

## NOTICE

**Some items from the filed copy were removed this ONLY included County Clerk Stamp, recording requested and when recorded, and note pertaining to the documents recording information. The following is edits made based off of the document that is currently recorded with the Lane County Clerk on June 27, 2012**

First Amendment to  
Second Amended Declaration of Covenants, Conditions and Restrictions  
Of  
West Eugene Village, and  
West Eugene Village-1<sup>st</sup> Addition, and  
West Eugene Village- 2<sup>nd</sup> Addition

Sections 4.5, 4.6, 4.9, 6.1, and 9.4 of the Second Amended Declaration of Covenants, Conditions and Restrictions of West Eugene Village, and West Eugene Village -1<sup>st</sup> Addition, and West Eugene Village – 2<sup>nd</sup> Addition (the “Declaration”) are hereby deleted in their entirety and replaced with the following:

4.5 Notice and Quorum for Any Action Authorized Under Section 4.4 Written notice of any meeting called for the purpose of taking any action authorized under section 4.4 shall be sent to all members not less than fifteen (15) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty percent (20%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called per statute.

4.6 ~~Reserves.~~ **New Ownership Fee** .At the time of initial conveyance of each Lot, and with each subsequent change in ownership, each **new** owner shall pay to the Association, in addition to such other assessments and charges as shall then be due and payable, a ~~reserve~~ **ownership fee** in the amount of two-twelfths (2/12) of the then established annual assessment. ~~The reserve new ownership fee, or such part thereof as required, may be held and applied by the Association~~ **Board of Directors** as full or partial payment toward such Owner's delinquent assessments and charges, ~~if any. Such application of an Owner's reserve account~~ **However, the payment of the new ownership fee** shall not relieve the Owner or release the land of any obligation for the delinquent assessments or charges. **The Board of Directors, at its discretion, may use the new ownership fee for regular operating expenses, extraordinary items of maintenance, repair or replacement or capital additions, or may deposit all or a portion of such funds into the reserve account.**

4.9 Effect of Non-payment of Assessments: Remedies of the Association. Any assessments which are not paid when due, shall be delinquent if the assessment is not paid within ninety (90) days ~~after the~~ **of its due date and shall be subject to a late fee set by the Board of Directors.** The assessment **not paid within ninety (90) days after the due date** shall bear late

fees and interest from the date of delinquency at the rate of ~~ten percent (10%)~~ **twelve percent (12%)** per annum. The Association may bring any action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. The **president or** secretary of ~~said the Association or a designee having knowledge of the facts~~ shall file in the office of the recorder of Lane County, State of Oregon, a statement of the amount of any such charges or assessments together with interest as aforesaid which have become delinquent, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessment, together with **late payment penalties, fines,** interest, costs and expenses and a reasonable attorney's fee for filing and enforcement thereof, shall constitute a lien on the whole residence location with respect to which it is a fixed and on any improvements thereon, from the date of the notice of delinquency thereof is filed, until the same has been paid or released as herein provided. The owner at the time such assessment is incurred, shall also remain liable for any delinquency remaining unpaid after any foreclosure sale. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of ~~his~~ **the owners** lot.

6.1 The Architectural Control Committee, consisting of three or more persons, shall be appointed by the Board of Directors. The Committee may enforce existing rules and regulations by a majority vote, which shall apply to construction and use of the properties, including the Common Areas. The Committee may also propose ~~modifications to existing and new rules~~ **new or modified Rules and Regulations** to the Board for consideration.

9.4 **No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except** A maximum of three (3) ~~dogs and/or Cats can be kept and maintained on any one property at one time,~~ **household pets, such as dogs, cats or other tame, domestic household pets, provided such household pets are not permitted to run loose and are not kept, bred or maintained for any commercial purpose, and** ~~provided they~~ do not create objectionable odor or noise. ~~Dogs are not permitted to run loose and must be leashed at all times when on the Common Area or not inside fenced areas. No animals, livestock or poultry of any kind shall be kept on any part of said property to be raised or bred for any commercial purpose.~~

