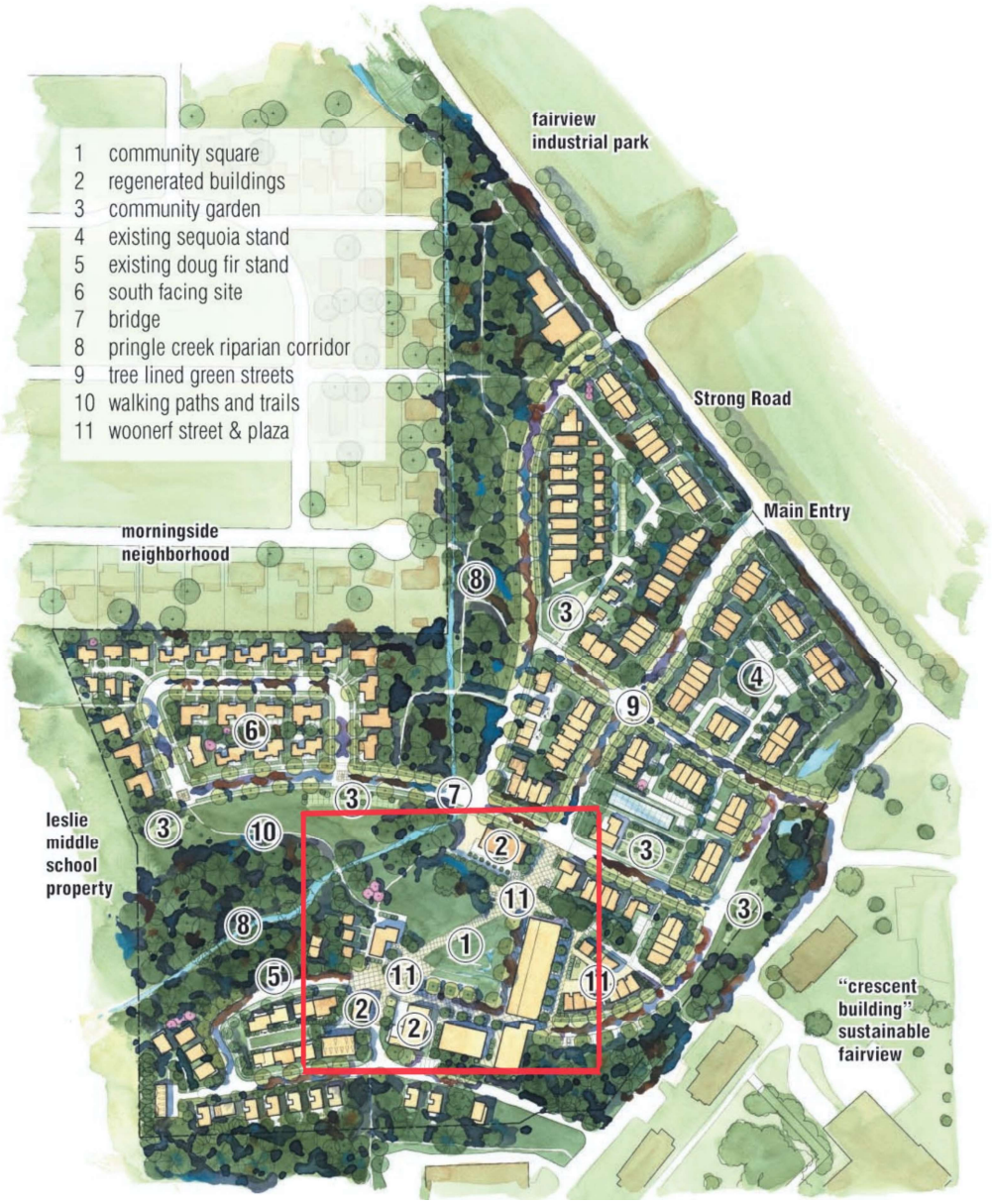
JMK:lae

Enclosures

4848-5019-9799, v. 2

EXHIBIT E

ORIGINAL ILLUSTRATIVE D SIGN FROM PCC REFINEMENT PLAN



DETAILED VIEW OF VILLAGE CENTER FROM ILLUSTRATIVE D SIGN IN PCC REFINEMENT PLAN

This image illustrates the original planned building footprints in the Village Center.

EXHIBIT F

PCC AS-BUILT STREET SECTIONS

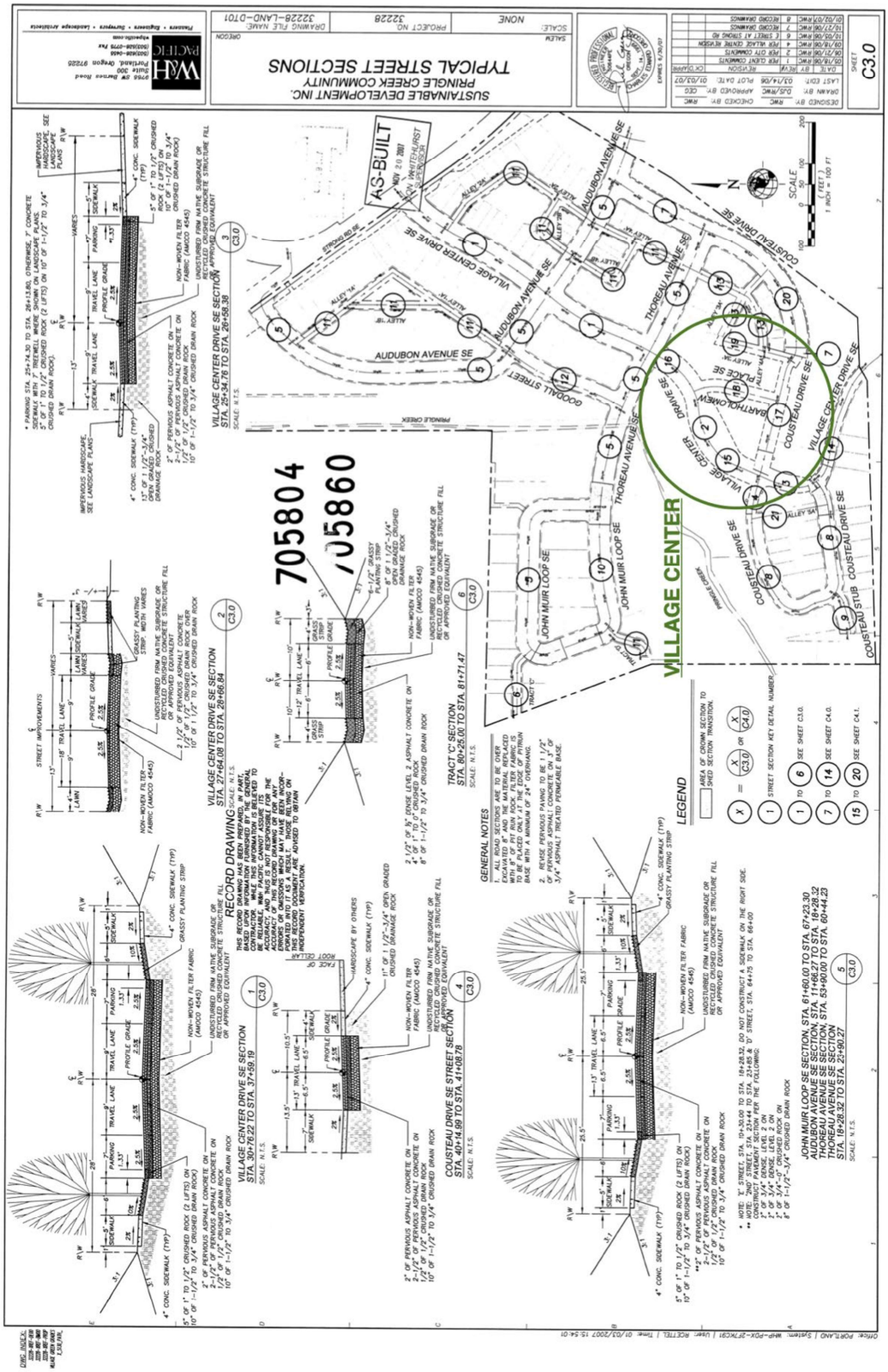


EXHIBIT F

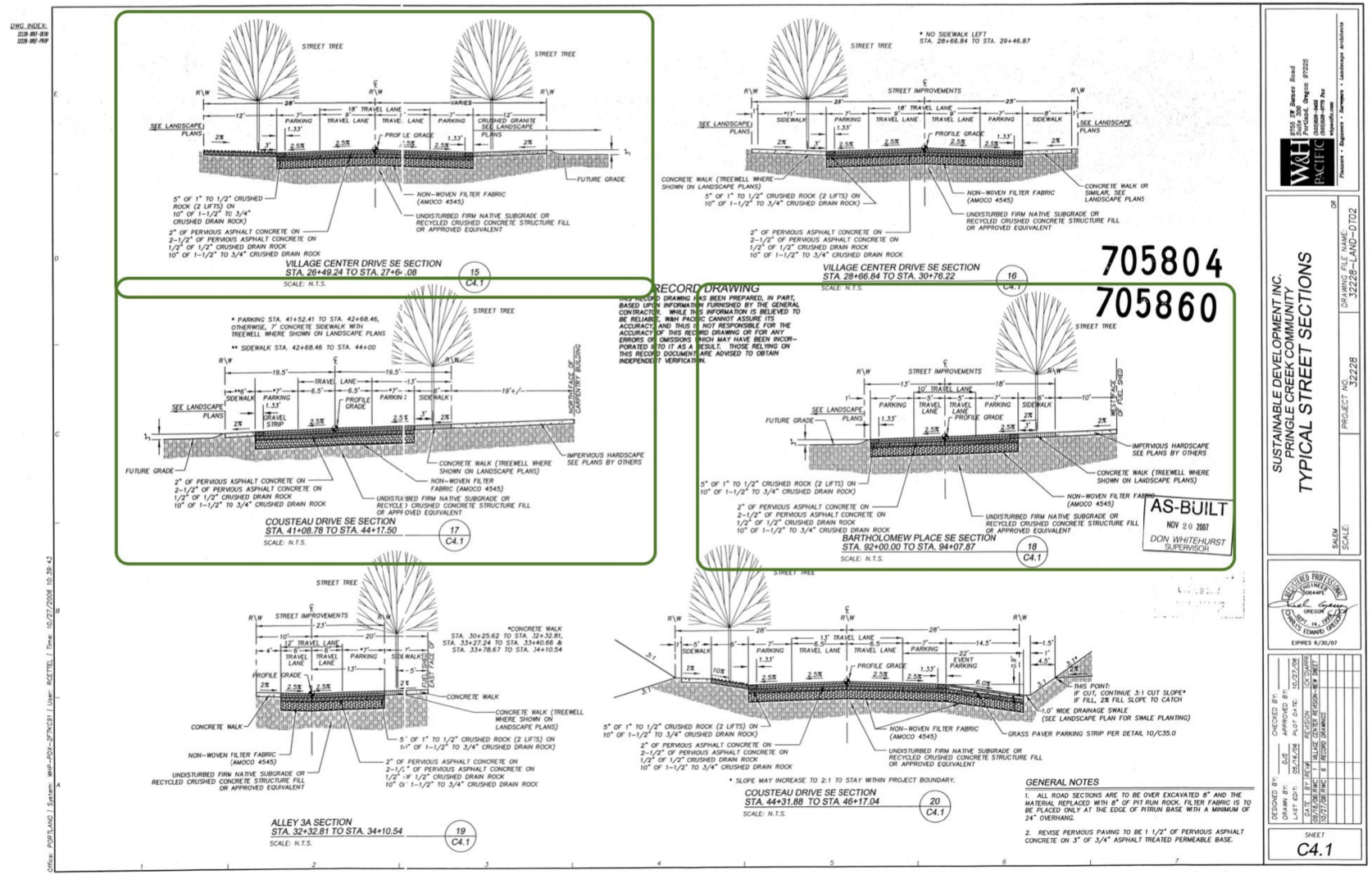

VILLAGE CENTER DRIVE SE SECTION
STA. 26+49.24 TO STA. 27+6 .08
15
C4.1
SCALE: N.T.S.
VILLAGE CENTER DRIVE SE SECTION
STA. 28+66.84 TO STA. 30+76.22
16
C4.1
SCALE: N.T.S.
COUSTEAU DRIVE SE SECTION
STA. 41+08.78 TO STA. 44+17.50
17
C4.1
SCALE: N.T.S.
BARTHOLOMEW PLACE SE SECTION
STA. 92+00.00 TO STA. 94+07.87
18
C4.1
SCALE: N.T.S.
ALLEY 3A SECTION
STA. 32+32.81 TO STA. 34+10.54
19
C4.1
SCALE: N.T.S.
COUSTEAU DRIVE SE SECTION
STA. 44+31.88 TO STA. 46+17.04
20
C4.1
SCALE: N.T.S.
RECORD DRAWING
AS-BUILT
NOV 20 2007
DON WHITEHURST
SUPERVISOR
705804
705860
GENERAL NOTES
1. ALL ROAD SECTIONS ARE TO BE OVER EXCAVATED 8" AND THE MATERIAL REPLACED WITH 8" OF PIT RUN ROCK. FILTER FABRIC IS TO BE PLACED ONLY AT THE EDGE OF PITRUN BASE WITH A MINIMUM OF 24" OVERHANG.
2. REVISE PERVIOUS PAVING TO BE 1 1/2" OF PERVIOUS ASPHALT CONCRETE ON 3" OF 3/4" ASPHALT TREATED PERMEABLE BASE.
SUSTAINABLE DEVELOPMENT INC.
PRINGLE CREEK COMMUNITY
TYPICAL STREET SECTIONS
PROJECT NO. 32228
DRAWING FILE NAME: 32228-LAND-DT02
SCALE:
SHEET C4.1
EXPIRES 6/30/07

EXHIBIT G
REMAX INTEGRITY LISTING

RE/MAX COMMERCIAL

Lot 57 - Pavilion - Pringle Creek Community

3950 Bartholomew Pl SE | Salem, OR 97302

This Image shows a conceptual design of a mixed-use building on Village center, incorporating pedestrian friendly woonerf design. Approximately 7000 sq ft. of parking and commercial on ground floor and16 residential units above.

EXHIBIT H

EXAMPLE OF SI COMMUNICATION WITH COMMUNITY MEMBERS

Gmail Jonathan Schachter <jonathan@pringlecreek.com>

Notice of Proposed Minor Amendment

8 messages

Jonathan Schachter <jonathan@pringlecreek.com> Thu, Apr 22, 2021 at 2:30 PM
To: Jonathan Schachter <jonathan@pringlecreek.com>
Cc: Ian Meyer <ian@pringlecreek.com>
Bcc: Wilma Chu <wilmachu@gmail.com>, Dean Chu <deanjchu@yahoo.com>, Kristen Duus <duuskl@msn.com>, McKenzie Farrell <mckenzie.farrell@gmail.com>, Barb Hargand <bharg@comcast.net>, Lucy Hitchcock <lucyhitchcock8140@gmail.com>, Carol Khalaf <caroldkhalaf@gmail.com>, Iyad Khalaf <iyad.r.khalaf@gmail.com>, Janet Lorenzen <jlorenze@willamette.edu>, Jeff McCoy <mccoyjs@gmail.com>, Mellinda McCoy <melindagjordan@gmail.com>, Allison McKenzie <allisonmckenzie1021@gmail.com>, Margaret Nielsen <Mtnielsen5@gmail.com>, Fariborz Pakseresht <fpakseresht@yahoo.com>, Ila Russell <ilamaerussell@gmail.com>, Jonathan Schachter <jschachter.jd@gmail.com>, Lisa Schachter <lisaAschachter@gmail.com>, Dennis Gutknecht <Dennis.g321@yahoo.com>, Jenny Symens <jennyesymens@gmail.com>, Sloane Russell <luvsloane@gmail.com>, Karen Weiss <karen.weiss1665@gmail.com>, Steve Weiss <steven.weiss1665@gmail.com>, Susan Wilson <sbwilson4@comcast.net>, Alan Wilson <ajwilson@comcast.net>, Dan Suhr <dan.suhr@gmail.com>, "Shelly L. Bunn" <shelly.l.bunn@gmail.com>, Steven Deyerly <gabste777@hotmail.com>, Amanda Cotey <amanda.cotey@gmail.com>, Brian Foley <bpfoley10@gmail.com>, Margaret Manoogian <mmmanoogian@gmail.com>, Mary Hughes <maryhughes529@gmail.com>, Chloe Dixon <chloedixoncpa@gmail.com>, Emily Schroff <emily.schroff@gmail.com>, Jason Miranda <portudork@yahoo.com>, Debbie Miranda <d1mmiranda@live.com>, Katie Bonham <bonhamsk@gmail.com>, Jannie-Rich CROSSLER-LAIRD <rich_jannie@msn.com>, Betty Boyce <bettyboycephoto@gmail.com>, Brandon Boyce <brandonboy119@yahoo.com>, logster245@gmail.com, Kristen Taylor <kmt324@live.com>, Katie Crocker <Crocker.kt@gmail.com>, ky.crocker@gmail.com, Lena Crider <lmcrid@gmail.com>

Dear Neighbors,

To give you some background, I'm dropping everyone this note regarding the land use notice that you should have received in the mail yesterday. This filing by SI is a proposed minor amendment to the PCC Refinement Plan.

The original refinement plan was drafted and approved over 15 years ago. Over time, it became apparent to us and the City that dwelling density requirements for the community needed to be clarified in the plan. The amendment clarifies that the maximum number of dwelling units allowed at PCC is 315 (not the 638 units at the bottom of page 10 in the Land Use Summary). The amendment also ensures that the dwelling unit density is to be concentrated in Area 3, the Village Center. These changes will help make sure that the Village Center develops as a vibrant hub of the community and that the community does not have the potential to become built out beyond capacity.

Please reach out to Ian Meyer or me if you have questions.

Best,

Jonathan
Jonathan Schachter
Director of Development
Sustainable Development Inc.
1828 Cousteau Loop SE
Salem, OR 97302
206-963-0511

Jonathan Schachter <jonathan@pringlecreek.com> Thu, Apr 22, 2021 at 3:10 PM
To: Susan Wilson <sbwilson4@comcast.net>

Hi Sue,

Just got your note. I sent out a group email about 40 minutes ago. Did you receive it?

Best,

Jonathan Schachter
Director of Development
Sustainable Development Inc.
1828 Cousteau Loop SE
Salem, OR 97302
206-963-0511

[Quoted text hidden]

Jenny Symens <jennyesymens@gmail.com> Thu, Apr 22, 2021 at 3:22 PM
To: Jonathan Schachter <jonathan@pringlecreek.com>
Cc: Ian Meyer <ian@pringlecreek.com>

Thank you for clarifying this Jonathan! I've read through the information twice and was trying to decipher it.

