

**R e s t a t e d**  
**B y l a w s**  
of  
**ORCHARD HEIGHTS WATER ASSOCIATION,**  
**An Oregon cooperative corporation**  
(Including amendments adopted June 21, 2016)

**ARTICLE 1**

General Purposes

The purpose for which this corporation is formed and the powers which it may exercise are set forth in the Articles of Incorporation of the corporation.

**ARTICLE 2**

Name and Location

2.1 The name of this corporation is ORCHARD HEIGHTS WATER ASSOCIATION ("Association").

2.2 The principal office of this Association shall be located at 4350 Orchard Heights Road NW, Polk County, Oregon 97304, but the Association may maintain offices and places of business at such other places within or without the State of Oregon as the Board of Directors may determine.

**ARTICLE 3**

Fiscal Year

The fiscal year of the Association shall begin the first day of January in each year.

**ARTICLE 4**

Membership

4.1 **General Rule.** The holders of a membership certificate of this Association are its members. Any owner of a farmstead or residential property having reasonable accessibility to the water system operated by the Association and who receives approval of the Board of Directors may be admitted to membership. No person shall be admitted to membership until such person has paid the price for the membership certificate as well as all attachment charges required by the Board of Directors.

4.2 **Attachment Charges.** In these Bylaws, the term "attachment charges" shall include, but not be limited to:

4.2.1 All amounts due for water charges, other services, membership fees, membership assessments, late charges, installation fees and system development charges.

4.2.2 All installation fees and costs relating to setting a water meter as well as the connection of the water line to the property to which the membership certificate will attach.

**4.3 Attachment to Property.** Each membership in the Association shall be attached to the particular property which it serves or which it is intended to serve, and shall be transferred by operation of law to the purchaser or new owner in the case of change of ownership of that property. In the case of change of ownership of only a part of the property served by a membership certificate, the membership certificate shall remain appurtenant to that portion of the property on which the residence served by such membership certificate is situated.

**4.4 Transfer of Property.** Immediately upon transfer of property served by a membership certificate, the former owner of such property shall sign and surrender the membership certificate to the Association, and shall notify the Association of the name and address of the new owner. If the membership certificate has been lost, the former owner of the property served by the membership shall certify to the Association that the membership certificate has been lost. After such endorsement, surrender or certification, a new certificate shall be issued in the name of the new owner of the property served by the membership, and the property shall be entitled to water service when all attachment charges have been paid in full. If the former member fails to notify the Association of a change of ownership, the former member shall continue to be personally liable for any water or other charges and membership assessments incurred through the date which is 30 days after the date the Association is notified in writing of the name of the new owner. Without limiting its rights against the prior owner, the Association may seek payment for all attachment charges due the Association from the new owner as provided by law.

**4.5 Cancellation of Membership Certificate.** The Association shall cancel any membership certificate of any membership that has been terminated or surrendered with no obligation to pay for the same. The Association has the discretion, however, to enact any policy in which it may elect to purchase a certificate according to procedures and policies adopted by the Board of Directors.

**4.6 Other Termination.** If any membership certificate in the association is terminated for any reason pursuant to these Bylaws for breach of these Bylaws or breach of any water user agreement required by the Board of Directors, the Association may cancel the membership certificate. The member has forty-five (45) days to appeal to the board such cancellation. All Board decisions in this regard are final and the members shall not have the right to institute any court action or arbitration to review the basis for the termination of any membership or the cancellation of any membership certificate.

## ARTICLE 5

### Membership Certificates

5.1 This Association shall not have capital stock, but its capital shall be represented by membership certificates.

5.2 The membership certificate shall be issued to each holder of fully paid membership and shall be numbered consecutively in accordance with the order of issue. Each membership certificate shall bear on its face the following statements:

5.2.1 This Membership Certificate No. \_\_\_\_\_ is issued and accepted in accordance with and subject to the conditions and restrictions stipulated in the Articles of Incorporation and Bylaws, and amendments to the same, of Orchard Heights Water Association.