## NOTICE

**Removed statement and signature information that was contained in this section of the filed document. The new Declaration of Conditions, Covenants and Restrictions will only be the information contained from this point forward, on this document. If the Members so approve. The information in the sections above is the same as they are in the identical sections below.**

**SECOND ~~THIRD~~ AMENDED and RESTATED  
DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS  
OF  
WEST EUGENE VILLAGE, and  
WEST EUGENE VILLAGE – 1<sup>ST</sup> ADDITION, and  
WEST EUGENE VILLAGE – 2<sup>ND</sup> ADDITION**

THIS DECLARATION is made on the date hereinafter set forth by West Eugene Village, L.L.C., hereinafter referred to as the "Declarant", whose business address is 7100 South Cooper, Arlington, Texas, 76001.

**This AMENDED AND RESTATED DECLARATION OF CONDITIONS, CONVENANTS AND RESTRICTIONS OF WEST EUGENE VILLAGE AND WEST EUGENE VILLAGE 1<sup>ST</sup> ADDITION AND WEST EUGENE VILLAGE 2<sup>ND</sup> ADDITION, is adopted by the West Eugene Village Homeowners Association, Inc. an Oregon Nonprofit Corporation (hereinafter "the Association") pursuant to ORS 94.590.**

RECITALS:

~~A. Declarant is the owner of certain real property in the City of Eugene, County of Lane, State of Oregon, described in Exhibit "A" attached hereto and made a part hereof. This description includes the Common Areas. Declarant does not choose to limit Declarant's rights to add improvements not described in this Declaration.~~

~~B. Declarant desires to provide for the preservation and enhancement of the property values, desirability, amenities and attractiveness of the Properties, and improvements thereon, and to provide for their maintenance. To that end, Declarant desires to subject the Properties to the covenants, conditions, restrictions, easements, and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each Owner thereof.~~

~~C. Declarant hereby declares that all of the Properties described above, together with the improvements now existing or to be constructed thereon, shall be held, sold, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements and liens. These covenants, conditions, restrictions, easements and liens shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties or any part thereof, their heirs, successors, devisees, grantees and assigns, and shall inure to the benefit of, be imposed upon and pass to the successor in interest of each and all of said Lots as a servitude in favor of and enforceable by Declarant, its successors and assigns, and the Owner or Owners of any Lot.~~

**RECITALS**

**1. The Declaration of Conditions, Covenants and Restrictions of West Eugene Village was recorded on December 14, 2001, as Instrument No. 2001-084522, in the Official Records of Lane County, Oregon.**

**2. The Amended Declaration of Conditions, Covenants and Restrictions of West Eugene Village and West Eugene Village 1<sup>st</sup> Addition was recorded on March 17, 2005, as Instrument No. 2005-018643, in the Official Records of Lane County, Oregon.**

**3. The Second Amended Declaration of West Eugene Village and West Eugene Village 1<sup>st</sup> Addition, and West Eugene Village 2<sup>nd</sup> Addition was recorded on May 26, 2006, as Instrument No. 2006-036617, in the Official Records of Lane County, Oregon.**

**4. The First Amendment to the Second Amended Declaration of Covenants, Conditions and Restrictions of West Eugene Village and West Eugene Village 1<sup>st</sup> Addition, and West Eugene Village 2<sup>nd</sup> Addition was recorded on June 27, 2012 as Instrument No. 2012-032068, in the Official Records of Lane County, Oregon.**

**5. Owners representing 75 percent of the total votes of the planned community have approved the amendments set forth herein in accordance with ORS 94.590(1).**

**6. The Board of Directors has adopted a resolution in accordance with ORS 94.590(6)(b), and is causing the declaration to be restated and recorded under that section.**

**NOW THEREFORE, the 2001 Declaration set forth above is amended and restated in its entirety and the Owners and Board of Directors of the Association hereby replace the same with the following:**

DECLARATIONS:

**The Owners hereby declare on behalf of themselves, their successors, grantees, and assigns, as well as to any all persons having, acquiring, or seeking to have or acquire any interest of any nature whatsoever in and to any of the Properties described below, together with the improvements now existing or to be constructed thereon, that the Properties and improvements shall be held, sold, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements and liens. These covenants, conditions, restrictions, easements and liens shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties or any part thereof, their heirs, successors, devisees, grantees and assigns and shall inure to the benefit of, be imposed upon and pass to the successor in interest of each and all of said Lots as a servitude in favor of and enforceable by the Owner or Owners of any Lot.**

1. DEFINITIONS. When used herein, the following terms shall have the following meanings:

1.1 "Association" shall mean and refer to the West Eugene Village Homeowners Association, an Oregon nonprofit corporation organized under the laws of the State of Oregon, its successors and assigns.