On Thu, Apr 22, 2021 at 2:30 PM Jonathan Schachter <jonathan@pringlecreek.com> wrote:
[Quoted text hidden]

Jonathan Schachter <jonathan@pringlecreek.com> Thu, Apr 22, 2021 at 3:26 PM
To: Jenny Symens <jennyesymens@gmail.com>

Your welcome Jenny. Sorry for not getting this out to you yesterday when the notice came in.

Best,

Jonathan

Jonathan Schachter
Director of Development
Sustainable Development Inc.
1828 Cousteau Loop SE
Salem, OR 97302
206-963-0511

[Quoted text hidden]

Susan <sbwilso@gmail.com> Thu, Apr 22, 2021 at 3:39 PM
To: Jonathan Schachter <jonathan@pringlecreek.com>

Thanks Jonathan!

Sent from my iPhone

> On Apr 22, 2021, at 2:30 PM, Jonathan Schachter <jonathan@pringlecreek.com> wrote:
>
> [Quoted text hidden]

Allison McKenzie <allisonmckenzie1021@gmail.com> Thu, Apr 22, 2021 at 4:45 PM
To: Pringle C C Pringle C C <jonathan@pringlecreek.com>, Jonathan Schachter <jschachter.jd@gmail.com>, Ian Meyer <ian@pringlecreek.com>

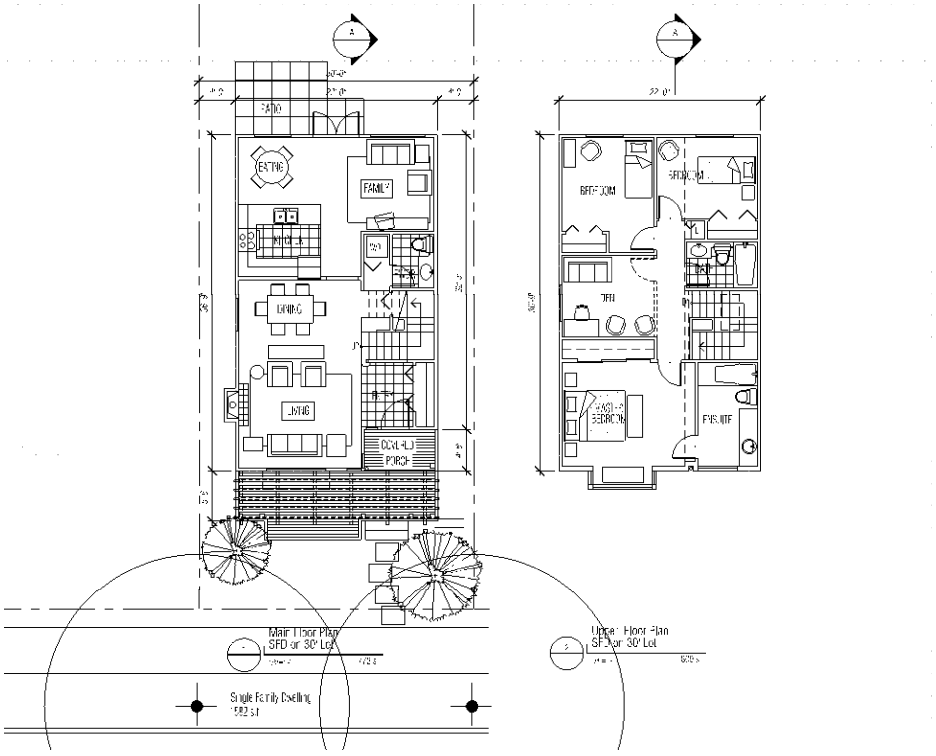
Jonathan,
Thank you for the clarification :)

EXHIBIT H

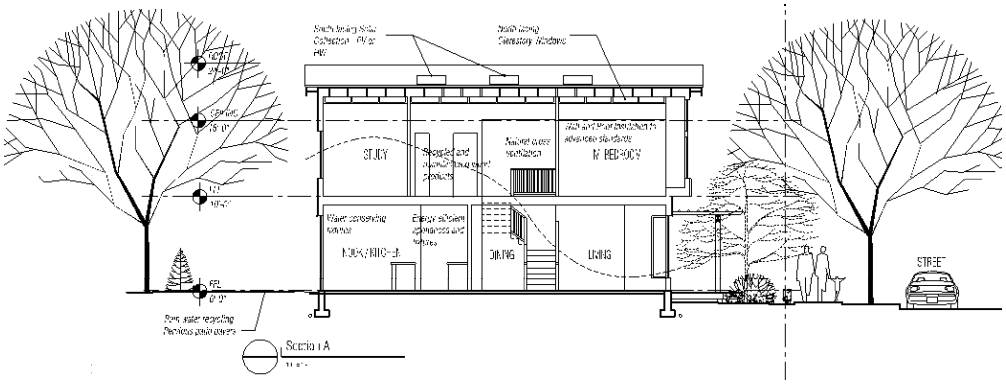
EXHIBIT I

EXAMPLE OF ORIGINAL HOUSING TYPES FROM PCC DESIGN GUIDELINES

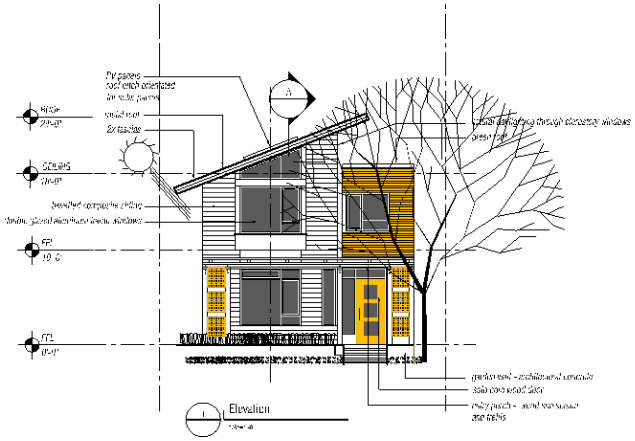
DETACHED DWELLING TYPES
Small Lot Single Family



TYPICAL FLOOR PLAN



TYPICAL LONGITUDINAL CROSS-SECTION



TYPICAL FRONT ELEVATION

Aug 30, 2021

City of Salem Planning Commission

RE: Rebuttal to Applicant's letter - Appeal of the Minor Modification to the Pringle Creek Refinement Plan (FRPA21-01)

Dear Members of the Planning Commission,

After reading the applicant's August 23, 2021 letter we offer the following simple statements of rebuttal:

1. **The applicant has yet to satisfy the conditions of approval and implement elements included in their Refinement Plan that the Planning Commission approved in Nov 2005.** This can not be debated – it's fact. They continue to show no interest in completing conditions of approval or elements of the plan they stated on record, in writing, were 'mandatory requirements' for the Refinement Plan. They should not be allowed to make further changes to the Refinement Plan while ignoring the unmet conditions and incomplete elements of approval. The Morningside Neighborhood Association also supports this position per their letter to the City on Aug 20, 2021.

2. **The proposed changes to the density in the Village Center should be considered a major modification.** If allowed to move forward as proposed, the 216% increase to residential density and 51% increase in commercial sq ft in the Village Center is anticipated to create significant impacts to on street parking, circulation and stormwater systems.

   Attached is the recorded plat with the streets highlighted and notes on restrictions, widths, etc. As you can see, the widest streets with the least restriction are located where the density was originally meant to be located. Moreover, based on the as-built drawings provided by the applicant there are several streets in the Village Center that are so narrow either there is no parking or parking on one side only. Shifting the density and adding commercial sq ft to the Village center is expected to have impacts related to parking and circulation. They haven't demonstrated there will not be impacts. This burden of proof is on them, not the community.

3. **Neither the applicant nor the City know how many on-street parking spaces are available on street** and neither has a plan for how on-street parking will be reviewed, monitored, or allocated. Without knowing the # of available on street parking spaces, it can not be demonstrated there will be no impact as a result of their density.

4. **The proposed changes are a significant change to the original vision and intent of the Refinement Plan.** We have asked them to show how their proposed shifting of density

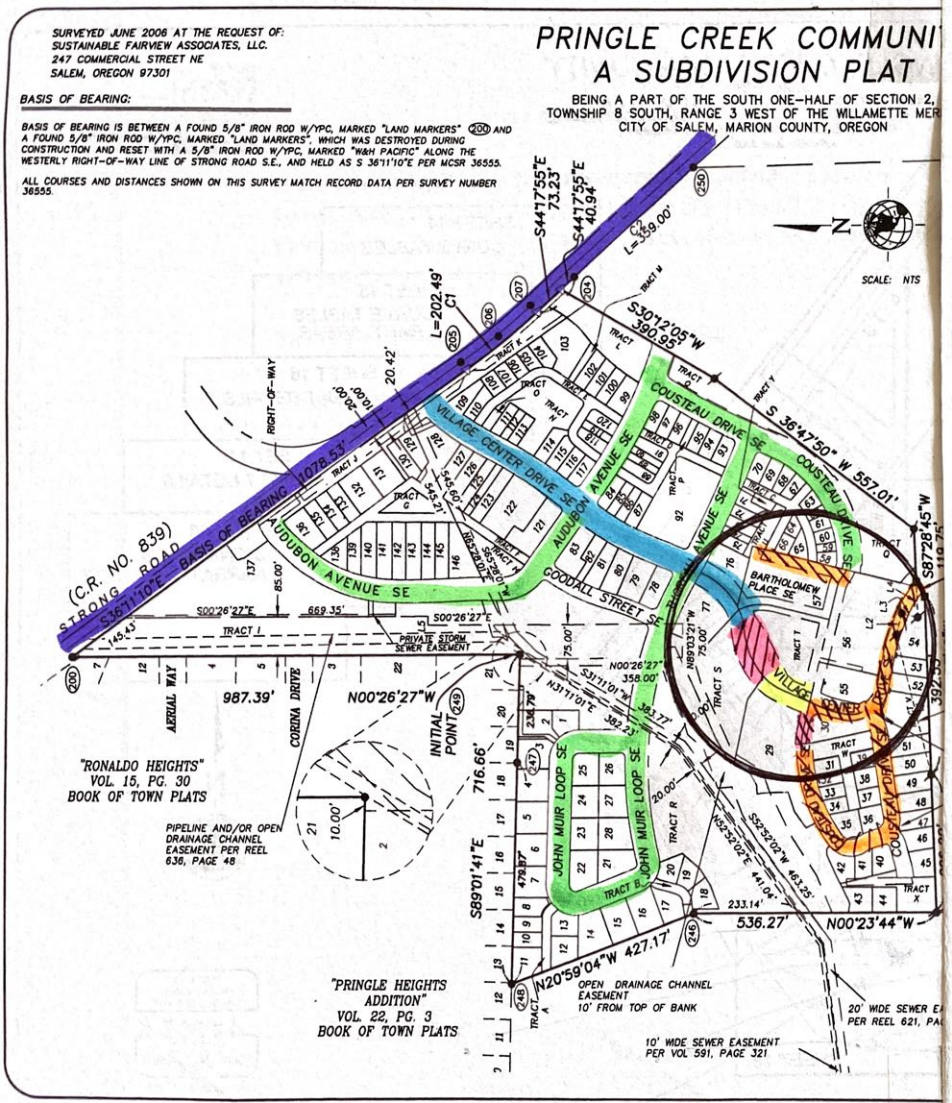
is consistent with the original vision and they have failed to do so. The original vision and intent are clear – the density was meant to be located in the north/northeastern part of the community, along Strong Road, along either side of Village Center Drive up to its' intersection with Thoreau Ave and the area served by Audubon Avenue – in other words where the streets are wider and less restricted. This does not include the Village Center.

5. **The burden of proof is on the applicant to demonstrate there will not be significant impacts. They have submitted NO evidence to date that shows there will be no impact** to the infrastructure (on street parking, circulation, stormwater system) as a result of the density and sq ft increases in the Village Center. Merely putting a statement forth that says there will be no impacts is not acceptable. The applicant should be required to submit professional studies (TIA, infastructure capacity studies) that demonstrate no impact. This hasn't happened.

If the Planning Commission approves the applicant's proposal, the City is allowing an applicant to not only ignore conditions of approval and not fully implement an approved Refinement Plan, but to allow further changes to the Refinement Plan without demonstrating such changes will not have adverse impacts.

Thank you for your consideration and time,

Terri Valiant
On behalf of the resident/owners in Pringle Creek that signed/support the appeal.



56' ROW PARKING BOTH SIDES WITH SIDEWALKS

NO PARKING DESIGNATED (24-33' STREET & PARKING)

PARKING 1 SIDE ONLY

NO SIDEWALK

51' ROW PARKING 2 SIDES W/ SIDEWALKS

STRONG ROAD

GARRETT HEMANN ROBERTSON P.C.

Mailing Address:
P.O. Box 749
Salem, OR 97308-0749

Street Address:
1011 Commercial St. N.E.
Salem, OR 97301

Ph: (503) 581-1501
Fax: (503) 581-5891
www.ghrlawyers.com

August 31, 2021

Via Email Only: *bbishop@cityofsalem.net*

Salem Planning Commission
City of Salem
c/o Bryce Bishop, Planner III
555 Liberty St. SE
Salem, OR 97301

Re: Our Client: Sustainable Investments, LLC
Land Use Appeal – Pringle Creek Community
Our File No. 82276007

Dear Commissioners:

This firm represents Sustainable Investments, LLC ("SI") regarding the appeal of the Planning Administrator's decision to approve SI's application for a Minor Amendment to the Pringle Creek Community Refinement Plan ("Refinement Plan") in Case No. FRPA21-01. Appellants have presented additional comments during the open hearing period that SI addresses below.

I. INTRODUCTION

As with the prior testimony, most of the objections from Appellants take issue with the Refinement Plan approved in 2005. The time to appeal the Refinement Plan is long past. ORS 197.830(6). *See Just v. Linn County*, 59 Or LUBA 233 (2009) (challenges to the correctness or validity of a decision that was not appealed amount to an impermissible collateral attack on a final land use decision. Such challenges do not provide a basis for reversal or remand of a later land use decision involving the same property). In addition, pursuant to SRC § 300.920(e), "[t]estimony shall be towards the applicable standards and criteria which apply to the proposal." Pursuant to SRC § 300.920(f) "[t]he Review Authority may exclude or limit cumulative, repetitious, or immaterial testimony." All testimony and evidence not towards the applicable standards and criteria should be excluded—which includes all evidence and arguments that the 2005 Refinement Plan is invalid, that the City has not been enforcing the FMU code or the Refinement plan, that the duties of the HOA are somehow also the duties of SI such as street signs, or that SI did not properly provide notice to homeowners or the neighborhood association.

II. THE NUMBER OF UNITS AND THE DENSITY IN THE PRINGLE CREEK COMMUNITY IS UNCHANGED

Despite the regulatory standards set for the AU Zoning density or those stated in the approved refinement plan, the Appellants continue to claim there is a huge increase in the number of residential units permitted in the development. For Area 3 particularly, per the AU Zoning density requirements in the code, a maximum density of 30 units per acre is permitted for a total of 135 units allowed in Area 3. Per the minor amendment, the total number of units proposed in Area 3 is 95. Appellants are inflating the percentage change by comparing the estimated number of units against SI's updated estimated number of units. These estimates are just that—estimates and not the maximum permitted number. The total number of units for the Pringle Creek Community ("Community") remains unchanged at 315.

III. THE NEIGHBORHOOD ASSOCIATION'S SUBMITTAL INCORRECTLY ACCEPTS APPELLANT'S FACTS AMD ARGUMENTS

The Applicant was surprised by the additional comments submitted by the Morningside Neighborhood Association (MNA) now requesting that the minor amendment be rejected. As previously submitted in Exhibit A to SI's August 16, 2021, submittal after discussions with MNA, they concluded that they had no concerns with the minor amendment. Yet, they have now filed an objection based on the arguments by certain homeowners in the Pringle Creek Community which tries to paint the minor amendment as containing major changes and that the minor amendment is based on an invalid refinement plan. Specifically, MNA claims:

- The proposed amendment makes major changes to the character of PCC as approved in the refinement plan.
- There will be a significant increase in traffic flow in the community.
- A large increase in the number of required on-street parking spaces.

However, like the Appellants, the MNA fails to recognize that no increase in density is proposed for the Community as illustrated in our last submittal of additional evidence on August 24, 2021.

The staff's position is that the refinement plan limits overall density to the community of 315 residential units. That has not changed at all. The change to the commercial square footage available for approved uses has changed less than 20% in the community. With no increase in residential density in the Community and a minor change to allow for more commercial services in the Village Center, there is no basis to anticipate more traffic than that planned when the refinement plan and infrastructure were originally approved.

Additionally, they have claimed the refinement plan is invalid. This is simply not so. The refinement plan was approved on November 15, 2005 and is a basis for all development that has occurred at PCC. The time for any objection and appeal to the plan itself was due by 15 days after approval of the plan in 2005.

Finally, SI has made several attempts to talk further with MNA about their concerns and to obtain a better understanding of their claims, and has shared its most recent evidence submittal offering evidence that counters their assertions. Unfortunately, the MNA does not seem interested in open dialog on these matters. Please see Exhibit J.

IV. APPELLANTS REQUEST A PARKING STUDY AS A CONDITION, BUT THAT IS PREMATURE AND THE RESPONSIBILITY OF THE HOA

The issue of requiring a parking study has been raised repeatedly by Appellants. SI is not opposed to a parking study and will cooperate with the HOA if the HOA decides to conduct a study. Pursuant to the CC&Rs, the HOA is responsible for parking, not SI. See Sec. 3.8, p. 10 of the CC&Rs attached as Exhibit K. A parking study would be premature at this time because the area is only minimally built out. Such a study can only provide guidance closer to build out when the actual number and mix of units is more certain. In any event, SI believe a study is not necessary, as the Refinement Plan itself has in inbuilt design review and city development approval process. For example, commercial buildings can forgo off-street parking if, in the permitting process, it can be demonstrated to the City that street parking is adequate.

V. APPELLANT'S REQUESTED CONDITIONS ARE REALLY AMENDMENTS TO THE REFINEMENT PLAN

While Appellants ask that conditions be imposed on the approval of SI's Minor Amendment application, these requests are really Appellant's own requests for amendments to the Refinement Plan. Each of their requests to the Refinement Plan would amount to a Major Amendment.

VI. DEVELOPING THE COMMUNITY ACCORDING TO THE REFINEMENT PLAN IS NOT THE SAME AS AN UNREASONABLE IMPACT

The Refinement plan and Exhibit E to SI's August 23, 2021, submission shows that a developed Village Center is in line with the original vision for the Community. These documents clearly show building footprints which contemplate a built-out Village Center. Appellants and various homeowners suggest this will create a significant detrimental impact on the community. However, building out the Village Center is simply part of the plan. The Village Center was always meant to contain some mix of residential and commercial space. The impact is that there will finally be infill in the Village Center to complete the plan. However, by definition, it will not be a significant impact on the Community because this is a Minor Amendment with less than a 20% change.