5.2 2 Transfers of membership certificates shall be made only upon the books of the Association, only to persons eligible to become members, only with the approval of the Board of Directors and only when the member transferring is free from indebtedness to the Association.

5.3 Each member agrees to sign such Water Users Agreements as the Association shall provide and require from time to time.

## **ARTICLE 6**

### Meetings of Members

6.1 The annual meeting of the members of this Association shall be held in November of each year within a 10-mile radius of the principal office of the Association described in Article 2 of these Bylaws.

6.2 Special meetings of the members of the Association may be called at any time upon request of the Board of Directors, or upon filing of a petition with the secretary or office manager which is signed by at least ten percent (10%) of the members of the Association. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted except as specified in the notice.

6.3 Notice of meetings of members of the Association may be given by a notice sent electronically or mailed to each member of record, directed to the e-mail address and/or the mailing address shown upon the books of the Association, at least 10 days but not more than 30 days prior to the meeting. Such notice shall state the nature, time, place and purpose of the meeting, but no failure or irregularity of notice of any annual meeting, regularly held, shall affect any proceedings.

6.4 The voting members present at any meeting of the Association for the transacting of business shall constitute a quorum. The voting powers of the members of this Association shall be equal and no voting by proxy shall be allowed. There shall be only one vote per membership certificate.

6.5 Directors of this Association shall be elected at the annual meeting of the members.

6.6 The order of business at the regular meetings and, so far as possible, at all other meetings shall be:

6.6 1 Calling to order and proof of quorum

6.6.2 Proof of notice of meeting

6.6.3 Reading and action on any un-approved minutes

- 6.6.4 Reports of officers and committees
- 6.6.5 Election of directors
- 6.6.6 Unfinished business:
- 6.6.7 New business
- 6.6.8 Adjournment.

## ARTICLE 7

### Directors and Officers

7.1 The Board of Directors of this Association shall consist of five (5) members, all of whom shall be members of the Association. Each director shall be elected for a term of two (2) years and shall hold office until the director's successor has been elected and qualified and entered upon the discharge of the director's duties.

7.2 After the Annual Election, the Board of Directors shall meet for the first time by the third week in January in the new fiscal year and shall elect from among themselves, a president and vice president as well as a secretary and a treasurer. Each director shall hold office until the next annual meeting and until the election and qualification of the director's successor unless sooner removed by death, resignation, or for cause.

7.3 If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification, or otherwise, except by removal from office, a majority of the remaining directors, though less than a quorum, shall choose, by a majority vote, a successor who shall hold office for the un-expired term of the director whose place the successor fills. The disqualification of a director as a member of the Association shall operate to disqualify such director as a director and to create a vacancy in the office of directors.

7.4 A majority of the Board of Directors shall constitute a quorum at any meeting of the Board.

7.5 Possible compensation of officers may be fixed only at any regular or special meeting of the members of the Association. Directors shall receive no compensation for their services, as such.

7.6 Any member bringing charges against an officer or director shall file them in writing with the secretary or office manager of the Association and the secretary or office manager shall immediately notify the officer or director of the charges filed against him. The officer or director may then file with the secretary or office manager a statement concisely giving the director's defense against the charges made. The Board of Directors shall take the matter up at its next meeting and take such action as it deems for the good of the Association. If the charges are accompanied by a petition requesting the removal of the officer or director, signed by a minimum of ten percent (10%) of the members, and are filed with the secretary or office manager at least fourteen (14) days previous to any general or special meeting, the secretary shall prepare and mail to each member with the regular notice a ballot calling for a vote upon the removal of the officer or director. Accompanying the notice and ballot, the secretary or office manager shall enclose a statement giving the charges against the officer or director. At the request of the accused officer or director, the secretary or office manager shall enclose with this statement to

each member a copy of the written defense as filed. By a vote of the majority of the entire Association membership, present or Represented by ballot, the Association may remove the officer or director and fill the vacancy.