1.2 "Owner" shall mean and refer to the ~~record~~ **recorded** Owner or owners, ~~whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers,~~ but excluding those having such interest merely as security for the performance of an obligation.

1.3 "Properties" shall mean and refer to that certain real property ~~hereinbefore described and such additions thereto as may hereafter be brought~~ **in the City of Eugene, County of Lane, State of Oregon, described in Exhibit "A"** within the jurisdiction of the Association.

1.4 "Common Area" shall mean all real property and appurtenances thereto, now or hereafter owned by the Association for the common use and enjoyment of the Owners, and all Common Areas subsequently annexed thereto. The Common Area to be deeded and owned by the Association is designated "Common Area" on that portion of any subdivision plat of said Properties and any Supplemental Declaration. ~~The deed to the Common Area shall be delivered to the Association at the time Declarant turns over responsibility for administration of West Eugene Village to the Association.~~

1.5 "Lot" shall mean and refer to any separately designated plot of land shown upon any recorded subdivision map of said Properties, with the exception of the Common Area(s).

1.6 "Improved Lot" shall mean with completed Home thereon.

1.7 "Home" shall mean any portion of any structure intended for use, occupancy or ownership as a residence by one family, together with attached or detached garage as the case may be, and patios, deck, entry porches and steps appurtenant thereto.

~~1.8 "Declarant" shall mean and refer to West Eugene Village, L.L.C., its successors and assigns, if such successors or assigns should acquire unimproved Lots from the Declarant for the purpose of development.~~

~~1.9~~ **1.8** "Street" shall mean and refer to the improved private access streets and roads shown upon any recorded subdivision plat of said Properties.

~~1.10~~ **1.9** "Member" shall mean and refer to every person or entity who holds membership in the Association.

~~1.11~~ **1.10** "Institutional Holder of a First Mortgage" shall mean a holder of a first mortgage, trust deed or equivalent security interest in a Lot or improvements thereto, if such holder is a bank or savings and loan association or established mortgage company, or any other entity chartered under any Federal or State agency.

## 2. PROPERTY RIGHTS:

2.1 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, and to limit the number of guests of members permitted to use the Common Areas;

- (b) The right of the Association to suspend the voting right and/or right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities and, in aid thereof, to mortgage said Common Areas and facilities for such purposes, and the rights of any mortgagee in said Properties shall be subordinate to the rights of the Homeowner hereunder;
- (d) The right of the Association to ~~promulgate~~ **create** reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe usage of the Common Areas by the members of the Association, without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said property **within the Common Area**, ~~including, without being limited thereto, rules restricting persons under or over designated ages from using certain portions of such property during certain times, and reasonable regulations and restrictions respecting, but not being limited to, parking, speed and pets.~~
- (e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless (1) an instrument agreeing to such dedication or transfer ~~signed by two-thirds (2/3) of each class of members~~ **has been approved by eighty percent (80%) of the members of the Association, recites that it has been approved by this majority, is executed by the president and secretary** of the Association has been recorded, and (2) except as to the grant of easements for utilities and similar or related purposes, all holders of first mortgage liens on any of the Lots or improvements thereto have approved such dedication or transfer.
- (f) The right of the Association to maintain the perimeter fence. Neither the Homeowner nor the Architectural Control Committee may alter the perimeter fencing without the ~~consent~~ **approval of fifty percent (50%) plus one of the members of the Association. The perimeter fence shall refer to the fence along Terry Street, Avalon Street, as designated on the plot map.**
- (g) No Owner shall be permitted to hook up to the Association irrigation/sprinkler system.