VII. A CONSERVATION TRUST IS NOT REQUIRED FOR THE MINOR AMENDMENT

Appellant Terri Valiant claims in her August 24, 2021, additional evidence submission, that based on a pre-refinement plan and CC&Rs that were not yet reviewed or approved by the planning commission or city, the City required a mandatory requirement for financial assurances.

Firstly, Sustainable Investments wishes again to note this claim has no relevance, nor basis for denial of the minor amendment presented before the Commission. However, to provide some clarification, prior to the first submittal of the refinement plan the developers discussed many options as how to manage the community, one of which was to setup a conservation trust. This is reflected in Opsis Planner's (Mark Kogut) September 30, 2005, email to the deputy fire chief to receive an acceptance of the "Green Street" in the proposed development. Any action of the Fire Department based in part on the Memorandum (evidence of which has not been provided) is not at issue in this appeal and are addressed in the approved refinement plan.

Specifically, the appellant claims SI was required to set up a non-profit to help manage the community. Nowhere in the refinement plan does it say that SI is required to setup a Conservation Trust; it only says the infrastructure and amenities will be owned and managed by a "combination" of the Trust and the HOA. There is no guidance as to what the roles of the two entities would be related to each other. That is an unenforceable requirement. So long as at least one of the entities was established and is performing the required functions there could be no violation. The same is true with the respect to the provision that funding would be provided by the Trust and the homeowners through the HOA. Moreover, the appellants argue that SI as the initial developer failed to provide funds to a Conservation Trust. There is no requirement in the Refinement Plan that SI do so. The Plan says nothing about where the Trust would receive its funds if it existed and participated in financing the infrastructure. In fact, the most likely source would have been to grant it assessment authority against the homeowners. None of the City's Unified Development Code provisions specify that absence of a Plan violation is a requirement for approval of an amendment or a basis for denial of an amendment.

Nowhere does the appellant show that this proposal is a regulatory requirement and accepted by the city or fire marshal. It is again another item piled on by the Appellants to confuse the issues properly before the commission.

The State's Planned Community statutes and the City's Public and Private Streets Code provisions (See, ORS 94. 550 to 94.783 and SRC 804.020 b) (3)) both require that the management and funding of common areas and facilities be done by a homeowner's association pursuant to the approved CC&Rs. A charitable trust cannot perform these functions. Diverting some part of those responsibilities to an unregulated trust would violate both the statues and the Code.

The management and fiduciary responsibility for the community lie with the HOA as stated in the CC&Rs (See Exhibit K, Sections 4.3, 6.1,6.6and 11.6). The operative provisions in these CC&Rs have not changed since the original was reviewed and approved by the City. Consequently, the CC&Rs, submitted to the City for review in connection with the preliminary subdivision and approved by the City Attorney on June 28, 2006, place the entire management responsibility with the HOA and does not establish a conservation trust. Any attempt to force SI to fund a conservation trust would be an impermissible exaction unrelated to the land use application at hand. *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).

In addition, SI would like to note that it did help setup a now community run 501c3 in 2007 called 'The Sustainable Living Center' (slcsalem.org). Its mission is to provide education on sustainability using Pringle Creek Community as a living laboratory.

VIII. CONCLUSION

SI respectfully requests the Planning Commission review its Minor Amendment application according the procedures and criteria in the City Code. The Minor Amendment meets the criteria set forth in SRC section 530.035(e) and the Planning Administrator's decision to approve it should be upheld.

Sincerely,

J. Michael Keane
Attorney at Law
mkeane@ghrlawyers.com

JMK:

Enclosures
c: Shelby Guizar ***Via Email Only***

4846-0540-0569, v. 1

Re: FW: Fairview Refinement Plan Minor Amendment Case No FRPA21-01 - Pringle Creek Community Refinement Plan

GJ

Geoffrey James <geoffreyjames@comcast.net>

Yesterday at 16:33

To: Ian Meyer; **Cc:** sidrakdragon@live.com

OUT OF OFFICE

I will return to Salem by Wednesday a.m.
Please email project related communications.

Geoffrey James
Geoffrey James A.I.A. Architect
503-931-4120
gjamesarchitect@gmail.com

via Newton Mail

On Sun, Aug 29, 2021 at 7:44 PM, Ian Meyer <ian@pringlecreek.com> wrote:

> Dear Pamela & Geoff,
>
> I am attaching Sustainable Investments latest evidence submittal to the planning commission for your review. My hope is that it will shed more light on what is happening in this appeal.
>
> We would still welcome the opportunity to discuss the appeal and your letter submittal, to make sure you have heard from both sides. Please let me know if you have availability for a call in the next couple of days.
>
> Many Thanks
>
> Ian
>
> ---
>
> **From:** Ian Meyer <ian@pringlecreek.com>
> **Date:** Wednesday, 25 August 2021 at 14:13
> **To:** sidrakdragon@live.com <sidrakdragon@live.com>, geoffreyjames@comcast.net <geoffreyjames@comcast.net>
> **Cc:** Jonathan Schachter <Jonathan@pringlecreek.com>
> **Subject:** Re: Fairview Refinement Plan Minor Amendment Case No FRPA21-01 - Pringle Creek Community Refinement Plan
>
> Dear Pamela and Geoff,
>
> We just received notice that the Morningside Neighbourhood Association has submitted a letter to the city in regards to our minor amendment to redistribute the density within Pringle Creek Community.
>
> I was a little surprised by this, given our last communication. From reading the letter (Attached) I am not sure if you have all the information, and thought you might appreciate hearing from both sides before making any decisions.
>
> Would you and Pamela be willing and/or interested in talking with us in regards to the minor amendment?
>
> Many Thanks
>
> Ian
>
> Ian Meyer
> President
>
> Pringle Creek Community
> 3911 SE Village Center Drive
> Salem, OR 97302
>
> ian@pringlecreek.com I PringleCreek.com
> Facebook I Instagram I Twitter

From: Geoffrey James <geoffreyjames@comcast.net>
Date: Thursday, 6 May 2021 at 10:53
To: Jonathan Schachter <jonathan@pringlecreek.com>
Cc: Ian Meyer <ian@pringlecreek.com>
Subject: Re: Fairview Refinement Plan Minor Amendment Case No FRPA21-01 - Pringle Creek Community Refinement Plan

Jonathan:
All the letters and emails expressing concern or questions have come from your residents, and surrounding neighbors.
I had circulated your proposal to all the MNA board members.
Bryce maintains that the amendment is Minor.
Therefore you are not legally required to present your proposal to to neighborhood association.
It does seem that you have done a thorough job with outreach to all the people who voiced concern, and many are now well informed and less concerned.
I have received no feedback from my MNA board members.
So they do not seem to be concerned.
Therefore, I am going to email Chair Pamela today and recommend that your appearance be cancelled, because of those reasons.
Thanks for your efforts.
Geoff

Geoffrey James
MNA Land Use Chair
503-931-4120
gjamesarchitect@gmail.com

via Newton Mail

On Thu, May 6, 2021 at 10:37 AM, Jonathan Schachter <jonathan@pringlecreek.com> wrote:

> Good morning, Geoff,
>
> I wanted to reach out to let you know that we have been actively explaining the purpose and effect of SI's minor amendment to the community, particularly those who filed comments. Below is an email from Dean Chu, a community leader, to all residents regarding the discussion Ian and I had with him and other community leaders on April 29. Unfortunately, Dean did not file his comments with the City but I wanted you to be aware that, now that community members understand it, there is general community support for the amendment.
>
> We have a concern that presenting at the open MNA board meeting will open a further can of worms. While we don't object to appearing and speaking to the amendment, we would prefer not to. I am reaching out to you for advice on this and know you understand our position. Do you still feel it is necessary?
>
> Thanks,
>
> Jonathan
>
> Jonathan Schachter
> Director of Development
> Sustainable Development Inc.
> 1828 Cousteau Loop SE
> Salem, OR 97302
> 206-963-0511

AFTER RECORDING, RETURN TO:

Stafford Development Company, LLC.
8840 SW Holly Lane
Wilsonville, OR 97070

REEL 4359 PAGE 170
MARION COUNTY
BILL BURGESS, COUNTY CLERK
07-15-2020 12:35 pm.
Control Number 608937 $ 336.00
Instrument 2020 00037552

SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PRINGLE CREEK COMMUNITY

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PRINGLE CREEK COMMUNITY is made, adopted, and approved this 14th day of July 2020, by the Members of Pringle Creek Community.

RECITALS

WHEREAS, Sustainable Investments, Inc, ("SI") an Oregon corporation, acting in its capacity as the initial Declarant, caused the Plat of Pringle Community, a replat of the plat of Pringle Creek Community, to be recorded in the plat records of Marion County, Oregon, on September 18, 2007 as Reel 2867, Page 289, Film Records;

WHEREAS, SI caused the initial Declaration of Covenants, Conditions and Restrictions for Pringle Creek Community to be recorded in the records of Marion County, Oregon on April 3, 2007 as Reel 2793, Page 295, Film Records;

WHEREAS, SI caused the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pringle Creek Community to be recorded in the records of Marion County, Oregon on November 6, 2007 as Reel 2886, Page 148, Film Records;

WHEREAS, SI caused the Bylaws for Pringle Creek Community to be recorded in the records of Marion County, Oregon on November 6, 2007 as Reel 2886, Page 149, Film Records (the "Bylaws");

WHEREAS, SI caused the Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pringle Creek Community to be recorded in the records of Marion County, Oregon on February 9, 2015 as Reel 3671, Page 460, Film Records (the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pringle Creek Community as amended by the Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pringle Creek Community is referred to herein as the "Amended Declaration");

WHEREAS, SI and Stafford recorded a Final Acknowledgment of Assignment and Transfer of Declarant Rights for Pringle Creek Community in the records of Marion County, Oregon on July 9, 2020 as Reel 4356, Page 301, Film Records;

WHEREAS, Article 10.3 of the Declaration states that the Declaration may be amended at any time by an instrument approved by not less than 75% of the total votes in the Community Association, without regard to the Class B voting rights of the Declarant.

WHEREAS, The plat of Pringle Community contains 146 Lots, and a proposal to amend the Declaration requires the approval of not less than the Owners of 110 Lots in Pringle Community.

WHEREAS, Declarant is the Owner of 86 Lots in Pringle Community that include Lots 4, 5, 6, 7, 11, 12, 13, 20, 21, 24, 25, 45, 46, 47, 48, 49, 50, 53, 54, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 78, 79, 80, 81, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 144, 145, and 146.

WHEREAS Stafford Homes & Land, LLC, an Oregon limited liability company, is the Owner of 24 Lots in Pringle Community that include Lots 9, 10, 17, 19, 22, 31, 32, 33, 34, 65, 82, 83, 85, 104, 105, 106, 107, 108, 138, 139, 140, 141, 142, and 143.

WHEREAS, Together, Declarant and Stafford Homes & Land, LLC are the Owners of 110 Lots in Pringle Community, without regard to the Class B voting rights of Declarant.

WHEREAS, A proposal has been made to restate and make certain amendments to the Amended Declaration.

RESTATEMENT AND AMENDMENT

Based on the foregoing recitals, and with the acknowledgment and approval of Declarant and Stafford Homes & Land, LLC, who together represent 75% of the total votes in the Community Association, the Members of the Pringle Creek Community declare as follows:

SECTION 1. AMENDMENT

The Amended Declaration is hereby restated and amended as described and set forth in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pringle Creek Community, which is attached hereto as Exhibit A:

//

//

//

SECTION 2. ACKNOWLEDGMENTS.

Stafford Development Company, LLC, acting as the Owner of 86 Lots in Pringle Creek Community, acknowledges, consents, and agrees to the restatement and amendment of the Declaration of Covenants, Conditions, and Restrictions for the Pringle Creek Community as described and set forth in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pringle Creek Community

Gordon C. Root, Manager
Stafford Development Company, LLC

State of Oregon)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that Gordon C. Root is the person who appeared before me, that said person acknowledged he signed this instrument, and on oath stated that he executed the instrument as the Manager and authorized representative of Stafford Development Company, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this 14th day of July 2020.

OFFICIAL STAMP
EFROSINIA SCHERBAKOV
NOTARY PUBLIC – OREGON
COMMISSION NO. 970997A
MY COMMISSION EXPIRES JANUARY 28, 2022

Efrosinia Scherbakov
Notary Public for Oregon

My Commission expires: January 28, 2022

//

//

//

//

//

//

//

Stafford Homes & Land, LLC, acting as the Owner of 24 Lots in Pringle Creek Community, acknowledges, consents, and agrees to the restatement and amendment of the Declaration of Covenants, Conditions, and Restrictions for the Pringle Creek Community as described and set forth in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pringle Creek Community.

Richard L. Waible, Manager
Stafford Homes & Land, LLC

State of Oregon)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that Richard L. Waible is the person who appeared before me, that said person acknowledged he signed this instrument, and on oath stated that he executed the instrument as the Manager and authorized representative of Stafford Homes & Land, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this 14th day of July 2020.

OFFICIAL STAMP
EFROSINIA SCHERBAKOV
NOTARY PUBLIC – OREGON
COMMISSION NO. 970997A
MY COMMISSION EXPIRES JANUARY 28, 2022

Efrosinia Scherbakov
Notary Public for Oregon

My Commission expires: January 28, 2022

//

//

//

//

//

//

//

//

The President and Secretary of Pringle Creek Community declare and certify: (1) that the Owners of more than 75% of Lots in Pringle Creek Community have voted to approve this SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PRINGLE CREEK COMMUNITY; and (2) that this Amendment is adopted in accordance with the Declaration and ORS 94.590.

Richard L. Waible, President
Pringle Creek Community

State of Oregon)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that Richard L. Waible is the person who appeared before me, that said person acknowledged he signed this instrument, and on oath stated that he executed the instrument as the President and authorized representative of the Pringle Creek Community, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this 14th day of July 2020.

Efrosinia Scherbakov
Notary Public for Oregon
My Commission expires: January 28, 2022

OFFICIAL STAMP
EFROSINIA SCHERBAKOV
NOTARY PUBLIC – OREGON
COMMISSION NO. 970997A
MY COMMISSION EXPIRES JANUARY 28, 2022

Bryan W. Cavaness, Secretary
Pringle Creek Community

State of Oregon)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that Bryan W. Cavaness is the person who appeared before me, that said person acknowledged he signed this instrument, and on oath stated that he executed the instrument as the Secretary and authorized representative of the Pringle Creek Community, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this 14th day of July 2020.

Efrosinia Scherbakov
Notary Public for Oregon
My Commission expires: January 28, 2022

OFFICIAL STAMP
EFROSINIA SCHERBAKOV
NOTARY PUBLIC – OREGON
COMMISSION NO. 970997A
MY COMMISSION EXPIRES JANUARY 28, 2022

EXHIBIT A

SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR PRINGLE CREEK COMMUNITY

AFTER RECORDING RETURN TO:

Stafford Development Company, LLC
8840 SW Holly Lane
Wilsonville, OR 97070

SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PRINGLE CREEK COMMUNITY

TABLE OF CONTENTS

SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR PRINGLE CREEK COMMUNITY

THIS SECOND AMEND AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PRINGLE CREEK COMMUNITY ("Declaration") is made this 14th day of July, 2020 by Stafford Development Company, LLC, an Oregon limited liability company ("Declarant").

PURPOSES

Pringle Creek Community was a part of the former Fairview Training Center property. The Property was developed with a vision to create Pringle Creek Community as a sustainable and mixed-use development featuring walkable neighborhoods, acres of meandering creek and wetlands, open community plazas, vintage buildings of great character, and green space for all to enjoy. This combination of preserving the natural environment while adding community amenities and a wide array of housing options will be a unique opportunity for people seeking a livable community setting.

Recognizing the special environmental features of the property, three major goals have guided the planning of Pringle Creek Community: embrace sustainable land use principles; build ecological systems; and promote smart transportation and movement principles. The planning for the Community included a unique process in collaboration with the City of Salem, in which a new zoning district and provisions were created for the entire Fairview Training Center property, the Fairview Mixed Use Zone. An overall plan was adopted for the entire property, the Fairview Plan. And a refinement plan was crafted after listening to the broader community and was adopted by the City to address the special features and opportunities of this property, the Pringle Creek Community Refinement Plan. The Refinement Plan is the primary land use document governing the property. It explains the three guiding principles, sustainable land use, ecological systems, and smart transportation, and applies them to the land.

Beyond these planning principles, Pringle Creek Community is founded on the core values of:

STEWARDSHIP - a community taking care of the land as a parent nurtures a child, and the land providing for the community.

COMMUNITY- embracing all of Salem and its surroundings, all age groups, diverse in its economic and ethnic make-up, with individuals interested in protecting the future of the area's eco-system by living lightly on the land. Mixed-uses across the site, within buildings, and over time, will contribute to the vitality and sense of place within Pringle Creek Community. A range of public spaces (plaza, park, and open space), owned either privately, by the Pringle Creek Community Association, or even publicly, are possible amenities that could provide for and encourage active uses and opportunities for social engagement

CULTURE - recognizing that education and learning are central to the health of a community, that arts and humanities are essential to a vibrant and active mind, and that nature and the environment are the source of our sustenance to be honored, celebrated and respected. Sustainability requires that social equity grow along side of environmental stewardship and economic opportunity. A culture of diversity, tolerance and fairness will be nurtured within this dynamic livable community.

CRAFT - the Pringle Creek Community land is forever bound to the historical tradition of building and maintaining a community that was at the heart of the largely self-sustaining former Fairview Training Center with its farming, heating and repair facilities, some of which remain on this site. In this new phase of the land's existence, Pringle Creek Community envisions a renewed attention to the crafts by building a new village center from the regeneration of the existing facilities and proposed buildings, crafting a regenerative architecture that provides a sense of place, tradition and a vision for the future community to build their values upon. The community will encourage and nourish the crafting of small community-oriented businesses and workshops dedicated to sustainable working in the environment. It will develop community gardens to foster connectivity to the land and among the residents. It will foster learning about the sustainable use of the natural resources available at Pringle Creek Community and in the greater Willamette Valley.

Pringle Creek Community includes all of the real property described in the plat of Pringle Community, a replat of the plat of Pringle Creek Community, recorded in the plat records of Marion County, Oregon, on September 18, 2007 at Reel 2867, Page 289 (the "Property"). "Pringle Creek Community" as used in this Declaration refers to the mixed-use community to be created on the Property. Declarant intends to develop Pringle Creek Community as a Class I planned community pursuant to the Oregon Planned Community Act (ORS 94.550-94.783). Declarant has caused to be incorporated a non-profit corporation known as Pringle Creek Community Association (the "Community Association").