## **ARTICLE 8**

### Board Policy

8.1 The Board shall set forth a series of written policies and Board rules to govern the conduct and deliberations of the Board and to serve as a guide for the employees of the Association in carrying out the functions of the Association.

8.2 The policies and rules of the Board shall be drafted, adopted and amended with full consideration for the Board's desire to provide water services of the best obtainable quality for the membership of the Association at a reasonable cost.

8.3 The Board, as the governing body representing the membership of the Association, determines all questions of policy to be employed in the conduct of the Association.

8.4 In the event that a conflict arises between a Board Policy and state or federal law or these Bylaws, the applicable state or federal law or Bylaw article shall govern.

8.5 If disagreement over the application, extent, or interpretation of a policy arises, the resolution of the conflict will be based on the majority opinion of a quorum of the Board.

8.6 Board rules may also be based on pertinent statutes and these Bylaws. In this context they are designed to explain, detail, or otherwise organize the application of a policy consistent with the statutes or Bylaw.

8.7 Proposals regarding the adoption of Association policy or changes, deletions, additions, or repeal may originate from any interested person.

**8.8 Policy Adoption, Changes, Deletions, Additions, Repeal and Review.** In its deliberations leading to the establishment or amendment of Board Policy or Rules, the Board's central concern will be for increased efficiency and effectiveness in carrying out its mandated tasks and general policies in the interest of the Association good.

8.8.1 Board policies shall remain flexible and be subject to review and change. Such review shall take place at least biennially. A biennial review shall be scheduled to occur at a regularly scheduled Association Board meeting within the first quarter after the Annual membership meeting.

8.8.2 Adoption, changes, additions to and deletions from or repeal of the established policies shall be accomplished by a majority vote of the Board. A two-step action, with steps separated by no less than 21 days, is required. Introduction, discussion and deliberation shall constitute the first step. A ratification vote shall be required at a second meeting. In the event that an emergency is deemed to exist, and said emergency is recorded in the official minutes and agreed to by a majority of the Board members, a policy can be changed, suspended, added to, or deleted from in the course of a single meeting. An emergency shall be defined as a circumstance requiring immediate action so as to prevent diminishment of the welfare of the Association.

8.8.3 The assembled policies of the Board, known collectively as the **BOARD POLICY MANUAL** shall be the reference instrument for conducting the business of the Board.

## **ARTICLE 9**

### Duties of Directors

**9.1 GENERAL MANAGEMENT.** The business and affairs of the Association shall be managed by its Board of Directors. Except as otherwise specifically provided herein, the Board of Directors shall exercise all of the powers of the Association provided by the Articles of Incorporation, the Bylaws of the Association and any applicable local, state or federal laws. Without limitation upon the general powers of the Board of Directors, the Board of Directors is given full power and authority to be exercised by the establishment of Board Policy to:

9.1.1 confirm the qualifications of members and to issue certificates of membership.

9.1.2 select and appoint all officers, agents, or employees of the Association or to remove such officers, agents, or employees of the Association for just cause, prescribe such duties and designate such powers as may be consistent with these Bylaws, and fix their compensation for faithful services.

9.1.3 borrow from any source money, goods, or services and to make and issue notes and other negotiable and transferable instruments, security interests, mortgages, and trust deeds, and to do every act and thing necessary to effectuate the same.

9.1.4 prescribe, adopt, and amend policies, rules and regulations, at its discretion, as may be deemed essential or convenient, from time to time, in order to conduct the business and affairs of the Association and to provide the necessary guidance and control of its officers and employees, and to prescribe adequate penalties for the breach thereof.

9.1.5 provide each member upon request with a fiscal year-end financial statement and income statement for the Association.

9.1.6 order an audit, review, or compilation of the books and accounts of the Association by a competent public auditor or accountant. The report prepared by such auditor or accountant shall be made available upon request to the members of the Association at the annual meeting. Nothing herein shall require the Board of Directors to order such an audit, review, or compilation.

9.1.7 select one or more banks to act as depositories of the funds of the Association and to determine the manner of receiving, depositing, and disbursing the funds of the Association and the form of checks and the person or persons by whom the same shall be signed, with the power to change, at will, such banks and the person or persons signing such checks and the form thereof.