2.2 Private Easements. The following private easements are being created by this Declaration:

- (a) A Temporary Private Landscape Maintenance Easement. Is hereby declared over the easterly portion of Lots 11 thru 30, inclusive, in "West Eugene Village", and

~~as shown on the Subdivision Plat. This easement is for the benefit of the West Eugene Village Homeowners Association. The purpose of said easement is for maintenance of the following:~~

- ~~(1) — Maintenance of existing fence.~~
- ~~(2) — Maintenance of landscaping located on the east side of said perimeter fence.~~
- ~~(3) — Maintenance of irrigation waterline located on the west side of said fence.~~

~~This easement will last as to each Lot only until such time as the Lot is sold.~~

~~(b) — A Temporary Private Maintenance Easement. Is hereby declared over the southerly portion of Lots 4 thru 11 of "West Eugene Village" and over the southerly portion of Lots 103 thru 108 of "West Eugene Village — 1<sup>st</sup> Addition, as shown on the Plat. This easement is for the benefit of the West Eugene Village Homeowners Association. The purpose of said easement is for maintenance of the following:~~

- ~~(1) — Maintenance of existing fence.~~
- ~~(2) — Maintenance of landscaping located on the south side of said perimeter fence.~~
- ~~(3) — Maintenance of irrigation waterline located on the north side of said fence.~~

~~This easement will last as to each Lot only until such time as the Lot is sold.~~

~~The width of said easement is variable on Lot 4 and 10.00 feet wide on Lots 5 through 11, inclusive, and 10.00 feet wide on Lots 103 through 108, inclusive.~~

- (c) Private Wall and Landscape Easement. Is hereby declared over portions of Lots 27 & 28 of "West Eugene Village", as shown on the Plat. This easement is for the benefit of the West Eugene Village Homeowners Association for maintenance of walls and landscaping located therein.
- (d) 10' Wide Private Storm Drain Easement. Is hereby declared over the portions of Lots 10, 11 and 12 of "West Eugene Village", as shown on the Plat, for the benefit of the West Eugene Village Homeowners Association.
- (e) A 1.50 Feet Wide Private Storm Drain Easement. Is hereby declared over portions of Lots 83, 84, 121 and 122 of "West Eugene Village – 1<sup>st</sup> Addition", as shown on the Plat, for the benefit of the West Eugene Village Homeowners Association.

- (f) ~~Private Irrigation and Fence Maintenance Easement. Is hereby declared over the rear property line of lots 30 through 35, inclusive of "West Eugene Village", for the benefit of the West Eugene Village Homeowners Association. The purpose of the said easement is for the irrigation line located south of the fence. This easement will last as to each Lot only until such time as the Lot is sold.~~

### 3. MEMBERSHIP AND VOTING RIGHTS.

GENERAL PLAN OF DEVELOPMENT. ~~The Declarant has filed a subdivision plat covering the Properties which is and shall be subject to this Declaration, consisting of single family lots together with areas designated as open space or for the development of roadway, **are set out in the subdivision Plat attached hereto.** The Lots which are brought within the purview of this Declaration are Lots 1 through 178, together with the Common Area(s) and facilities thereon.~~

3.1 Recorded Ownership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a proprietary member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot ~~or Improved Lot~~ which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate when such ownership shall terminate or be transferred.

3.2 Classes of Membership. ~~The Association shall have two classes of voting membership:~~

Class A. ~~Class A member(s) shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.~~

Class B. ~~Class B member(s) shall be the Declarant or its successors and assigns and shall be entitled to five (5) votes for each platted Lot within the Properties in which it holds the interest required for membership; provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:~~

(a) ~~When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.~~

(b) ~~December 13, 2016.~~

**The Association shall have one class of voting membership. Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such**



**residence location shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In event that co-Owners cannot agree upon the vote, the vote of the lot shall be disregarded completely in determining the proportion of votes given with respect to the matter.**

4. MAINTENANCE ASSESSMENTS.

4.1 Creation of the Lien and Personal Obligation of Assessments. ~~The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot or Improved Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association;~~

**(Content stayed the same just numbering and formatting changed below)**

(1) Annual or other regular periodic assessments or charges as established by the Association from time to time,

(2) Special assessments for capital improvements, and

(3) Any other special assessments or charges as hereinafter provided. Such assessments shall be established and collected as hereinafter provided.