The initial Declarant, Sustainable Investments, LLC, an Oregon limited liability company, recorded a Declaration of Covenants, Conditions, and Restrictions for Pringle Creek Community at Reel 2793, Page 295, in Marion County, Oregon. Sustainable Investments recorded an Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Property at Reel 2886 Page 148, and an Amendment to the Amended and Restated Declaration of Conditions, Covenants, and Restrictions for the Property at Reel 3671, Page 460 in the records of Marion County. This Second Amended and Restated Declaration of Conditions, Covenants, and Restrictions is intended to and does amend and restate the previously recorded documents in full, as amended.

DECLARATION

Declarant declares that the Property shall be held, transferred, sold, conveyed, occupied and improved subject to the Oregon Planned Community Act as may be amended from time to time and subject to this Declaration and the easements, covenants, restrictions and charges herein, which shall run with the such Property, shall be binding on all parties having or acquiring

any right, title, or interest in the Property or any part thereof and shall inure to the benefit of the Community Association and of each Owner.

Annexation of Additional Property. Declarant may, from time to time, and in its sole discretion, annex to the Property any adjacent real property now owned or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of adjacent real property to annex the adjacent real property owned by them to the Property. The annexation of such adjacent real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a supplemental declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications for the additional property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration and the supplemental declaration.

(b) The property included in any such annexation shall thereby become a part of the Property and this Declaration, and the Declarant and the Community Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(c) There is no limitation on the number of Lots or the number of units as defined in ORS 94.550(24) which Declarant may create or annex to the Property or on Common Property which Declarant may create or annex to the Property as Common Area.

(e) Upon annexation of additional property and upon creation of Condominium Units, additional Lots and Condominium Units shall have the voting rights as set forth in Section 6.5 of this Declaration.

(f) The formula to be used for reallocating the common expenses if additional Lots are created or annexed or Condominium Units are created and the manner of reapportioning the common expenses if additional Lots are annexed or Condominium Units are created during a fiscal year are set forth in Section 9.6 of this Declaration.

ARTICLE 1
LAND CLASSIFICATIONS

1.1 Lots and Common Area. All land in the Property is either a Lot or Common Area as depicted on the Plat or as subsequently changed as permitted by this Declaration. Common Area on the Plat consists of Tracts, Private Streets, and Lots 77 and 92, including all improvements thereon.

1.2 Change in Classification. Subject to any applicable City of Salem ordinances, title to any portion or all of a Lot or Lots may be transferred to the Community Association and the property converted to Common Area by the Declarant prior to Turnover and by the Community Association after Turnover. Conversion shall be accomplished by recording a

supplemental declaration executed by the Declarant or the Community Association as applicable and the Owner of any included Lot. Transfer and conversion after Turnover requires approval of a majority of the Owners. The Community Association's supplemental declaration shall bear a certificate of the president or secretary of the Community Association reciting that the holders of a majority of the voting rights in the Community Association have approved such change in classification.

1.3 Limited Common Area. Any portion of the Common Area which is a Tract or a portion of a Tract may be designated as Limited Common Area in the manner and for the purposes described in Section 4.5. Unless the context requires otherwise, references in this Declaration to Common Area include Limited Common Area.

ARTICLE 2
OWNERSHIP AND EASEMENTS

2.1 Non-Severability. The interest of each Owner in the use and benefit of the Common Area is appurtenant to the Lot or Condominium Unit owned by the Owner. No Lot or Condominium Unit shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Lot or Condominium Unit shall automatically transfer any right to use the Common Area provided by this Declaration without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each of the easements granted or reserved herein are deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and Condominium Units and the Community Association, as applicable, and shall be superior to all other encumbrances applied against or in favor of any portion of the Property.

2.2 Use and Occupancy of Lots. Except as otherwise expressly provided in this Declaration, or in any supplemental declaration and plat annexing property to the Property, the Owner of a Lot is entitled to the exclusive use and benefit of such Lot.

2.3 Ownership of Common Area. Title to the Common Area included in the Plat will be conveyed to the Community Association by the Declarant by language of conveyance in the Plat or after recording of the Plat and not later than Turnover. Any Common Area subsequently added to the Property will be conveyed to the Community Association at the time of the addition.

2.4 Easements. Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article. Failure to set forth such easements in any deed shall not serve to invalidate or limit any such easements in any fashion.

2.4.1 Easements on Plat. The Common Area and Lots are subject to the easements shown on the Plat and the easements granted by or pursuant to this Article 2. If any use or prospective use of any Lot or Lots results in the need to modify, remove or relocate any easement granted by the Plat or by or pursuant to this Declaration, including without limitation easements granted by or pursuant to Paragraphs 2.4.5 or 2.4.6 hereof, all costs associated with

such modification, removal or relocation, including without limitation those incurred by utility providers, shall be borne by such Lot Owner or Owners.

2.4.2 Easements for Common Area. Every Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot and Condominium Unit. Such easement is subject to any restrictions or limitations pursuant to Article 4 of this Declaration, including the right of regulation, and to Paragraph 2.4.3 regarding Limited Common Area. Such easement is also subject to ORS 94.665, as may be amended from time to time, relating to the authority of the Community Association to transfer or encumber Common Area.

2.4.3 Easement for Limited Common Area. Limited Common Areas are established by Section 4.6. The general easement for use and enjoyment of Common Areas provided in Paragraph 2.4.2 is modified with the limitations and with the special rights of use and enjoyment in the Benefited Lots provided in Section 4.6. Additional Limited Common Areas may be established pursuant to Section 4.5 by the recording of a supplemental declaration. Upon recording of the supplemental declaration, the general easement for use and enjoyment of Common Areas provided in Paragraph 2.4.2 is modified with the limitations and with the special rights of use and enjoyment in the Benefited Lots provided in the supplemental declaration.

2.4.4 Easements Reserved by Declarant. As long as Declarant owns any Lot, Declarant reserves an easement in the Common Area for itself and Participating Builders in order to carry out sales activities necessary or convenient for the sale of Lots. As long as Declarant owns any Lot, Declarant reserves an easement in the Common Area for itself and Participating Builders to store materials and to make such other use thereof as may be reasonably necessary or incident to the construction of improvements on the Property in such a way as not to interfere unreasonably with the occupancy, use, enjoyment, or access to an Owner's Lot.

2.4.5 Easement to Governmental Entities and Utility Companies. Notwithstanding anything to the contrary contained herein, Declarant grants a nonexclusive perpetual easement over, under, and across the Common Area to all governmental entities, agencies, utility companies, and their agents for the purposes of locating utilities and related facilities and performing their other respective duties as utility providers to the Property and its Owners and Occupants.

2.4.6 Additional Provisions for Utility and Drainage Easements. This Declaration and the Property is and will be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Property. No structure, planting, or other material that may damage or interfere with the installation, operation, or maintenance of utilities or drainage facilities shall be placed or permitted to remain within any easement area in the Property. Notwithstanding any provision of this Declaration to the contrary, each Lot and Condominium Unit Owner is responsible for the maintenance and repair of any utility line serving the Lot or Condominium Unit from the point of common connection, except where such maintenance is provided by a government agency or utility company and except for repair or replacement of pavement in the Common Area.

2.4.7 Community Association's Easements. Declarant grants to the Community Association and its duly authorized agents and representatives such easements over the Lots and Common Area as are necessary to perform the duties and obligations of the Community Association, including installation, maintenance, repair, and replacement of utilities, communication lines, and drainage, and any authorized maintenance of any Lot and its improvements, as set forth in this Declaration, the Bylaws, and any amendments thereto.

2.4.8 Perimeter Easements Benefiting Owners. The Refinement Plan allows side and rear yard building setbacks of varying dimensions to as little as zero feet. If the Development Review Committee or the Declarant approves structures on a Lot with less than a five-foot setback from an adjacent Lot or Common Area (excluding party wall development), an easement on the adjacent Lot or Common Area for repair and maintenance access may be needed. For that reason each Lot has an easement, and the same is granted to Declarant, over all adjoining Lots and Common Area outside of structures for the purpose of accommodating repairs and maintenance to an Owner's property (i.e., painting, re-roofing, flashing, guttering, landscaping, foundation work, masonry repairs, installation of or repairs to utility services, or any other constructive purpose) where such repairs or maintenance require access to or from the adjacent land until the work is completed. Except in case of emergency, the easement may only be utilized after i) verbal notice to and consent of the Owner of the adjacent Lot, or ii) written notice seven days in advance of the entry.

2.4.9 Utility Service Easements Benefiting Lot Owners. The Owners of a Dwelling Unit developed within a single building have an easement over, under, and through all other Lots on which the building is located for underground utility service to the Owner's Dwelling Unit. This easement is perpetual, runs with the land and is binding on the successors and assigns to the Lots and the Dwelling Units located within a single building. The utility lines within the easement area shall be maintained by the Lot owner benefited by the easement. Any damage caused to the servient Lot (and Dwelling Unit) by the maintenance, repair, removal, or replacement of the utility service lines shall be paid by the Lot Owner causing such damage.

ARTICLE 3
LOTS

3.1 Designation of Use. All Lots in the Property may be put to residential uses. Subject to the Refinement Plan and other applicable City of Salem ordinances, the specific permitted uses of a Lot will be determined at the time of its initial development. Residential and mixed-use categories are described in the Development Guidelines as examples but not as restrictions on permitted use categories. At the time of initial development of any Lot subject to Development Review the Development Review Committee will approve the permitted uses of the Lot. At the time of initial development of any Lot not subject to Development Review the Declarant will approve the permitted uses of the Lot. The permitted uses will be recorded in the records of the Community Association. The Development Review Committee or the Declarant, as applicable, will take into account previously approved uses to assure that upon complete development of the Property the residential density ranges and other requirements of the Refinement Plan will be satisfied. A change in permitted uses may be approved through the

same process by the Development Review Committee or the Declarant, as applicable, but may not occur without the consent of the Owner of the affected Lot.

3.2 Division and Combination of Lots. A Lot may be divided and Lots may be combined only with the prior written approval of the Board and in accordance with applicable City of Salem ordinances. The Board will determine, in its sole discretion, whether a proposed Lot division or combination of Lots and any associated development or redevelopment is consistent with the principles and values of Pringle Creek Community and existing and planned development patterns in the Property.

3.3 Development of Lots and Improvements. The initial development of a Lot and the alteration or addition of development on a Lot is subject to the requirements of the Development Review Committee. No Lot shall be initially developed without approval of the Development Review Committee and any proposed alterations or replacements that require Development Review Committee approval pursuant to the Development Guidelines must first receive such approval. The first Owner of a Lot shall obtain Development Review Committee approval and commence construction of the initial development on the Lot within one year from the date the Owner acquires ownership and shall complete the development and obtain a determination of compliance as provided in Section 5.5 within one year from the date of commencement of construction. The Development Review Committee shall enforce the provisions of this Section 3.3 pursuant to the procedures for noncompliance in Section 5.6. The foregoing notwithstanding, Declarant, a Successor Declarant, and Participating Builders shall be exempt from any requirement to submit plans and specifications to the Development Review Committee, obtain any approval from the Development Review Committee prior to commencing to construct any Improvement on a Lot, commence construction within a specified period of time, obtain a determination of compliance from the Development Review Committee following the completion of any Improvement constructed on a Lot, or pay any fees with respect to the construction of Improvements on any Lots owned by Declarant, a Successor Declarant, or a Participating Builder. The exemptions stated in this Article 3.3 shall continue and remain in effect after Declarant turns over administrative responsibility for the Community Association pursuant to Section 7.2, i.e., the "Turnover date."

3.3.1 Lot and Improvements Maintenance by Owner. Each Owner shall maintain such Owner's Lot and all improvements thereon in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard or other nuisance. All repainting or re-staining and exterior remodeling is subject to the requirements of the Development Review Committee. If a Lot or Lots are converted to condominium ownership, the condominium sub-association shall be bound by these requirements with respect to all common elements on the Lot or Lots.

3.3.2 Structures Maintenance by the Community Association. At the time of initial development of a Lot subject to Development Review, the Development Review Committee with the consent of the Lot Owner may determine that some part or all of the exterior maintenance and repair of structures on the Lot will be performed by the Community Association and advise the Board of its determination. At the time of initial development of a Lot not subject to Development Review, the Declarant may determine that some part or all of the

exterior maintenance and repair of structures on the Lot will be performed by the Community Association and advise the Board of its determination. The Board will establish the Lot, and if applicable, the Condominium Units on the Lot as a Special Area in the records of the Community Association for purposes of performing the maintenance and repair and for Special Area Assessment and may include the Lot and the Condominium Units on the Lot in a Special Area with other Lots with similar maintenance and repair requirements. At any time after development an Owner or Owners may petition the Board to establish a Special Area for their Lot or Lots, and if applicable, the Condominium Units on the Lot or Lots or include their Lots and Condominium Units in an existing Special Area for purposes of performing exterior maintenance and repair. The cost of any such maintenance and repair will be assessed to the Lots or the Condominium Units on the Lots in the manner provided in Article 9. The Community Association may, but is not obligated to, purchase insurance covering damage to the elements included in the maintenance and repair obligation and include the cost of the insurance in the Special Area Assessment. An Owner will make available to the Community Association any proceeds from the Owner's insurance for casualty loss to elements that the Community Association maintains on the Lot or Condominium Unit to offset the cost of repair of casualty loss. Notwithstanding any obligation of the Community Association to provide maintenance and repair in accordance with this Paragraph, if a structure suffers damage the Owner will have the sole authority to decide whether the structure will be repaired or reconstructed, provided that if the Owner chooses not to repair or reconstruct the structure the Owner will remove the structure or the damaged portion thereof.

3.4 Landscaping. The initial installation and the replacement of landscaping on a Lot is subject to the requirements of the Development Review Committee. No Lot shall be initially landscaped without approval of the Development Review Committee and any proposed alterations or replacements of landscaping that require Development Review Committee approval pursuant to the Development Guidelines must first receive such approval. The foregoing notwithstanding, Declarant, a Successor Declarant, and Participating Builders shall be exempt from any requirement to submit landscaping plans to the Development Review Committee, obtain approval from Development Review Committee prior to commencing initial installation of landscaping on a Lot, obtain a determination of compliance from the Development Review Committee following the completion of any initial landscape work on a Lot, or pay any fees with respect to the initial landscaping of any Lots owned by the Declarant, a Successor Declarant, or a Participating Builder.

3.4.1 Landscape Maintenance by Owner. Owners shall irrigate their yards as necessary to properly maintain the landscaping. The Community Association may irrigate from hose bibs on the Lots of Owners who fail to properly irrigate their yards. If plantings on any Lot have died or are dying because the Owner of the Lot neglected to properly care for and irrigate the plants, or because of other harm to the plants caused by such Owner, the Community Association may replace the plantings and assess the Owner for the cost as a Reimbursement Assessment, which may be collected and enforced in the manner provided in Article 9 and the Bylaws. If a Lot or Lots are converted to condominium ownership, the condominium sub-association shall be bound by these requirements with respect to all common elements on the Lot or Lots.

3.4.2 Landscape Maintenance by the Community Association. At any time after Lot is developed an Owner or Owners may petition the Board to establish a Special Area for their Lot or Lots, and if applicable, the Condominium Units on the Lot or Lots or include their Lots and Condominium Units in an existing Special Area for purposes of performing exterior maintenance and replacement. The cost of any such maintenance and replacement will be assessed to the Lots or the Condominium Units on the Lots in the manner provided in Article 9. The Community Association may, but is not obligated to, purchase insurance covering damage to the elements included in the maintenance and replacement obligation and include the cost of the insurance in the Special Area Assessment. An Owner will make available to the Community Association any proceeds from the Owner's insurance for casualty loss to elements that the Community Association maintains on the Lot or Condominium Unit to offset the cost of repair of casualty loss.

3.5 Rental. An Owner may rent or lease such Owner's Lot or a portion thereof, provided that all of the following conditions are met:

3.5.1 Written Rental Agreements Required. The Owner and the tenant enter into a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Declaration, Bylaws, and Rules and Regulations of the Community Association; and (ii) a failure to comply with any provision of the Declaration, Bylaws, and Rules and Regulations of the Community Association shall constitute a default under the rental or lease agreement;

3.5.2 Minimum Rental Period. The period of the rental or lease is not less than thirty (30) days;

3.5.3 Tenant Must be Given Documents. The Owner gives each tenant a copy of the Community Association's Declaration, Bylaws, and Rules and Regulations; and

3.5.4 Signs. No "For Rent" signs shall be allowed anywhere within the Property, including in yards or in windows.

3.6 Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot that supports a Dwelling Unit except dogs, cats, or other household pets; provided that they are not kept, bred or maintained for commercial purposes; provided further that no more than two (2) dogs or two (2) cats shall be allowed per Dwelling Unit. All pets must be kept as domestic indoor pets, shall be restrained to the Owner's Lot or Dwelling Unit, and shall not be allowed to run at large. Leashed animals are permitted within Common Areas streets when accompanied by their Owners. Owners shall be responsible for cleaning up any and all of their animals' waste on the Property, including on the respective Owner's Lot. If an Owner fails to clean up their animals' waste, the Association may, but shall not be obligated to, take such action as may be necessary to clean up the animals' waste and shall have the right of entry for such purposes. Any costs incurred by the Association in connection with such action shall be deemed to be a Special Assessment of the Owner whose animal(s) created the waste. No animal shall be allowed to make an unreasonable amount of noise or become a nuisance as determined by the Board, at its sole discretion. After notice and an opportunity to be heard, the

Board shall have the right to require the removal of any animal from the Lot which it finds, in its sole discretion, to violate this section.

3.7 Nuisance or Unlawful Activities. No noxious, harmful, or offensive activities shall be carried out on any Lot or Common Area. Nor shall anything be done or placed on any Lot or Common Area that interferes with or jeopardizes the enjoyment of, or that is a source of annoyance to, the Owners or Occupants. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. Owners, their lessees, guests, and invitees shall not cultivate, process, dry, use, or consume, or suffer and permit any person to cultivate, produce, process, dry, use, or consume any part or derivative of the plant Cannabis family Moraceae (Marijuana) on any Lot except in the interior portions of Dwelling Units and/or other enclosed structures. The Board may adopt Rules and Regulations that identify and define specific conditions and activities that are in violation of this Paragraph and provide sanctions for such violations.

3.8 Parking. Boats, trailers, mobile homes, campers, and other recreational vehicles or equipment shall not be parked on any part of the Common Area including any streets or on any portion of a Lot that is subject to an access easement at any time, except for briefs periods for loading or unloading, and may not be parked on any Lot outside of an access easement or Limited Common Area for more than eight hours or such other period as may be permitted by the Community Association Rules and Regulations unless parked within a fully enclosed structure. The Community Association may adopt Rules and Regulations restricting parking, including Rules and Regulations that modify the restrictions of this Section 3.8, that are desirable as determined in its sole discretion for the safe and efficient functioning of the Common Area including streets and of the access easements over Lots in the Property, and for the benefit of Pringle Creek Community generally.