9.1.8 Fix the charges to be paid by each member for services rendered by the Association to such member and to fix the time of payment and the manner of collection for such services.

**9.2 Limitations** The Board of Directors shall obtain approval of the membership by a majority vote of a quorum at a regular or special membership meeting before taking any of the following actions:

9.2.1 Imposition of a systems development charge to be assessed against each member in a sum certain. To obtain approval for such a charge the Board of Directors shall recommend the imposition of a systems development charge and the dollar amount of such charge. New members shall be responsible for paying such systems development charge paid by other members from the effective date of such new member's membership.

9.2.2 Issue new memberships. To obtain approval of the members for the issuance of new membership certificates, the Board of Directors shall recommend to the membership at the annual or a special meeting that applications for new memberships be accepted and the board shall recommend to the membership the number of new memberships that could be issued. The price for new membership certificates shall remain fixed for a designated time not to exceed 365 days. If not sold within 365 days, or such shorter period as established by the membership, authority to sell any one or any designated number of membership certificates shall automatically lapse without further act of the Board of Directors. The fixed price for any new membership certificate may be increased by the Board to reflect any new systems development work done by the Association after the date the new membership certificate price was established by the Board. The membership shall pass a resolution as to the number of new memberships that the Board can issue for the following year if any. The Board can issue, at its discretion and following established procedures, new memberships up to the limit imposed by the membership.

## **ARTICLE 10**

### **Duties of Officers**

**10.1 Duties of the President.** The president shall preside over all meetings of the Association and the Board of Directors, call special meetings of the Board of Directors, perform all acts and duties usually performed by an executive and presiding officer, and sign all membership certificates and such other documents of the Association as the president may be authorized or directed to sign by the Board of Directors. The Board of Directors may authorize any other person to sign any or all checks, contracts and other instruments in writing on behalf of the Association. The president shall perform such other duties as may be prescribed by the Board of Directors.

**10.2 Duties of the Vice President.** In the absence or disability of the president, the vice president shall perform the duties of the president provided, however, that in case of death, resignation, or disability of the president, the Board of Directors may declare the office vacant and elect a successor.

**10.3 Duties of the Secretary.** The secretary shall keep a complete record of all meetings of the Association and of the Board of Directors. With the exception of the duties to sign membership certificates and other papers pertaining to the Association, all attendant duties listed for the "Secretary", may be assigned to the Office Manager for the Association by the Board of Directors. The secretary shall:

10.3.1 maintain the Board Policy Manual and have the current Policy Manual available to any member upon request and at the annual Meeting.

10.3.2 sign all membership certificates, along with the president, and such other papers pertaining to the Association as the secretary may be authorized or directed to do by the Board of Directors.

10.3.3 serve all notices required by law and by these Bylaws and shall make a full report of all matters pertaining to this office to the members at its annual meeting.

10.3.4 keep a proper membership certificate record, showing the name of each member of the Association and date of issuance, surrender, cancellation, or forfeiture.

10.3.5 make all reports required by law and shall perform such other duties as may be required of the secretary by the Association or the Board of Directors.

10.3.6 Upon the election or hiring of a successor, turn over to the successor all books and property belonging to the Association that the secretary may have in the secretary's possession.

**10.4 Duties of the Treasurer.** All or any portion of the work of the treasurer may be delegated by the Board of Directors to be performed by the Office Manager or other independent contractors of the Association in order that the treasurer shall have no greater responsibility than the other officers and directors of the Association. The treasurer shall:

10.4.1 Have charge and custody of and be responsible for all funds and securities of the Association and receive and give receipts for monies due and payable to the Association from any source whatsoever.

10.4.2 Deposit all such monies in the name of the Association in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these Bylaws and in general, perform all of the duties incident to the office of treasurer and such other duties as may be assigned, from time to time, to the treasurer by the president or the Board of Directors.

10.4.3 sign checks, along with another officer.