The annual, regular, and special assessments, together with interest, costs and reasonable attorney's fees to collect the same, shall be a charge against the Lots upon which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessments fell due. The obligation for delinquent assessments shall remain a lien upon the property until paid or foreclosed, and shall be a personal obligation of successors in the title, unless expressly waived by the Association.

4.2 Purpose of Assessments. The assessments levied by the Association, through its Board of Directors, shall be used exclusively to promote the recreation, health, safety and welfare of the Owners in the Properties, and in particular for the improvements and maintenance of the Common Area(s), pursuant to this section and Section 5 below.

4.3 Amount of Annual Assessment, Establishment of Reserve Fund. The Board of Directors of the Association shall fix the amount of the annual assessments, and may make adjustments thereto that it deems necessary or appropriate, at a level sufficient to enable it to provide for the improvement, repair, maintenance, replacement, management and insurance of the Properties, and to provide for services and facilities devoted to such purposes, and shall include adequate reserves for the general operation of the Association and for deferred maintenance of the Properties. ~~Said maintenance, repair and replacement is more specifically set forth in Section 5, and shall be for whatever other purpose(s) the Board of Directors may from time to time deem to be in the collective interest of the members.~~

4.4 Special Assessments for Capital Improvements. In addition to annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or easements, including fixtures and personal property related thereto, the maintenance or repair of private streets, and other similar special costs. Said assessments shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. This section shall not prohibit the Board of Directors from authorizing capital expenditures for replacement, repairs or improvements from funds generated by regular assessments.

4.5 Notice and Quorum for Any Action Authorized Under Section 4.4 Written notice of any meeting called for the purpose of taking any action authorized under section 4.4 shall be sent to all members not less than fifteen (15) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty percent (20%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called per statute.

4.6 ~~Reserves.~~ **New Ownership Fee**. At the time of initial conveyance of each Lot, and with each subsequent change in ownership, each **new** owner shall pay to the Association, in addition to such other assessments and charges as shall then be due and payable, a ~~reserve~~ **ownership fee** in the amount of two-twelfths (2/12) of the then established annual assessment. ~~The reserve~~ **new ownership fee**, or such part thereof as required, may be held and applied by the Association **Board of Directors** as full or partial payment toward such Owner's delinquent assessments and charges, **if any**. ~~Such application of an Owner's reserve account~~ **However, the payment of the new ownership fee** shall not relieve the Owner or release the land of any obligation for the delinquent assessments or charges. **The Board of Directors, at its discretion, may use the new ownership fee for regular operating expenses, extraordinary items of maintenance, repair or replacement or capital additions, or may deposit all or a portion of such funds into the reserve account.**

4.7 Uniform Rate of Assessment. The annual or other regular periodic assessments and special assessments must be fixed at a uniform rate called the "Basic Rate-"; ~~provided, however, that Declarant shall not be obligated to pay any assessments for the Lots which Declarant owns until a home has been constructed thereon and an occupancy permit has been issued in respect thereto. Thereafter, Declarant shall pay the same assessment for any such Lot as any other Lot Owner. As specified in Section 4.8, said assessments shall be prorated and paid on a monthly basis.~~

4.8 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein as the "Basic Rate" shall ~~commence as to all Lots, except as noted in Section 4.7, on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The succeeding annual assessment for all Lots shall be for a full year. The Board of Directors shall fix the amount and send written notice of the annual~~

assessment(s) **at least yearly** to each Owner subject thereto. The assessment(s) shall be due on the first day of each month, ~~unless otherwise provided as per Section 4.7,~~ and shall be 1/12 of the total yearly assessment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