3.9 Vehicles in Disrepair. No Owner shall permit any vehicle that is in a state of disrepair or that is not currently licensed to be abandoned or to remain parked on the Common Area including any street on at any time and may not permit them on a Lot or Limited Common Area for a period in excess of 48 hours. A vehicle shall be deemed in a "state of disrepair" when the Board reasonably determines that its presence is offensive to the neighborhood. If an Owner fails to remove such vehicle within five days following the date on which the Community Association mails or delivers to such Owner a notice directing such removal, the Community Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner as a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

3.10 Signs. No signs shall be erected or maintained on any Lot except that not more than one "For Sale" sign placed by an Owner, Declarant, a Successor Declarant, Participating Builders, or by a licensed real estate agent, not exceeding 24 inches high and 36 inches long, may be temporarily displayed on any Lot, except that two such signs may be placed on a Lot during the course of initial construction of Improvements on such Lot. This restriction shall not prohibit the temporary display of political signs placed no earlier than three weeks prior to an election date. Political signs shall not exceed three (3) square feet and no more than three (3) political signs shall be displayed on any one Lot at a time. All political signs shall be removed

from a Lot within 48 hours after election day. The restrictions in this section shall not apply to an entrance sign placed by the Declarant, a Successor Declarant, Participating Builders, or advertising for the development generally.

3.11 Rubbish and Trash. No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard rakings, dirt, and other material resulting from landscaping work shall not be dumped onto the Common Area including streets or any other Lots. If an Owner fails to remove any trash, rubbish, garbage, yard rakings, or any similar materials from any Lot or the Common Area where deposited by such Owner or the Occupants of such Owner's Lot after notice has been given by the Board to the Owner, the Community Association may have such materials removed and charge the expense of such removal to the Owner. Such charge shall constitute a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

3.12 Fences and Hedges. No fences or boundary hedges shall be installed or replaced without prior written approval of the Development Review Committee. All such fences and hedges shall have convenient access ways to allow the Community Association to carry out its exterior maintenance and landscaping responsibilities.

3.13 Service Facilities. Service facilities (garbage containers, fuel tanks, etc.) shall be screened so that such facilities are not visible at any time from the street or a neighboring Lot or Common Area. All telephone, electrical, cable television, and other utility installations shall be placed underground in conformance with applicable law and subject to approval by the Development Review Committee.

3.14 Antennas and Satellite Dishes.
Except as otherwise provided by law or this Section, no exterior antennas, satellite dishes, microwave, aerial, tower or other devices for the transmission or reception of television, radio or other forms of sound or electromagnetic radiation shall be erected, constructed or placed on any Home, Common Area or Lot. Exterior satellite dishes with a surface diameter of one (1) meter or less and antennas designed to receive television broadcast signals or multi-channel multi-point distribution (wireless cable), may be placed on an Owner's Home or Lot. They shall be screened from neighboring Lots to the greatest extent practicable. The Board or the Development Review Committee may adopt reasonable rules and regulations governing the installation, safety, placement and screening of antennas, satellite dishes, and other similar devices. However, this section and any rules adopted hereunder shall not unreasonably delay or increase the cost of installation, maintenance, or use, or preclude reception of a signal of acceptable quality.

3.15 Exterior Lighting or Noise-making Devices. Except with the consent of the Development Review Committee, no exterior lighting or noise-making devices, other than fire alarms, shall be installed or maintained on a developed Lot. All exterior lighting on a Lot shall be designed, installed, and maintained in a manner that does not adversely affect other Lots. Seasonal holiday lighting and decorations are permissible and shall not require review and

approval by the Design Review Committee if removed within 30 days after the celebrated holiday.

3.16 Flags. The Community Association shall not prohibit the outdoor display of the flag of the United States on a Lot if the flag is displayed in a manner consistent with the United States Flag Code. The Board may adopt reasonable rules and regulations, consistent with the United States Flag Code regarding the placement and manner of display of the flag of the United States. The Association shall not prohibit the installation of a flagpole for the display of the flag of the United States. The Board may adopt rules and regulations regarding the location and the size of a flagpole used to display a flag of the United States. For purposes of this section, "flag of the United States" means the flag of the United States as defined in the United States Flag Code that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole, or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, or of any similar building components.

3.17 Basketball Hoops. No Owner may install a permanent basketball hoop on any Lot without the Development Review Committee's prior approval. The Development Review Committee may, in its discretion, prohibit such basketball hoops. Basketball hoops may be permitted in Limited Common Area pursuant to Section 4.5.

3.18 Grades, Slopes, and Drainage. There shall be no interference with the established drainage over or through any Lot or Common Area. The term *established drainage* means the drainage system and facilities designed and constructed for the Property.

3.19 Tree Preservation. The Refinement Plan contains an inventory of trees in the Property and recommendations for tree preservation. A tree preservation plan was recorded with the City of Salem in connection with City approval of the Plat. Owners and Occupants will comply with the requirements of the tree preservation plan and applicable City of Salem ordinances concerning trees.

3.20 Damage or Destruction to Improvements. If all or any portion of a structure on a Lot is damaged by fire or other casualty, the Owner or Owners shall either (a) restore the damaged improvements or (b) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (a) above must be performed so that the improvements are in substantially the same condition in which they existed before the damage, unless the owner complies with the provisions of Article 5. The Owner or Owners must commence such work within 60 days after the damage occurs and must complete the work within six months thereafter.

3.21 Right of Maintenance and Entry by Community Association. If an Owner fails to perform maintenance and/or repair that such Owner is obligated to perform pursuant to this Declaration, and if the Board determines, after notice, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature, and/or value of the Property, the Board may cause such maintenance and/or repair to be performed and may enter any such Lot whenever entry is necessary in connection with the performance thereof. Entry shall be made

with as little inconvenience to an Owner as practicable and only after advance written notice of not less than 48 hours, except in emergency situations. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot as a Reimbursement Assessment, which may be collected and enforced as any other assessments authorized hereunder.

3.22 Temporary Structures. No structure of a temporary character or any trailer, tent, shack, garage, barn, or other outbuilding shall be used on any Lot as a residence, either temporarily or permanently.

3.23 Ordinances and Regulations. The standards and restrictions set forth in this Article 3 shall be the minimum required. To the extent that local governmental ordinances and regulations are more restrictive or provide for a higher or different standard, such local governmental ordinances and regulations will prevail.

3.24 Marketing Rights. Declarant, a Successor Declarant, and Participating Builders shall have the right to maintain a sales offices and models on one or more of the Lots that Declarant, a Successor Declarant, or a Participating Builder may own. Declarant, a Successor Declarant, Participating Builders, and prospective purchasers and their agents shall have the right to use and occupy the sales offices and models during reasonable hours any day of the week. Declarant, a Successor Declarant, and Participating Builders may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Area.

3.25 Party Walls. For the purposes of this Section 3.24, a wall built as a part of original construction of a structure that is located on the property line between two or more Lots and that divides the structures on those Lots is a party wall. The following provisions shall apply to party walls unless the Owners of the Lots have entered into and recorded an agreement evidencing an intent to be bound by the agreement in lieu of these provisions:

3.25.1 General Rules of Law to Apply. The general rules of law of the State of Oregon regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply to all such party walls, to the extent such rules are not inconsistent with the provisions of this Section 3.24.

3.25.2 Sharing of Repair and Maintenance. Each Owner shall provide the other Owners with reasonable notice of any repair, reconstruction, or other maintenance to the party wall that such Owner believes is reasonably needed and which is structural, or which will affect a portion of the party wall on the other Owners' Lots. Subject to the provisions of Paragraph 3.24.3, all Owners shall agree on all such maintenance work before any work commences. If the Owners are unable to agree with respect to the maintenance work, then such matter shall be arbitrated pursuant to Paragraph 3.24.8. Except as otherwise provided herein, the costs of all maintenance work shall be borne by each Owner in the proportion that the surface area of the party wall in the portion of the structure on the Owner's Lot bears to the surface area of the party wall in the structure on all of the Lots.

3.25.3 Right to Maintain, Repair or Reconstruct Without Consent. If, in the reasonable opinion of an Owner, any maintenance work is needed, if the other Owner(s) refuses to agree to such maintenance work, and if it would be imprudent to delay performance of the work, the work may be completed by the Owner who reasonably believes it is necessary. In such event, the cost of the maintenance work shall be divided among the Owners in the manner provided in Paragraph 3.24.2, unless arbitration pursuant to Paragraph 3.24.8 determines that the maintenance work was unnecessary or that the cost should be allocated in another manner.

3.25.4 Damage or Destruction. If a party wall is damaged or destroyed by fire or other casualty, any Owner may restore it and, if such Owner has given to all other Owners not less than 24 hours before commencing the work, written notice describing the restoration to be performed, the estimated cost thereof, and an estimate of each Lot's proportionate share, obtain contribution of the portion of the cost attributable to the other Owners, without prejudice to the right of any Owner to obtain a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

3.25.5 Weatherproofing. Notwithstanding any other provision of this Section 3.24, an Owner who, by his or her negligent or willful act, causes the party wall to be exposed to the elements more than is usual shall bear the whole cost of furnishing the necessary protection against such elements, subject, however, to reimbursement and/or contributions from available insurance policies.

3.25.6 Damage Caused by or Attributed to Lot Owner. Notwithstanding any other provision of this Section 3.24, in the event the party wall is damaged by one of the Owners, the damage shall be repaired at the expense of the Owner who caused the damage.

3.25.7 Right to Contribution Runs with Land. The right of an Owner to receive contribution from any other Owner under this Section 3.24, together with the obligation of an Owner to contribute to any other Owner under this Paragraph 3.24.7, shall be appurtenant to and shall run with the land and shall pass to each Owner's successors in title.

ARTICLE 4
COMMON AREA

4.1 Common Area. The Common Area in the Property has varied characteristics and functions ranging from stream corridor and wetlands, to Private Streets and ecologically advanced surface water infiltration systems, to community squares and gathering places, to Limited Common Areas, to name just a few. The Board may identify the purposes and functions of the various Common Areas and may adopt Rules and Regulations that govern their use.

4.2 Community Use of Common Area. Among the core values of Pringle Creek Community is community, creating an environment that welcomes and enriches not just its Owners and Occupants, but those in the broader community. To that end, the Community Association will operate and regulate the Common Area in a manner that provides access and benefit to the broader community consistent with the needs of the Owners and Occupants in the Property.

4.3 Maintenance of Common Area. The Community Association is responsible for maintenance, upkeep, repair and replacement of the Common Area except where such maintenance is provided by a government agency or utility company. The Board shall prescribe and review and update as necessary in the manner set forth in the Bylaws a maintenance plan for the maintenance, repair and replacement of all property for which the Community Association has maintenance, repair or replacement responsibility under this Declaration or the Bylaws or ORS 94.550 to 94.783.

4.4 Alterations to and Operation in Common Area. Except as provided in Section 4.5 or 4.6, only the Community Association may construct, reconstruct, or alter any improvements to and in the Common Area or cause such to be made, after initial development, if any, by the Declarant. A proposal for any construction of or alteration, maintenance, or repair to any such improvement may be made at any Board meeting. The Board may adopt a proposal, subject to the limitations contained in this Declaration and the Bylaws. The Board may make assessments for the construction, installation, operation, maintenance, upkeep, repair and replacement of improvements and facilities to and in the Common Area in accordance with Article 9 and the Bylaws. The Community Association may operate or delegate the operation of facilities in the Common Areas.

4.5 Creation of Limited Common Area. Limited Common Areas may be established in the following manner.

4.5.1 At the Time of Development of Potentially Benefited Lots. The Development Review Committee may determine that a specific Tract is needed or desirable to provide pedestrian access, vehicular access, vehicle parking, covered or enclosed parking structures, landscaping, outdoor recreational equipment or any other improvements for the use of certain Lots. The determination of the Development Review Committee shall be made at the time the Lots are proposed for development through Development Review. The Declarant may make a similar determination with respect to development of Lots owned by the Declarant if the Lots are exempt from Development Review. If the Development Review Committee makes the determination of need and approves the proposed development including any improvements in a Tract, it shall notify the Declarant, or after Turnover the Board, of its approval and determination. The Declarant or the Board, as applicable, will record a supplemental declaration identifying the Tract as a Limited Common Area, identifying the Lots which it will serve (the "Benefited Lots"), any limitations on the general easement for use and enjoyment in Paragraph 2.4.2 and any special rights of use and enjoyment granted to the Benefited Lots. Initial construction of improvements in the Limited Common Area approved by the Development Review Committee or the Declarant, as applicable, will be made by the Declarant, or by the Owners or developers of the associated Benefited Lots with the approval of the Declarant, subject to conditions of any Development Review Committee approval.

4.5.2 After Initial Development of Potentially Benefited Lots. After the initial development of Lots which may be benefited by improvements on a Tract, one or more Owners of such Lots or Condominium Units on the Lots may file a development review request with the Development Review Committee to initiate the process of creating the Tract as a Limited

Common Area and approving improvements described in Paragraph 4.5.1. The application shall be processed in the same manner as in Paragraph 4.5.1, except as otherwise provided in this Paragraph. The Development Review Committee must determine that the Lots will be benefited by the proposed improvements, that all Owners of the Lots or Condominium Units on the Lots that would benefit from the proposed improvements have consented to the proposal and agreed to make the improvements, and that creation of the Tract as a Limited Common Area will not be detrimental to the Property as a whole. If the Development Review Committee makes those determinations it must forward its decision to the Board which must review and concur in the determinations before taking action to create the Limited Common Area.

4.6 Initial Limited Common Area. In addition to Limited Common Areas established pursuant to Section 4.5 of this Declaration, the following Limited Common Areas are hereby established:

4.6.1 Tract O. Tract O is established as Limited Common Area for the principal purpose of providing a parking structure or structures to serve Lots 111, 112 and 113 (Benefited Lots) and such additional uses as are not inconsistent with use of Tract O for vehicle parking. Construction and landscaping on Tract O shall be approved by the Development Review Committee or the Declarant as applicable and performed in the same manner as provided in Paragraph 4.5.1. In addition to such approval, the Development Review Committee or the Declarant as applicable will assign spaces in the parking structure or structures to each of the three Benefited Lots. Thereafter the Board may reassign spaces among the Benefited Lots with the consent of any of the affected Lot Owners. The rights of use so assigned are for the exclusive use and benefit of the designated Lot to the exclusion of the general easement for use and enjoyment in Paragraph 2.4.2.

4.6.2 Tract Y. Tract Y is established as Limited Common Area for the principal purpose of providing a parking structure or structures to serve Lots 71 through 75 (Benefited Lots) and such additional uses as are not inconsistent with use of Tract Y for vehicle parking. Construction and landscaping on Tract Y shall be approved by the Development Review Committee or the Declarant as applicable and performed in the same manner as provided in Paragraph 4.5.1. In addition to such approval, the Development Review Committee or the Declarant as applicable will assign spaces in the parking structure or structures to each of the five Benefited Lots. Thereafter the Board may reassign spaces among the Benefited Lots with the consent of any of the affected Lot Owners. The rights of use so assigned are solely for the benefit of the designated Lot and its Owner to the exclusion of the general easement for use and enjoyment in Paragraph 2.4.2.

4.6.3 Tract W. Tract W is established as Limited Common Area for the principal purposes of providing a parking structure or structures, vehicular access to such structures and pedestrian access between such structures and the Benefited Lots to serve Lots 31 through 34 and Lots 37 through 39 (Benefited Lots) and such additional uses as are not inconsistent with use of Tract W for vehicle parking and vehicular and pedestrian access. Construction and landscaping on Tract W shall be approved by the Development Review Committee or the Declarant as applicable and performed in the same manner as provided in Paragraph 4.5.1. In addition to such approval, the Development Review Committee or the Declarant as applicable

will assign spaces in the parking structure or structures to each of the seven Benefited Lots. Thereafter the Board may reassign spaces among the Benefited Lots with the consent of any of the affected Lot Owners. The rights of use so assigned are solely for the benefit of the designated Lot and its Owner to the exclusion of the general easement for use and enjoyment in Paragraph 2.4.2.

4.6.4 Tract X. Tract X is established as Limited Common Area for the principal purposes of providing a parking structure or structures, vehicular access to such structures and pedestrian access between such structures and the Benefited Lots to serve Lots 40 through 44 (Benefited Lots) and such additional uses as are not inconsistent with use of Tract X for vehicle parking and vehicular and pedestrian access. Construction and landscaping on Tract X shall be approved by the Development Review Committee or the Declarant as applicable and performed in the same manner as provided in Paragraph 4.5.1. In addition to such approval, the Development Review Committee or the Declarant as applicable will assign spaces in the parking structure or structures to each of the five Benefited Lots. Thereafter the Board may reassign spaces among the Benefited Lots with the consent of any of the affected Lot Owners. The rights of use so assigned are solely for the benefit of the designated Lot and its Owner to the exclusion of the general easement for use and enjoyment in Paragraph 2.4.2.

4.7 Alteration and Maintenance of Limited Common Areas. The Board will establish the Benefited Lots or Condominium Units on the Lots associated with a Limited Common Area as a Special Area in the records of the Community Association for purposes of performing alteration, maintenance and repair of the improvements in such Limited Common Area and for Special Area Assessment. The cost of such alteration, maintenance and repair will be assessed to the Lots or Condominium Units on the Lots in the manner provided in Article 9. Notwithstanding the foregoing, the Board may apportion the cost of alteration, maintenance and repair between the Benefited Lots or Condominium Units and all other Lots and Condominium Units in the Property to the extent that the improvements are available to and benefit the entire Community. The Board will not authorize any construction of or alteration to any such improvement other than normal repair and maintenance without first advising the Owners of the Benefited Lots and considering their comments.

4.8 Landscaping. All landscaping on the Common Area shall be maintained and cared for in a manner that is consistent with Declarant's or the Development Review Committee's original approval of such landscaping. Weeds and diseased or dead lawn, trees, groundcover, or shrubs shall be removed and replaced.

4.9 Funding. Expenditures for alterations, maintenance, or repairs to an existing improvement for which a reserve has been collected shall be made from the Reserve Account. All other expenditures for operation, construction, reconstruction, alteration, maintenance or repair of Common Area and Common Area improvements shall be funded by assessments levied and collected as provided in Article 9 and the Bylaws and from insurance proceeds, if any, and from Special Area Assessments for work in Limited Common Areas if applicable.

4.10 Condemnation of Common Area. If any portion of the Common Area is taken for any public use under any statute, by right of eminent domain, or by purchase in lieu of

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

4.11 Damage or Destruction of Common Area. If any portion of the Common Area is damaged or destroyed by an Owner or any of Owner's guests, Occupants, tenants, licensees, agents, or members of Owner's family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner hereby authorizes the Community Association to repair such damage at the Owner's expense. The Community Association shall repair the damage and restore the area in a workmanlike manner as originally constituted or as may be modified or altered subsequently by the Community Association in the discretion of the Board. Reasonable costs incurred in connection with effecting such repairs will be levied as a Reimbursement Assessment on the Lot and against the Owner who caused or is responsible for such damage.