10.4.4 investigate investment opportunities and perform such other duties with respect to the finances of the Association as may be prescribed by the Board of Directors.

10.4.5 make full report of all matters of business pertaining to the office of treasurer to the members at the annual meeting.

10.4.6 make a report of each month's financial activities and status of the Association's finances to the regularly scheduled meetings of the Board of Directors.

## ARTICLE 11

### Benefits and Duties of Members

11.1 The Association will install, maintain, and operate a water distribution line and associated delivery lines to provide each Association member with water sufficient for domestic use.

11.2 Each member shall be entitled to purchase from the Association, pursuant to such agreements as may be provided and required by the Association from time to time, such water for domestic, livestock, and garden purposes as a member may desire however, subject to the provisions of these Bylaws and subject to such rules, and Board Policy, as may be permitted by the Board of Directors. Each member shall be entitled to have delivered to them through a single service line only such water as may be necessary to supply the needs of the persons residing in a single dwelling and of the livestock owned by such persons and to irrigate a garden of not to exceed 1/8 of one acre. The water delivered through such single service line shall be metered.

11.3 In the event the total water supply shall be insufficient to meet all of the needs of the members or in the event there is a shortage of water, the Association may prorate the water available among the various members on such basis as is deemed equitable by the Board of Directors, and may also prescribe a schedule of hours covering use of water for garden purposes by particular members and require adherence thereto, or prohibit the use of water for garden purposes provided, that if at any time the total water supply shall be insufficient to meet all of the needs of all of the members for domestic, livestock, and garden purposes, the Association must first satisfy all of the needs of the members for domestic purposes before supplying any water for livestock purposes and must satisfy all of the needs of all of the members for domestic and livestock purposes before supplying any water for garden purposes.

11.4 The Board of Directors, prior to the beginning of each calendar year, shall determine the minimum monthly rate to be charged each member during the following calendar year. A member to be entitled to the delivery of water shall pay such charges at the office of the Association at or prior to the dates fixed by the Board of Directors. The failure to pay water charges duly imposed shall result in the automatic imposition of the following penalties:

11.4.1 Late Payment Charge A late payment charge may be imposed as defined in the Board Policy Manual.

11.4.2 Non-Payment for Ten Days after Due. A member is delinquent if the member fails to pay any amount due the Association within ten (10) days of its due date. The delinquent party will be given written notice of the past due account.

11.4.3 Non-Payment for Forty Days. When a member fails to pay in full a delinquent account for forty (40) days, they will be notified of a scheduled shut off if the account is not paid in full by the said date. Said notice shall include an opportunity for the delinquent party to appear before the Board of Directors to contest the proposed cut off, prior to the effective date of such action. If account is not paid in full by said date, the delinquent party will be given no less than ten (10) days' prior written notice of the Association's intent to cut off water service. If water service is cut off, there will be an additional reconnect fee as determined by the Board of Directors from time to time, which is defined in the Board Policy Manual, and is to be paid before service can be restored. Neither the Board of Directors, the Association nor any member of the Association shall be liable for any claim of damages, consequential or direct, relating to discontinuance of water service.

11.4.4 Nonpayment for Sixty Days. Membership in this Association may be terminated and the membership certificate canceled as provided in Article 4, Section 4.5 of these Bylaws.

11.4.5 Whenever a member fails to pay when due any amount owing to the Association more than 60 days after the date its due, the Association shall have a lien upon all real property subject to membership in the Orchard Heights Water Association for the amount of any unpaid assessment or water charges. The Association shall record with the Polk County Clerk a claim containing a true statement of the accounts due for such water charges and assessments after deducting all just credits and offsets, the names of the owners of the property, a description of the property. The lien may be enforced by the Association's Board of Directors pursuant to ORS Chapter 88. In addition, any action to recover a money judgment for unpaid common assessments may be maintained without foreclosing or waiving a lien securing the accounting for unpaid assessments or water charges.

11.5 The Board of Directors shall be authorized to require each member to sign and comply with the terms of any Water User Agreement adopted by the Board of Directors pursuant to these Bylaws.