ARTICLE 5
DEVELOPMENT REVIEW

5.1 Development Review Committee. There shall be a Development Review Committee. Declarant, Declarant's agents, and/or Declarant's employees shall exclusively act and serve as the initial Development Review Committee. Not later than the Completion Date, Declarant shall assign responsibility for the Development Review Committee to the Community Association. Thereafter the Board shall appoint a new Development Review Committee consisting of three members. At least one member of the Design Review Committee shall be an Owner. Members of the Design Review Committee shall hold office until they resign or are removed by a vote of the Board.

5.2 Duties of the Development Review Committee. The Development Review Committee shall consider and approve or deny proposals or plans for development activities on the Property and perform other duties set forth in this Declaration, the Bylaws, the Development Guidelines, and other Rules and Regulations the Board may adopt. The Development Review Committee shall act consistent with the requirements of this Declaration, the Bylaws, the Development Guidelines subject to Section 5.4, and any other applicable Rules and Regulations. Any Owner adversely affected by an action or decision of the Development Review Committee may appeal such action or decision to the Board. An appeal shall be made in writing within ten (10) days following the Development Review Committee's action or decision and shall state specific objections or mitigating circumstances that justify the appeal. The Board shall make a final, conclusive decision regarding the merits of an appeal within thirty (30) days after receipt of the written appeal. The Board shall have final authority to interpret this Declaration, the Bylaws, the Development Guidelines, and any other applicable Rules and Regulations as they may apply to the Development Review Committee's exercise of its duties under Article 5. The Design Review Committee may, in its discretion, employ one or more registered architects, registered engineers, and/or landscape architects to assist it with its duties to review and approve development plans.

5.3 Functions of the Successor Development Review Committee. At such time as a successor Development Review Committee is appointed under Section 5.1, such Development Review Committee shall meet as necessary to properly perform its duties. The vote or written consent of any two members shall constitute an action by the Development Review Committee. The Development Review Committee shall keep and maintain a record of all actions taken by it at meetings or otherwise; however, this requirement shall not apply to Development activities undertaken by Declarant, a Successor Declarant, or any Participating Builder during the period that Declarant serves as the Development Review Committee. Unless authorized by the Board, members of the Development Review Committee shall not receive any compensation for services rendered. The Board shall reimburse members of the Development Review Committee for any reasonable expenses they may incur in connection with the performance of any Development Review Committee duties.

5.4 Development Guidelines. The Board shall adopt and may amend from time to time Development Guidelines setting forth procedures and substantive guidelines for the decisions the Declaration requires the Development Review Committee to make. The Development Guidelines shall not conflict with this Declaration. The Development Review Committee's decisions should be consistent with the Development Guidelines. However, the Development Review Committee may determine that special characteristics of a proposed development or its site justify a different approach than set forth in the Development Guidelines or that the Development Guidelines should be amended. In the former instance the Development Review Committee will explain its reasons for not adhering to the Development Guidelines. In the latter instance, the Development Review Committee will recommend the Board amend the Development Guidelines. After the successor Development Review Committee has been formed, any amendment of the Development Guidelines shall not be effective unless it is approved by a majority of the votes of Owners computed in the manner provided in this Declaration.

5.5 Determination of Compliance. The Development Review Committee may inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted and shall make such inspection and determination upon request of an Owner of the work. If the Development Review Committee finds that the work was not performed in substantial conformance with the approval granted, or if the Development Review Committee finds that the approval required was not obtained, the Development Review Committee shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

5.6 Noncompliance. If the Development Review Committee determines that an Owner has not constructed an improvement consistent with the specifications of a Development Review Committee approval or has constructed an improvement without obtaining Development Review Committee approval, sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, not sooner than three days after issuance of such notice, the Development Review Committee shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than 30 days from the date on which the notice of noncompliance was issued. At the hearing, if the Development Review Committee finds that

there is no valid reason for the continuing noncompliance, the Development Review Committee shall require the Owner to remedy such noncompliance within 10 days after the date of the Development Review Committee's determination. If the Owner does not comply with the Development Review Committee's ruling within such period or any extension thereof granted by the Development Review Committee, at its sole discretion, the Development Review Committee may remove the noncomplying improvement, remedy the noncompliance, and/or record a notice of noncompliance in the county deed records. The costs of any such action shall be assessed against the Owner as a Reimbursement Assessment either before or after any remedial action is taken.

5.7 Non-Waiver. Approval by the Development Review Committee of any plans, drawings or specifications shall not be a waiver of the right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

5.8 Fees and Deposits. The Development Review Committee may charge applicants a reasonable application fee and additional costs incurred or expected to be incurred by the Development Review Committee to retain architects, attorneys, engineers, and other consultants to advise the Development Review Committee concerning any aspect of the applications and/or compliance with any appropriate development criteria or standards. The Development Review Committee may also require payment of deposits prior to commencing approved work to assure proper completion of the work.

5.9 Liability. Neither the Development Review Committee nor any member shall be liable to the Community Association or to any Owner for any damage, loss or prejudice due to approval or failure to approve any matters submitted to the Development Review Committee; provided, however, the member must have acted in good faith in light of the member's actual knowledge at the time.

5.10 Declarant, Successor Declarant, and Participating Builders Exempt from Development Review. Notwithstanding any other provision of this Declaration or Development Guidelines to the contrary, Declarant, a Successor Declarant, and Participating Builders shall be exempt from the requirement to submit development plans to the Development Review Committee, to obtain any approval from the Development Review Committee prior to commencing any development work on a Lot, obtain a determination of compliance from the Development Review Committee following the completion of any development work on a Lot, or pay any fees with respect to the development of any Lots owned by Declarant, a Successor Declarant, or a Participating Builder. The exemptions stated in this Article 5.10 shall continue and remain in effect after Declarant turns over administrative responsibility for the Community Association pursuant to Section 7.2, i.e., the "Turnover date."

ARTICLE 6
THE COMMUNITY ASSOCIATION

6.1 Organization. Declarant will file articles of incorporation to incorporate the Pringle Creek Community Association under the nonprofit corporation laws of the State of Oregon. Not later than the date that the first Lot is conveyed to an Owner other than Declarant,

Declarant shall also adopt Bylaws, which, together with the Articles will govern the affairs of the Community Association.

6.2 Dissolution. If the Community Association for any reason is subsequently dissolved as a corporate entity, a non-profit, unincorporated Community Association of the same name consisting of all Owners shall immediately and without further action or notice succeed to all rights and obligations of the Community Association, including without limitation the assets of the former organization. The affairs of the unincorporated Community Association will be governed by the laws of the state of Oregon and, to the extent not inconsistent, by the Articles and Bylaws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated Community Association. As referred to herein, the term "Community Association" shall include the unincorporated Community Association.

6.3 Members. Each Owner is a member of the Community Association. Membership in the Community Association is appurtenant to, and may not be separated from, ownership of any Lot, provided that when one or more Condominium Units are created on a Lot the owners of the Condominium Units are members and the Lot is not separately recognized for purposes of Community Association membership. Transfer of ownership of a Lot or Condominium Unit shall automatically transfer membership in the Community Association upon satisfaction of the filing requirements of Section 1.3 of the Bylaws. Without any other act or acknowledgment, Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and the Rules and Regulations and Development Guidelines of the Community Association and any amendments.

6.4 Proxy. Each Owner may vote or give consent in person at a meeting of the Community Association, in the discretion of the Board by absentee ballot in the manner prescribed in the Planned Community Act, by written ballot subject to the requirements and limitations of ORS 94.647, or pursuant to a proxy executed by such Owner. An Owner may not revoke a proxy given pursuant to this Section 6.4 except by actual notice of revocation to the person presiding over a meeting of the Community Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date, unless the proxy specifies a shorter term.

6.5 Voting Rights. Voting rights within the Community Association will be determined as follows:

6.5.1 Allocation. Initially each Lot is allocated one vote. When a Lot is developed with more than one Dwelling Unit, but not as a residential condominium, the Lot will be allocated the same number of votes as the number of developed Dwelling Units on the Lot. An Accessory Dwelling Unit is not allocated a vote. When a Lot is developed with a nonresidential use or uses, the Lot will be allocated one vote for each 1,000 square feet, or portion thereof in excess of 500 square feet, of interior floor area devoted to the nonresidential uses on the Lot. For purposes of nonresidential allocation every Lot with a nonresidential use is entitled to not less than one vote. When a Lot is developed with a Live/Work Use or uses, the Lot will be allocated one vote for each area devoted to a separate Live/Work Use. When a Lot is developed with any combination of Dwelling Units, nonresidential uses and Live/Work Uses, the Lot will be

allocated votes in accordance with the foregoing methodology for the sum of the uses. When a Lot is developed as a residential condominium each Condominium Unit will be allocated one vote and the Lot is not separately recognized for purposes of voting. When a Lot is developed with a nonresidential condominium or a combination of residential and nonresidential Condominium Units, each Condominium Unit will be allocated votes according to the foregoing methodology based upon its use and the Lot is not separately recognized for purposes of voting. Unless otherwise required by law, a residential home or residential facility as defined in State statutes or any other group living facility is deemed a nonresidential use for purposes of allocating votes. Lots with structures existing on the date of recording this Declaration, including those intended for regenerative uses, will be allocated one vote until the Lot is put to a use, after which votes will be allocated in accordance with the foregoing methodology based upon the use. Developed uses for purposes of this Paragraph 6.5.1 are those uses approved by, and development is deemed to have occurred on the date specified by, the Development Review Committee or the Declarant as applicable pursuant to this Declaration. If two or more Lots are combined into one Lot or one Lot is divided into two or more Lots pursuant to Section 3.2, upon recording a document effecting the approved change the votes allocated to the reconfigured Lot or Lots will be adjusted according to the foregoing methodology as of the date of recording. If an approved developed use subsequently changes in a manner that affects the allocation of votes to the use, the votes for the use will be reallocated on the date of approval of the change by the Development Review Committee or the Declarant as applicable.

6.5.2 Voting Classes. The Community Association has two classes of voting members:

6.5.2.1 Class A. Class A members are all Owners with the exception of the Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members are all Owners including the Declarant). Class A members are entitled to voting rights for each Lot or Condominium Unit owned and allocated in accordance with Paragraph 6.5.1 of this Declaration. When more than one person holds an interest in any Lot or Condominium Unit, the vote for such Lot or Condominium Unit will be exercised as they among themselves determine, but in no event will more votes be cast with respect to any Lot or Condominium Unit than is determined as set forth in Paragraph 6.5.1 of this Declaration.

6.5.2.2 Class B. The Class B member is the Declarant and is entitled to ten times the voting rights computed under paragraph 6.5.1 of this Declaration for each Lot or Condominium Unit owned by Declarant. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) Upon the Completion Date; or

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

6.6 Duties, Obligations, Powers and Authority of the Community Association. The Community Association shall have the duties, obligations, powers and authority set forth in applicable state statutes, in the Articles and Bylaws and in this Declaration, including the

authority to acquire, construct and operate any real and personal property, whether within the Property or otherwise, that the Board determines serves and benefits the Owners, occupants and visitors of the Property, subject to the limitations and restrictions included herein. Such powers and authority include acquisition, construction and operation of utility facilities and provision to the Owners and Property of utility services. If the Community Association makes any utility service available to a Lot or Condominium Unit it may require the Owner to connect and utilize the utility service and pay the charges established by the Board therefore. Such utility services may include geothermal energy made available to the Owner for use as a heating source. The powers of the Community Association include the power to construct and maintain vehicular and pedestrian facilities and related landscaping and improvements and drainage facilities within utility and access easements over Lots.

6.7 Sub-Associations. Nothing in this Declaration shall be construed as prohibiting the formation of sub-associations within the Property, including without limitation, condominium associations, neighborhood associations or associations of commercial owners. If a Lot or Lots are converted to condominium ownership, the condominium sub-association shall be bound by all requirements of this Declaration, the Bylaws and the Rules and Regulations that are applicable to the use, operation and maintenance of elements of the condominium within the control or responsibility of the condominium sub-association.

6.8 Rules and Regulations. The Board may make and enforce reasonable Rules and Regulations governing the conduct of persons and the operation and use of Lots and Common Areas it may deem necessary or appropriate and not inconsistent with this Declaration, in addition to, and without limitation by, specific references to Rules and Regulations elsewhere in this Declaration. Sanctions for violations of this Declaration, the Bylaws, or such Rules and Regulations may include reasonable monetary fines, suspension of the right to vote, and suspensions or restrictions of the right to use of Common Areas. The Board has the right to exercise self-help to cure violations, and is entitled to suspend any services the Community Association may provide to any Owner or Owner's Lot or Condominium Unit in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Community Association. The Board also has the power to seek legal and equitable relief in any court of competent jurisdiction for violations of this Declaration or to abate nuisances. The Board may adopt Rules and Regulations and impose fines and sanctions in the manner prescribed in the Bylaws. The Board shall deliver copies of any Rules and Regulations it may adopt or amend from time to time to each Owner at the last known address provided by the Owner within thirty (30) days of adoption or amendment. Rules and Regulations the Board may adopt or amend shall only be binding on Owners and Occupants of the Owner upon delivery by the Board.

ARTICLE 7
DECLARANT CONTROL

7.1 Interim Board and Officers. Declarant reserves administrative control of the Community Association until Turnover. Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim board (the "Interim Board"), which shall manage the affairs of the Community Association and be invested with all powers and rights of the Board

until Turnover. The Interim Board shall consist of from one to three members. Declarant reserves the right to appoint any officers of the Community Association deemed necessary or desirable by Declarant or to exercise the functions of the officers itself prior to Turnover.

7.2 Turnover Meeting. Declarant shall call a meeting for the purposes of turning over administrative control of the Community Association from Declarant to the Class A members within 90 days of the earlier of the following dates:

7.2.1 The Completion Date;

7.2.2 The date on which Declarant gives notice to the Transitional Advisory Committee of Declarant's intention to turn over administrative control of the Community Association earlier than the Completion Date.

Declarant shall give notice of the turnover meeting to each Owner as provided in the Bylaws. If Declarant does not call the Turnover Meeting required under this Section the Transitional Advisory Committee or any Owner may do so. At the turnover meeting if a quorum of Owners is present the Owners shall elect not fewer than the number of Board members necessary to constitute a quorum of the Board to replace the Interim Board based on the voting rights then existing pursuant to Section 6.5.2.

ARTICLE 8
DECLARANT'S SPECIAL RIGHTS

Declarant is undertaking the work of development and sale of Lots in the Property. Declarant may perform the initial construction of buildings on the Lots and regeneration of existing buildings on the Lots, buyers of Lots may do so, or construction and regeneration may occur in some combination. However the work occurs, the ability of Pringle Creek Community to realize the potential of its principles and values will be enhanced if the Declarant has the option to retain the special declarant rights provided in this Declaration until the Completion Date. Consequently, Declarant reserves all such special declarant rights until the Completion Date, or until Declarant has given up the special declarant rights in writing by notice to the Community Association. Declarant may give up specific special declarant rights and retain others until the Completion Date. Declarant may give up one or more such rights by notice while retaining the remaining rights. Declarant will give written notice to the Community Association when the Completion Date occurs, ending any remaining special declarant rights. Declarant does not agree to build any specific improvements in the Property other than those required in connection with approval of the Plat of Pringle Creek Community but does not choose to limit its right to add any improvements not described in this Declaration.

ARTICLE 9
FUNDS, ASSESSMENTS AND FINES

9.1 Annual Budgets. The Board shall from time to time and at least annually prepare a budget for the Community Association, taking into account the current costs of maintenance and services, future needs of the Community Association, and any common funds and common

profits of the Community Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law. The method of adoption of the budget shall be as provided in the Bylaws.

9.2 Assessment Formula. All Lots and Condominium Units shall be subject to assessment for Maintenance and Operations Fund Assessments, Common Property Reserve Account Assessments, and Capital Assessments. Each Lot or Condominium Unit will be allocated a number of "Assessment Units" equal to the number of votes allocated to the Lot or Condominium Unit pursuant to Paragraph 6.5.1. The total amount of each of these three types of assessments individually will be divided by the total number of Assessment Units at the time the assessment is to be levied, establishing an assessment amount per Assessment Unit for that type of assessment. The assessment payable by each Lot or Condominium Unit for each type of assessment is the product of the Assessment Units allocated to that Lot or Condominium Unit multiplied by the assessment amount per Assessment Unit for the same type of assessment.

For example, if Lot X is allocated 3 votes under Paragraph 6.5.1 and therefore has 3 Assessment Units, if the total number of votes and therefore Assessment Units is 500, if the total annual Maintenance and Operations Fund Assessment to be levied is $150,000, the total annual Common Property Reserve Account Assessment to be levied is $30,000 and the total Capital Assessment to be levied is $10,000, then the assessment amount per Assessment Unit for each type of assessment and the assessment levied against Lot X for each type of assessment is as follows: annual Maintenance and Operations Fund Assessment, $300 per Assessment Unit and $900 Lot X assessment; annual Common Property Reserve Account Assessment, $60 per Assessment Unit and $180 Lot X assessment; Capital Assessment, $20 per Assessment Unit and $60 Lot X assessment. In this hypothetical example Lot X will be assessed $1,140 for the three types of assessments combined.

9.3 Maintenance and Operations Fund Assessment. The Community Association shall establish a fund to be known as the "Maintenance and Operations Fund," into which all funds not otherwise allocated to a separate account in this Declaration or by action of the Board shall be deposited. The Community Association shall use the Maintenance and Operations Fund for the purpose of promoting the recreation, health, safety and welfare of the Owners and Occupants of the Property and consistent with its core values, the broader community, and for the operation of the Common Area, easements and the Community Association, including but not limited to:

9.3.1 Payment of the cost of maintenance, utilities, and services described in Articles 2, 4 and 6, except as may be the subject of other types of assessments provided in this Declaration.

9.3.2 Payment of the cost of insurance as described in the Bylaws.

9.3.3 Payment of property taxes, if any, assessed against the Common Area including any improvements thereon and income taxes, if any, owed by the Community Association.

9.3.4 Payment of the cost of other services which the Community Association deems to be of general benefit, including legal and secretarial services.