## ARTICLE 12

### Distribution of Surplus Funds

12.1 It is anticipated that the Association may have surplus funds. Any part or the whole of such surplus funds, at the discretion of the Board of Directors, may be:

12.1.1 Used to pay the expenses of the Association for construction, maintenance and operation of the Association system and infrastructure;

12.1.2 Used to establish reserves for replacement and renovation of buildings, equipment, and office fixtures;

12.1.3 Used to establish reserves as the Board of Directors may deem proper for other purposes of the Association;

12.1.4 Used for the payment of interest and principal of obligations and un-amortized debts of the Association;

12.1.5 Used for the purchase of proper supplies and equipment of the Association;

12.1.6 Used for the purpose of accumulating a surplus fund for the purpose of replacing, enlarging, extending and repairing the system and property of the Association;

12.1.7 Used for such other purposes as the Board of Directors may determine to be in the best interest of the Association including but not limited to distribution to members.

12.2 Any portion to be distributed to any member, at the discretion of the Board of Directors, may be applied to the indebtedness of such member of the Association should any exist and, in such case, the member shall be notified in writing of the amount so applied.

## ARTICLE 13

### Amendments

13.1 These Bylaws may be repealed or amended by a vote of the majority of the members present at any regular meeting of the Association or at any special meeting of the Association called for that purpose, except that the members shall not have the power to change the purposes of the Association so as to decrease its rights and powers under the laws of the State, or to waive any requirement of bond or other provision for the safety and security of the property and funds of the Association or its members. Notice of any amendment to be made at a special meeting of the members must be given at least 10 days but not more than 30 days before such meeting and must set forth the amendments to be considered.

## ARTICLE 14

### Indemnification of Directors and Officers

14.1 **Indemnification.** The Association shall defend, indemnify, and hold harmless to the fullest extent permitted by the Oregon Business Corporation Act each director and officer of the Association, now or hereafter serving as such, against any and all claims and liability to which such officer or director has or shall become subject to by reason of serving or having served as such director or officer, or by reason of any action alleged to have been taken, omitted, or neglected by such officer or director in such capacity.

14.2 **Expenses.** The Association shall further defend, indemnify and hold harmless each director or officer from any and all loss and expense, including amounts paid in settlement before or after suit is commenced, and reasonable attorney's fees, court costs, litigation expenses, witness fees, expert witness fees, and all other costs or expenses actually and necessarily incurred as a result of any claim, demand, action, proceeding or judgment that may be asserted against any such director or officer whether or not litigation is commenced.

14.3 **Limitation on Indemnification and Expense Reimbursement.** No such director or officer shall be indemnified against or be reimbursed for any expense incurred in relation to matters that any such director or officer is liable for: (a) breach of duty of loyalty to the Association or its members (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law: (c) any unlawful distribution under ORS 60.367 or any transaction from which the director or officer derived an improper personal benefit. The amount paid to any director or officer by way of indemnification shall not exceed the director or officer's actual, reasonable, and necessary expenses incurred in connection with the matter involved and such additional amount as may be fixed by the Board of Directors, and any determination so made shall be binding on the indemnified director or officer without the right to resort to judicial determination or arbitration.

## ARTICLE 15

### Contracts, Loans, Checks and deposits

15.1 **Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

15.2 **Loans.** No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

15.3 **Checks, Drafts, Etc.** All checks drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall be determined from time to time by Board Policy.

15.4 **Deposits.** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

## ARTICLE 16

### Waiver of Notice

16.1 Whenever any notice is required to be given to any member or director of the Association under the provisions of these Bylaws or under the provisions of the Articles of Incorporation or under the provisions of the Oregon Business Corporation Act, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting of which notice was required or consent to actions taken at such meeting shall be deemed equivalent to the receiving of such notice.

## SECRETARY'S CERTIFICATE

I, the secretary of the above entitled Association do hereby certify that the foregoing is a true and correct copy of the Association Bylaws as adopted by the Board of Directors of the Association

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(Date)