For the purpose of funding the Maintenance and Operations Fund, the Community Association shall not less often than annually estimate the cost of accomplishing the goals for which the Maintenance and Operations Fund is established for the next fiscal year, and shall assess such cost to the Lots and Condominium Units ("Maintenance and Operations Fund Assessment") beginning on the date of recording this Declaration or if the Declarant elects to pay and be responsible for all costs and expenses that would otherwise be paid from the Maintenance and Operations Fund, then on the date that Declarant ceases to pay such costs and expenses. The Community Association may include in such Maintenance and Operations Fund Assessment amounts for the establishment of reserves to meet extraordinary expenses or such other amounts which are reasonably related to the purpose of the Maintenance and Operations Fund. The Maintenance and Operations Fund Assessment shall be assessed to Lots and Condominium Units based on the allocation formula in Section 9.2 adjusted as provided in Section 9.6.

9.4 Reserve Account for Replacing Common Property. The Declarant shall establish a reserve account which shall be called the "Pringle Creek Community Common Property Reserve Account," and which will be kept separate and apart from all other accounts of the Community Association. Except as provided in ORS 94.595, the Pringle Creek Community Common Property Reserve Account shall be used exclusively for major maintenance, repair or replacement of all items of Common Property which will normally require major maintenance, repair or replacement, in whole or in part, in more than one and less than thirty years, for exterior painting if the Common Property includes exterior painted surfaces, and for other items, whether or not involving Common Property, if the Community Association has responsibility to maintain the items. For purposes of this Section "Common Property" means any real property or interest in real property within Pringle Creek Community which is owned, held or leased by the Community Association or owned as tenants in common by the Owners or designated in this Declaration or the Plat for transfer to the Community Association. The Pringle Creek Community Common Property Reserve Account need not include reserves for those items that can reasonably be funded from the general budget or other funds or accounts of the Community Association or for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

9.4.1 The Declarant shall conduct an initial reserve study and not less often than annually thereafter the Community Association shall review and update as necessary an existing reserve study. A reserve study shall identify all items for which reserves are or will be established, shall include the estimated remaining useful life of each item as of the date of the reserve study, and shall include for each item, as applicable, an estimated cost of maintenance and repair and replacement at the end of the item's useful life. For the purpose of funding the Pringle Creek Community Common Property Reserve Account, the Community Association shall, as necessary, periodically impose an assessment to be called the "Common Property Reserve Account Assessment" against the Lots and Condominium Units within Pringle Creek Community based on the allocation formula in Section 9.2 adjusted as provided in Section 9.6.

9.4.2 The initial Common Property Reserve Account Assessment, if any, shall be due on the date prescribed by the Board, provided that the Declarant may defer payment of the assessment against a Lot or Condominium Unit owned by Declarant until such date as the Lot or

Condominium Unit is conveyed by the Declarant to an unaffiliated party. However, Declarant may not defer payment of the assessment beyond the date of the Turnover Meeting.

9.5 Capital Assessment. The Community Association may purchase or otherwise acquire all or any portion of a Lot or Lots subject to Section 1.2 and may purchase, construct or otherwise acquire equipment, facilities or other capital improvements for the general use and benefit of all the members of the Community Association, and for that purpose may impose a special assessment to be called a "Capital Assessment." If the terms of acquisition of any such property include deferred payments extending more than one year, the Capital Assessment may provide for an annual Capital Assessment sufficient to satisfy the payment obligation. Any such assessments shall be assessed to the Lots and Condominium Units within the Property based on the allocation formula in Section 9.2 adjusted as provided in Section 9.6.

9.6 Reallocation of Assessments. Lots created by annexation of additional property to the Property or by division of existing Lots pursuant to Section 3.2 shall be subject to assessment for any Maintenance and Operations Fund Assessments, Common Property Reserve Account Assessments and Capital Assessments levied during the fiscal year in which a document creating the Lots is recorded. Within sixty days of the recording of the document creating the Lots, annexing Common Area, or converting a Lot or Lots to Common Area, the Community Association shall recompute the budget based upon the additional Lots or Common Area or both and recompute Maintenance and Operations Fund Assessments, Common Property Reserve Account Assessments and Capital Assessments for each Lot and Condominium Unit based on the allocation formula in Section 9.2. The budget for Maintenance and Operations Fund Assessments and Common Property Reserve Account Assessments and the Assessments themselves shall be prorated based on the amount of the fiscal year remaining on the date of recording the document. Capital Assessments will not be prorated. Consolidation of Lots pursuant to Section 3.2 will not result in reallocation of assessments previously levied and will be taken into account with the next periodic Maintenance and Operations Fund Assessments or Common Property Reserve Account Assessments, the next periodic installment of a multi-year Capital Assessment or a new Capital Assessment. The Community Association shall send notice of the assessments to the Owners of newly created Lots and notice of adjustments to assessments for existing Lots and Condominium Units not later than ninety days after the recording of the document that is the basis for the new or adjusted assessments or with the notice of the next occurring annual assessment, whichever is sooner. To the extent that any adjustment of an assessment for an existing Lot or Condominium Unit results in a credit for the Owner, such credit shall be applied towards the next occurring assessment payment or payments. Changes to the number of and distribution of Assessment Units as a result of changes described in Paragraph 6.5.1 other than changes resulting from division or consolidation of Lots will not result in adjustments to prior assessments and will be taken into account with the next periodic Maintenance and Operations Fund Assessments or Common Property Reserve Account Assessments, the next periodic installment of a multi-year Capital Assessment or a new Capital Assessment.

9.7 Special Area Assessments. The Board may establish one or more Special Areas in the manner provided in this Declaration. The Community Association shall not less often than annually estimate the cost of performing the work for which each Special Area is established for

the next fiscal year, and assess such cost to the Benefited Lots associated with each Special Area ("Special Area Assessment"). The Board will separately account for the costs incurred and assessment income received for each Special Area and consider any deficits or surpluses in making its estimates.

9.8 Reimbursement Assessments. The Community Association acting through the Board or the Development Review Committee as applicable may assess a Lot or Condominium Unit and its Owner for amounts described as Reimbursement Assessments in this Declaration. If the Board determines that any common expense is the fault of any Owner, the Community Association may also assess the expense against the Owner and the Lot or Condominium Unit of the Owner as a Reimbursement Assessment.

9.9 Other Special Assessments. Special assessments may be assessed by the Board to Lots and Condominium Units based on the allocation formula in Section 9.2 adjusted as provided in Section 9.6 to correct a deficit in the operating budget or to collect additional amounts necessary to make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget accounts or the reserve accounts.

9.10 Right to Profits. Profits the Community Association may realize, if any, shall be the property of the Community Association. The Board may use and apply any profits the Community Association may realize in its discretion to further the Pringle Creek Community's purpose and intent.

9.11 Fines. The Board may establish a schedule of fines for violation of the provisions of this Declaration and any Rules and Regulations the Board may adopt. The Board shall deliver copies of the schedule of fines it may adopt or amend to each Owner by mail to the address provided by the Owner or other delivery method that an Owner may request in writing.

ARTICLE 10
GENERAL PROVISIONS

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

10.2 Duration. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land perpetually from the date this Declaration is recorded, unless rescinded by a vote of at least 90% of the Owners and 90% of the first mortgagees. If any of the provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for as long as permitted by law.

10.3 Amendment. Except as otherwise provided in Sections 10.2 or 10.4 or ORS 94.590, this Declaration may be amended at any time by an instrument approved by not less than 75% of the total votes in the Community Association, without regard to the Class B voting rights of the Declarant pursuant to Paragraph 6.5.2.

10.4 Unilateral Amendment by Declarant. In addition to all other special rights of Declarant provided in this Declaration, Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Community Association, the Government National Mortgage Community Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee, or provide financing in connection with development of the Property and sale of Lots. Before Turnover, no such amendment shall require notice to or approval by any Class A member.

10.5 Inclusion. Whenever in this Declaration, the Bylaws, the Development Guidelines and any Rules and Regulations of the Community Association, the term "including" is used, it means "including without limitation" and any listed matters are not intended to be an exclusive list of similar matters.

10.6 Resolution of Conflicts. This Declaration is intended to comply with the Oregon Planned Community Act. In case of any irreconcilable conflict, such Act shall control over this Declaration. In the event of a conflict among any of the provisions in the documents governing the Property and the Community Association, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration
2. Articles
3. Bylaws
4. Development Guidelines
5. Rules and Regulations.

10.7 Legal Proceedings. Failure to comply with any of the terms of this Declaration, the Articles, the Bylaws, or any rules or regulations the Board may adopt by an Owner or Occupant, his guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, recording of a lien, foreclosure of a lien, or any combination thereof, which relief may be sought by Declarant, the Association, the Board, or, if appropriate, by an aggrieved Owner. Failure to enforce any provision thereof shall not constitute a waiver of the right to enforce said provision, or any other provision thereof. The Association, the Board, any Owner (so long as such Owner is not at that time in default hereunder), or Declarant shall be entitled to bring an action for damages against any defaulting Owner, and in addition may enjoin any violation of this Declaration by any Owner. The prevailing party in any action, arbitration, appeal, bankruptcy, hearing, or other proceeding to enforce the terms of this Declaration, the Articles, the Bylaws, and/or any rules or regulations the Board may adopt shall be entitled to an award of their reasonable costs and attorneys' fees, including all costs of the collection of any award or judgment. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

10.8 Mediation. If a dispute arises out of, relates to, or in any way concerns this Declaration, the Articles, the Bylaws, and/or any rule or regulation the Board may adopt, and if the dispute cannot be settled through negotiation, the parties shall first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties shall equally share and pay all fees charged by the mediator.

10.9 Arbitration. Except with respect to the foreclosure of liens pursuant to this Declaration, any dispute or claim by a party hereto arising under or in connection with this Declaration, the Articles, the Bylaws, and/or any rule or regulation the Board may adopt shall be resolved by binding arbitration. Venue for any arbitration shall be in Marion County, Oregon. A demand for arbitration shall be made within a reasonable time after a dispute or claim arises, but in no event after the date when institution of legal or equitable proceedings based on such dispute or claim would be barred by the applicable statutes of limitations or ultimate repose. The arbitration shall be conducted by a single arbitrator that the parties mutually agree to and who possesses not less than ten (10) years' experience in the practice of real estate and homeowner association law. If the parties are unable to agree on the appointment of an arbitrator, they shall petition the Presiding Judge of the Circuit Court of Marion County, Oregon to appoint an arbitrator. The arbitrator's decision and award shall be final and Judgment upon the award may be entered in any court having jurisdiction pursuant to ORS 36.715 or any successor statutes. The arbitrator shall have the authority, in his or her discretion, to specifically enforce the terms and provisions of this Declaration. This Section 10.9 shall be governed by the Uniform Arbitration Act (ORS 36.600 et seq). The foregoing mandatory arbitration requirements notwithstanding, any party may petition a court for injunctive relief or request the appointment of a receiver, whether or not arbitration is available or under way. Any person or party shall have the right to petition a court to compel compliance with these arbitration provisions. The parties to any arbitration shall equally share and pay all fees charged by the arbitrator and any other costs related to the arbitration proceeding. The Arbitrator may, in his or her discretion, award the prevailing party in any arbitration reasonable costs, witness fees, attorneys' fees, and other expenses the prevailing party may incur related to the arbitration or to recover any award or judgment.

10.10 Special Declarant Provisions.

10.10.1 Arbitration. Any claim by the Association, any Owner, or any Occupant against the Declarant and/or a Participating Builder shall be resolved by binding arbitration. Venue for any arbitration shall be in Marion County, Oregon. A party may petition the court to compel compliance with this arbitration provision. A demand for arbitration shall be made within a reasonable time after a Claim arises, but in no event after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statutes of limitations or ultimate repose. The arbitration shall be conducted by a single arbitrator that the parties mutually agree to and who possesses not less than ten (10) years' experience in the practice of real estate, construction, and/or homeowner association law. If the parties are unable to agree on the appointment of an arbitrator, they shall petition the Presiding Judge of the Circuit Court of Marion County, Oregon to appoint an arbitrator. The arbitrator's decision and award shall be final and Judgment upon the award may be entered in any court having jurisdiction pursuant to ORS 36.715 or any successor statutes. In any arbitration, each party shall pay its own costs, expenses, witness fees, and attorneys' fees. The parties shall equally share and pay all fees charged by the arbitrator and any other costs related to the arbitration proceeding.

10.10.2 Amendments. Notwithstanding Section 10.3 above, the following provisions may not be amended at any time without the Declarant's prior written consent: (a) Article 3.3; (b) Article 3.4; (c) Article 3.10; (d) Article 3.16; (e) Article 3.23; (f) Article 5.10; (g) Article 10.8; (h) Article 10.9; (i) Article 10.13; Article 10.15; or (j) this Article 10.10. In addition to the foregoing, no amendment to this Declaration shall be effective without the Declarant's prior written consent if the effect of the amendment would be to increase any obligation or liability of Declarant to the Owners, Occupants, Members, the Association, or the Board; or to lessen or decrease the Development Rights or any other rights of the Declarant under this Declaration; or revoke, reduce, amend or modify any waivers or releases given in favor of the Declarant under this Declaration.

Any right reserved by or granted to the Declarant pursuant to this Declaration may be exercised unilaterally by any one Declarant in the event that there are multiple Declarants or Co-Declarants.

10.11 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of the Community and for the maintenance of the Common Areas, and any violation of this Declaration shall be deemed to be a nuisance. The article and section headings, titles and captions have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context otherwise requires, as used herein, the singular and the plural shall each include the other and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require.

10.12 Construction and Sales by Declarant. Nothing in this Declaration shall limit, and no Owner shall do anything which shall interfere with, the right of Declarant to reasonably subdivide or re-subdivide any portion of the Property owned by Declarant; to complete any construction of Improvements on the Common Areas; to complete construction of any Improvements on Lots owned by Declarant, a Successor Declarant, and/or a Participating Builder; to alter the foregoing and/or their respective construction plans and designs; or to construct such additional Improvements on such Lots as Declarant, a Successor Declarant, and/or Participating Builders may deem advisable or necessary prior to completion and sale of the last Lot owned by Declarant. Each Owner, by accepting a deed of a Lot from Declarant, hereby acknowledges that the activities of Declarant and Participating Builders may constitute a temporary inconvenience or nuisance to the Owners, but nonetheless shall be permitted. Such right shall include, but shall not be limited to, erecting, construction and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Declarant's and Participating Builders' business or completing the work of disposing of the Lots by sale, lease or otherwise. Declarant and Participating Builders may at any time use any Lots owned by Declarant and/or Participating Builders as models or real estate sales or leasing and renting offices. This Declaration shall not limit the right of Declarant at any time prior to conveyance of title by deed to the last Lot owned by Declarant to establish on the Lots owned by Declarant and the Common Areas additional easements, reservations and rights-of-way to itself, to utility companies, or to other Persons as may from time to time be reasonably necessary to the property development and disposal of the Lots owned by Declarant. Such easements may be created for the construction, installation, maintenance, removal, replacement, operation and use

of utilities, including without limitation sewers, water and gas pipes and systems, drainage lines and systems, electric power and conduit lines and wiring, television, internet, telecommunication, and telephone conduits, lines and wires, and other utilities, public or private, beneath the ground surface (except vaults, vents, access structures and other facilities required to be above ground surface by good engineering practice), including the right to dedicate, grant or otherwise convey easements for rights-of-way to any public utility or governmental entity for such purposes. In the performance of any work in connection with such utilities, Declarant shall not unreasonably interfere with or disrupt the use of the Common Areas or the facilities located thereon and shall replace and restore the areas and facilities as nearly as possible to the condition in which they were prior to the performance of such work. All or any portion of the rights of Declarant hereunder, including but not limited to the Development Rights, may be assigned to any successor or successors to all or part of Declarant's respective interest in the Property, by an express written recorded assignment.

10.13 Owner Liability and Duty. Each Owner shall indemnify, defend, and hold the Association harmless from and against any injury to any person or damage to the Common Areas or any equipment thereon which may be sustained by reason of the negligence of said Owner(s), including the Owner's agents, guests, contractors, employees, invitees, occupants, or tenants. Any expenses, costs, or damages the Association may incur resulting from an Owner's negligence shall become a Special Assessment against such Owner and his Lot, and shall be subject to levy, enforcement and collection in accordance with the Association Lien procedure provided for in this Declaration. The Association reserves the right to charge a Special Assessment to such Owner equal to the increase, if any, in the insurance premium directly attributable to the damage or injury caused by such Owner or by the use of the Lot of such Owner. The Association shall hold Owners harmless from liability for loss or injuries that are covered by insurance then maintained by the Association.

10.14 Association Waiver. Notwithstanding anything herein to the contrary, to the extent that any Owner waives any claims against Declarant, or releases the Declarant from any claim with respect to a Lot, the Common Areas, the Improvements, and/or the Community, then the Association shall be deemed to have likewise released Declarant (and its officers, directors, shareholders, members, partners, employees, agents and representatives) from any claim with respect to such Lot, the Common Areas, the Improvements, and/or the Community on a pro rata basis applicable to each such Lot.

10.15 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

10.16 Indemnification. The Community Association shall indemnify, defend and hold officers of the Association, members of the Board, the Development Review Committee, and the members of any other committee the Board may establish harmless from and against any suits, claims, demands, expenses, and liabilities (including attorneys' fees and costs) arising out of, or in any way related to such individual holding a position or office, whether or not such person holds that position at the time the suit, claim or demand arises, or expense or liability is incurred, except to the extent such expenses or liabilities are covered by insurance and except where such person is adjudged guilty of intentional or willful misfeasance in the performance of his/her duties.

10.17 Access to Lots. The Declarant, the Committee, the Board, and the Association (and, as applicable, any of their officers, directors, shareholders, members, partners, employees, agents and representatives) may enter upon any Lot, which entry shall not be deemed a trespass, and take whatever steps are necessary to correct a violation of the provisions of this Declaration.

10.18 No Third-Party Rights. This Declaration is made for the exclusive benefit of the Association, the Board, the Owners, the Members, the Declarant, Participating Builders, and their respective successors and assigns. This Declaration is expressly not intended for the benefit of any other Person besides the Association, the Board, the Owners, the Members, the Declarant, Participating Builders, and their respective successors and assigns. No third party shall have any rights under this Declaration against any of the Association, the Board, the Owners, the Members, the Declarant, Participating Builders, and their respective successors and assigns.

10.19 Notices. Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more Co-Owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all Co-Owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Lot. Such notice shall be deemed delivered forty-eight (48) hours after the time of such mailing, except for notice of a meeting of Members or of the Board in which case the notice provisions of the Bylaws shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

ARTICLE 11
DEFINITIONS

Unless otherwise provided in this Declaration, capitalized words and phrases shall have the following meanings:

11.1 ***Accessory Dwelling Unit*** means a second Dwelling Unit on a Lot with one other house or attached house provided that the living area of the Accessory Dwelling Unit is no more than 500 square feet. As used in this definition a house is a detached Dwelling Unit on its own Lot and an attached house is a Dwelling Unit on its own Lot that shares one or more common or abutting walls with one or more Dwelling Units on adjacent Lots. As used in this definition living area means the total gross building area of the residential structure devoted to the Accessory Dwelling Unit excluding garage areas and attic or other building areas that are not accessible by a stairway or where the floor to ceiling height is less than five feet.

11.2 ***Articles*** means the Articles of Incorporation for the nonprofit corporation, Pringle Creek Community Association, as filed with the Oregon Secretary of State.

11.3 ***Benefited Lot*** means a Lot associated with and benefited by a Limited Common Area as determined pursuant to Section 4.5 or a Condominium Unit on such Lot.

11.4 ***Board*** means the Board of Directors of the Community Association.

11.5 ***Bylaws*** means the bylaws of the Community Association, which shall be recorded in the Marion County, Oregon, deed records.

11.6 ***Common Area*** means all property identified as a Tract or Private Street on the Plat of Pringle Creek Community, whether designated as common area or not, including any improvements located thereon, and any property included on a plat annexing property to the Property and designated on such plat as a Tract or Private Street.

11.7 ***Community Association*** is the Pringle Creek Community Association established by the Declarant as an Oregon nonprofit corporation, its successors and assigns, described in Article 6 of this Declaration.

11.8 ***Completion Date*** means the date upon which all initial development or regeneration on Lots has occurred and all Lots have been sold to an Owner other than Declarant or a successor declarant. Notwithstanding anything to the contrary in this Declaration, for purposes of establishing the Completion Date only, a Lot is developed only upon completion of the building or buildings, or in the instance of Lots with buildings at the time this Declaration is recorded, the initiation of a use of the building or buildings approved by the Development Review Committee or the Declarant, as applicable.

11.9 ***Condominium Unit*** means a unit as defined in the Oregon Condominium Act and in a recorded condominium plat in the Property.

11.10 ***Declarant*** is Stafford Development Company, LLC, an Oregon limited liability company, and its successors or assigns.

11.11 ***Declaration*** is this document including the covenants, conditions, restrictions, and all other provisions set forth in this Declaration.

11.12 ***Development*** means construction or alteration of a structure, a physical change to the land including excavations and fills, and landscaping provided that the Development Review Committee may limit the nature or scope of development that is subject to development review approval.

11.13 ***Development Review*** means any required or permitted review of a proposed use of a Lot, or development or alteration of development on a Lot by the Development Review Committee, or any other review by the Committee permitted or required by this Declaration or upon referral from the Board.

11.14 ***Development Review Committee*** is the committee constituted and acting pursuant to Article 5 of this Declaration.

11.15 ***Development Review Guidelines*** means the documents containing rules and regulations and polices adopted by the Development Review Committee.

11.16 ***Dwelling Unit*** means any portion of a structure on a Lot that has independent living facilities including provisions for sleeping, cooking and sanitation and that is designed and intended for use and occupancy as a residence by a single family or household.

11.17 ***Interim Board*** means the Board of Directors appointed by the Declarant prior to Turnover.

11.18 ***Limited Common Area*** means a tract identified as a limited common area as provided in Section 4.6 or in a supplemental declaration recorded pursuant to Section 4.5.

11.19 ***Live/Work Use*** means a use combining a Dwelling Unit with a commercial or industrial use or both in a structure or portion of a structure where one or more persons occupying the space are involved in both the residential and commercial/industrial uses.

11.20 ***Lot*** means all lots as designated on the Plat and subsequent plats annexing property to the Property, provided that after an approved combination of a Lot or Lots the

resulting lot shall be a single Lot, and after an approved division of a Lot, each divided portion shall by a Lot.

11.21 ***Occupant*** means an occupant of a structure on a Lot other than the Owner, whether such person is a lessee or any other person authorized by the Owner to occupy the structure.

11.22 ***Owner*** means the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession of a Lot under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. When one or more Condominium Units are created on a Lot, the owners of the Condominium Units are each Owners and the Lot is not separately recognized for purposes of voting, assessments and Community Association membership. An association of unit owners of Condominium Units is subject in the same manner as an Owner to all of the provisions of this Declaration except those relating to voting, assessments and membership in the Community Association.

11.23 ***Participating Builder*** means Stafford Development Company, LLC, Stafford Homes and Land, LLC, Lennar Northwest, Inc, a Delaware corporation, and any subsidiary entity Stafford Development Company and/or Stafford Homes and Land may establish for the purpose of constructing new Dwelling Units on Lots within the Property.

11.24 ***Plat*** means the Plat of Pringle Creek Community recorded in the plat records of Marion County, Oregon, at Reel 2867, Page 289.

11.25 ***Private Street*** means any parcel designated as a private street on the Plat and any property included on a plat annexing property to the Property and designated on such plat as a private street.

11.26 ***Property*** when capitalized has the meaning attributed to such term in the recitation of Purposes of this Declaration.

11.27 ***Special Area*** is an area established by the Board in the manner provided in Paragraphs 3.3.2, 3.4.2 or Section 4.7 and in connection with which the Board may levy a Special Area Assessment as provided in Section 9.7.

11.28 ***Rules and Regulations*** means the documents containing rules and regulations and policies adopted by the Declarant or the Board and are deemed to include the Development Review Guidelines adopted by the Development Review Committee unless the context requires otherwise.

11.29 ***Tract*** means any parcel designated as a tract on the Plat, whether designated as common area or not, and any property included on a plat annexing property to the Property and designated on such plat as a tract.

11.30 ***Transitional Advisory Committee*** means the transitional advisory committee formed as provided in the Bylaws and ORS 94.604.

11.31 ***Turnover*** refers to the date on which Declarant turns over administrative responsibility for the Community Association pursuant to Section 7.2.

11.32 ***Turnover Meeting*** means the meeting at which Turnover occurs.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, Stafford Development Company, LLC, acting in its capacity as Successor Declarant, has executed this Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Pringle Creek Community this 14th day of July 2020.

Stafford Development Company, LLC

By: _____
Richard Waible, Manager

STATE OF OREGON)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that Richard Waible is the person who appeared before me, that said person acknowledged he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Manager and authorized representative of Stafford Development Company, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this 14th day of July 2020.

OFFICIAL STAMP
EFROSINIA SCHERBAKOV
NOTARY PUBLIC – OREGON
COMMISSION NO. 970997A
MY COMMISSION EXPIRES JANUARY 28, 2022

Efrosinia Scherbakov
Notary Public for Oregon

My commission expires: January 28, 2022

REEL: 4359 PAGE: 170

July 15, 2020, 12:35 pm.

CONTROL #: 608937

State of Oregon
County of Marion

I hereby certify that the attached instrument was received and duly recorded by me in Marion County records:

FEE: $ 336.00

BILL BURGESS
COUNTY CLERK

THIS IS NOT AN INVOICE.

ATTACHMENT C

GARRETT HEMANN ROBERTSON P.C.

Mailing Address:
P.O. Box 749
Salem, OR 97308-0749

Street Addres
1011 Commercial St. N.E.
Salem, OR 97301

Ph: (503) 581-
Fax: (503) 58
www.ghrlawyers.com

September 7, 2021

Via Email Only: bbishop@cityofsalem.net

Salem Planning Commission
City of Salem
c/o Bryce Bishop, Planner III
555 Liberty St. SE
Salem, OR 97301

Re: Our Client: Sustainable Investments, LLC
Land Use Appeal – Pringle Creek Community
Our File No. 82276007
Case No. FRPA21-01

Dear Commissioners:

Sustainable Investments, LLC ("SI") respectfully requests that this Commission approve its Minor Amendment application because all of the SRC's criteria for a Minor Amendment to the Refinement Plan have been met; because the time to appeal the 2005 Pringle Creek Refinement Plan ("Refinement Plan") has long passed; because Appellants' requested revisions go well beyond the scope of the Minor Amendment and would actually require a major amendment under the SRC; and because the Minor Amendment allows the Pringle Creek Community ("PCC") to finally be developed as originally envisioned.

I. THE ARGUMENTS RAISED ON APPEAL DO NOT CHANGE THE FACT THAT SI MET THE MINOR AMENDMENT CRITERIA

Appellants have raised numerous issues outside the scope of the minor amendment application. Such arguments should not be considered. SI, however, has attempted to address them out of respect for the neighborhood and current homeowners. Even though SI is no longer the Declarant with control of the homeowners' association, it is the original developer and Declarant that had the vision for an award-winning sustainable development in the city of Salem that was and continues to be well ahead of its time. The goal is to finally see this process to completion with a fully realized community that all can be proud of.

All sides have submitted a substantial number of comments and evidence during this process and SI sincerely appreciates the Commissioners' willingness to spend their volunteer hours wading through the extensive submissions. So, for the sake of brevity SI incorporates its prior arguments and exhibits as though fully set forth in this final submission.

The only submission in the last round was Appellant Valiant's letter, which was a summary of the various arguments made by the appellants and other homeowners objecting to the Minor Amendment. An exhibit was attached to the submission and should be considered additional evidence and excluded. Because it was submitted, and because it was also incorrect, SI will address it along with the arguments in turn below.

A. SI Satisfied The Criteria For A Minor Amendment Set Forth In SRC § SRC 530.035(e)

Appellant again incorrectly states that SI has not satisfied the criteria for a minor amendment. However, as the planning administrator's decision and the City Staff report on appeal clearly and thoroughly demonstrate, SI has in fact done so. SI has demonstrated that it met the limited and straightforward criteria for a minor amendment as set forth in its submissions to the city dated August 18th, August 23rd, and August 31st. Without rehashing all of its arguments at length, SI directs the commissioners to their prior submittals and the City's Staff report. Ref: FRPA21-0 Appeal Staff Report p. 9 & Attachment 7, 8-16- SI Appeal Comments 1 p.4 Section D.

B. SI Has Implemented All Elements Of The Refinement Plan Required For A Minor Amendment

The appellants assert that some elements of the Refinement Plan have not been met, that SI is responsible for that, and as a result the minor amendment should be denied. If some elements of the Refinement that were the responsibility of the Declarant were not met, SI is no longer the Declarant and has no power to address that. And if true, that fact has no relevance to the criteria for approving a minor amendment to the Refinement Plan. The City has remedies to enforce the terms of a Refinement Plan. Denying a minor amendment is not one of them.

But the reality is that all enforceable elements of the Refinement Plan have been met. It is not entirely clear what elements the appellants believe were not met outside of the mistaken belief that the Declarant was required to establish and fund a Conservation Trust. A conservation trust is not a mandatory requirement of the Refinement Plan and if it were, it would not be permissible under applicable state statutes and City Code. REF: 8-31-21 SI Additional Evidence, Section 7 p. 3-4. In any event, SI as the original Declarant has gone well above and beyond what it was required to do. SI maintained all of the common area which includes infrastructure at its sole cost and expense without levying HOA dues or assessments even though it had the right to do so as the declarant of a developer-controlled HOA for over 10 years. SI also contributed properties worth over $1,000,000 directly to the HOA as the legal and rightful entity responsible for maintenance, upkeep, and financing of the community. Once again, this was done because SI had the vision as the original developer for PCC and wants to see its vision become a reality.

C. The MNA's Objections Appear To Take Appellants' Numerous Arguments And Version Of Facts At Face Value

The MNA certainly has a right to submit objections to a land use application. However, it is clear in reading its first two points that it is basing its objections on appellants arguments

throughout this appeal process and not on facts. The MNA has not yet had the opportunity to review all the submitted evidence which fully address these points, and we direct the Planning Commission to our previous submittals. REF:8-23-21 SI Additional Evidence, Section 2, p.2 & 8-31-21 SI Additional Evidence Section 3 p. 2. Further, contrary to the MNA's position, a minor amendment need not address alleged discrepancies in a refinement plan. This was fully and adequately addressed in the City's June 22nd report as well as SI's prior submissions. As previously stated, SI does not object to a parking plan being conducted by the HOA but SI believes it is premature as parking is reviewed on a site by site basis within the Village Center. As such adequate controls are already built in. It should also be remembered that there will be no increase in traffic in PCC beyond what was originally anticipated by the Refinement Plan as the overall number of units and density in PCC remains unchanged as set forth in the City's June 22nd report and SI's prior submissions.

To address a couple of additional items raised by MNA, the area nine density is not increasing. The street width and emergency services have already been addressed as set forth in the city's June 22nd report and SI's August 16th and August 23rd submissions. The original vision for PCC is clearly stated in the approved 2005 Refinement Plan.

The Refinement Plan itself provides uses as follows:

> primary use-- regeneration of existing building into a mix of uses to support the community square activities with potential uses, but not limited to the following: cultural facilities, bed and breakfast, boutique hotel, interpretive museum, performing arts facility, artists studio's, carpentry workshop, craft workshop, office, community storage, restaurant, day-care facility, cafe with performing arts events, community meeting hall, community cooperative uses, library, mixed-use commercial/residential, bakery, artist galleries, classroom facilities, retail, open air pavilion for farmers market and community events.
>
> secondary use-- Live/work residential, seasonal temporary pavilions for public use.
>
> Refinement Plan, p. 13.

The MNA is asking the commissioners to deny the Minor Amendment based on statements and items contained in an unapproved Refinement Plan draft circulated before the final Refinement Plan was approved in 2005. These early drafts have no bearing on the approved Refinement Plan and should not be considered in SI's Minor Amendment application.

D. Parking In PCC Has Already Been Extensively Addressed

The issue of parking has been repeatedly and extensively addressed throughout this process. There are internal controls in place for parking including in the Refinement Plan itself, the design review committee process, and the HOA's parking oversight. Parking needs cannot be determined until the use has been decided so a parking study is premature at this time. What is

certain, is that PCC was never envisioned nor designed to be a suburban, car-centric development. As for the exhibit submitted as additional evidence with the last rebuttal submission, Appellant has submitted a plat map with incorrect and misleading information. The actual plat map, along with as-built road cross sections (previously submitted by SI in Exhibit F) demonstrates that the Minor Amendment's changes are consistent with the original plan in the provision of on-street parking. Appellant is incorrect about having higher density along Strong Road. There is no access to these homes from Strong Road. The only vehicular traffic access is via alleyways which do not have the same on-street parking needed for higher density development as provided for in the Village Center.

E. PCC's Density Is Not Changing

As conceded by the Appellant, density within PCC is shifting within the development but it is not increasing. The widest street in the community is Village Center Drive that runs directly through the Village Center to connect Strong Road with Lindberg Road. The Appellant's hand-drawn sketch is misleading as it has Village Center Drive ending at the Village Center and neglects to inform you that there is on street parking on both sides of all the streets surrounding the village green (with the exception of the correctly highlighted pink section) as shown in previously submitted Exhibit F.

Additionally, the Appellant incorrectly and misleadingly show no sidewalks on a section of Village Center Drive. There are currently sidewalks on some portions of the Village Center where the Appellant states there are none, and where there aren't they will be put in as the Village Center is developed as clearly shown in As-B ilts in Exhibit F.

F. The Original Vision For PCC Remains And The Minor Amendment Will Help Get PCC There

Despite what the Appellant is arguing, there's been no change to the original vision and intent as has been testified to by the original principal architect and author of the Refinement Plan, as well as in SI's written submittals.

G. There Is No Unreasonable Impact From The Minor Amendment

As demonstrated by the original Village Center planned building footprint previously submitted by SI, and as thoroughly examined by the City's Planning Staff, the Minor Amendment will not cause unreasonable impact. Likewise, City Staff has conducted a thorough analysis of the Minor Amendment and appropriately determined that SI's application is a minor amendment as it will not substantially change the Refinement Plan. As city staff noted, the "proposed amendment does not represent a substantial change to the refinement plan and therefore qualifies as a minor amendment. The proposed amendment does not make any changes to the list of uses allowed within the refinement plan, it does not vary or change a policy of the Fairview Plan, does not change any designated buffers, perimeter landscaping, or significant natural resource areas, and does not result in a significant change in the purpose, scope, main concepts, goals, policies, or general development guidelines and standards of the refinement plan.FRPA21-01 Appeal Staff Report p. 38; See also pp. 4 and 6 and section 9 of the report for the same conclusion.

It is important to note the standards in the criteria are that the Minor Amendment shall not cause "unreasonable impact" nor "substantially changed the Refinement Plan." The criteria do not require that there be no impact or that the current residents disagree with the potential impact.

II. PRACTICAL CONSIDERATIONS OF THE MINOR AMENDMENT

At the appeal hearing, PCC's original principal architect and author of the Refinement Plan stated that with current height restrictions and setbacks it likely would not be possible to locate 95 residential units in the Village Center. In recognition of this, and to demonstrate that SI is not trying to build another version of the Grove Apartment Complex in PCC, SI would not object if the maximum number of residential units was limited to 75. SI is also willing to work with the HOA on parking issues and needs.

III. PCC's ORIGINAL INTENT WILL BE REALIZED WITH THE MINOR AMENDMENT AND FINAL BUILD OUT

After nearly 15 years with minimal buildout, it is understandable that many of the current residents have grown accustomed to nearly unlimited parking and a vast number of undeveloped lots. In the past year alone, PCC has seen the number of residential units nearly double. This rapid expansion is not what the current residents are accustomed to. This is readily apparent in the objections to the Minor Amendment which really are a combination of objections to the Refinement Plan itself; are proposed major revisions to the Refinement Plan; or are frustrations with the HOA and other issues unrelated to SI's application.

The intent shown in the refinement plan is to develop all residential and mixed-use/commercial lots while preserving open space for communal areas. The numerous objections, aside from the fact but they are largely outside the scope of the Minor Amendment and the criteria used to assess its validity, center on the fact that the residents do not want to see additional development or change in PCC period. To the extent these residents allow that additional development will take place, it appears they believe such development should be controlled by them and done according to their own taste and wishes down to ideas for specific businesses to be located in the mixed-use/commercial spaces. It was never the intent of PCC nor is it practical. There are processes in place to achieve this. For example, if there are not build standards in the refinement plan then the City will look to the FMU Zone standards for development. If the appropriate build standards are not covered in the FMU Zone provisions, then the City will rely on the appropriate provisions in the development code. In fact, members of PCC themselves in the past have asked for additional houses to be built as you cannot have a thriving community without additional people. This was a regular and ongoing conversation, with community members kindly offering testimonies, opening their homes for public viewings and meeting with potential buyers.

IV. CONCLUSION

SI remains committed to the original vision built on a foundation of (1) the social good, consisting of an inclusive community for all demographics, (2) environmental sensitivity, in striving to be the greenest community in the Pacific Northwest, and (3) financial responsibility in

seeking to be affordable to all demographics. The Minor Amendment will help achieve this. SI looks forward continuing to work in good faith with the community members, the HOA, the Neighborhood Associations, and the city as it works through the sustainable updates to the Salem Area Comprehensive Plans. SI respectfully requests that this Commission help SI realize this vision and approve its application for a minor amendment.

Sincerely,

J. Michael Keane
Attorney at Law
mkeane@ghrlawyers.com

JMK:

c: Shelby Guizar ***Via Email Only***

4845-3990-5018, v. 1