4.9 Effect of Non-payment of Assessments: Remedies of the Association. Any assessments which are not paid when due, shall be delinquent if the assessment is not paid within ninety (90) days ~~after the~~ **of its due date and shall be subject to a late fee set by the Board of Directors.** The assessment **not paid within ninety (90) days after the due date** shall bear late fees and interest from the date of delinquency at the rate of ~~ten percent (10%)~~ **twelve percent (12%)** per annum. The Association may bring any action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. The **president or** secretary of ~~said~~ **the Association or a designee having knowledge of the facts** shall file in the office of the recorder of Lane County, State of Oregon, a statement of the amount of any such charges or assessments together with interest as aforesaid which have become delinquent, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessment, together with **late payment penalties, fines,** interest, costs and expenses and a reasonable attorney's fee for filing and enforcement thereof, shall constitute a lien on the whole residence location with respect to which it is a fixed and on any improvements thereon, from the date of the notice of delinquency thereof is filed, until the same has been paid or released as herein provided. The owner at the time such assessment is incurred, shall also remain liable for any delinquency remaining unpaid after any foreclosure sale. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of ~~his~~ **the owners** lot.

4.10 Subordination of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien on any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. Such unpaid assessments shall be a common expense of all the Lot Owners, including such purchaser or mortgagees, his successors or assigns. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

4.11 Exempt Property. The following property subject to this Declaration shall be exempt from the assessment created herein: (a) all properties expressly dedicated to and accepted by a Local public authority including reserved utility easements; and (b) the Common Areas and all other properties owned by the Association.

## 5. MAINTENANCE OF COMMON AREAS.

The Association shall reasonably maintain or provide for the reasonable maintenance of the Common Area(s), including but not limited to, trees, shrubs, grass, landscaped areas, streets, walks, paths, lights and signs. Further, the Association shall provide maintenance and repair of

all buildings, drains and sewers which lie in, on, or under the Common Area. Except to the extent such damage is covered by any type of insurance with a waiver of subrogation in favor of such owner, in the event that the need for any such maintenance, repair or replacement is caused through the willful or negligent act or omission of any Owner, his family, tenant, guests or invitees, the cost of such maintenance or repairs may, in the discretion of the Directors, be added to and become a part of the assessment to which such Lot is subject as a lien, and enforceable in the same manner. Each Owner shall be responsible for maintaining, and keeping in good order and repair, the interior and exterior of his Home and owner-erected yard and fences within lot lines. The Architectural Control Committee has the right to settle disputes concerning repair of common fence lines and their decision shall be final. ~~The Board of Directors or~~ Architectural Control Committee shall have the right to require an Owner to maintain his Home.

The Association shall maintain the irrigation/sprinkler system, the entrances to the development, the surrounding walls and fences, and any landscaping outside the surrounding walls and fences.

## 6. ARCHITECTURAL CONTROL COMMITTEE.

6.1 The Architectural Control Committee, consisting of three or more persons, shall be appointed by the Board of Directors. The Committee may enforce existing rules and regulations by a majority vote, which shall apply to construction and use of the properties, including the Common Areas. The Committee may also propose ~~modifications to existing and new rules~~ **new or modified Rules and Regulations** to the Board for consideration.

6.2 No building, fence, well or other structure shall be commenced, erected or maintained upon the Properties nor shall any exterior addition to or change or alteration therein be made until appropriate plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing ~~as to harmonize in external design, material, size, elevation and location in relation to existing or planned structure, topography and existing or planned plantings~~ by the Architectural Control Committee of the Association, or in the absence of any such committee, by the Board of Directors. In the event said Architectural Control Committee or Board fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided applicant gives the Committee written notice that he has not received a determination and gives it ten (10) additional days to act.

6.3 Notwithstanding a prior approval, if a condition exists, ~~or changes have come about which may be caused by any event, time or effect which in the opinion of the majority of the Architectural Committee must be remedied, corrected, altered, modified or eliminated,~~ then **said which violates the provisions of this Declaration, the Bylaws or the Rules and Regulations of the Association as determined by a majority of the Architectural Control Committee,** the committee shall notify the Owner thereof, ~~and the Owner shall forthwith comply with said notice.~~ **of the alleged violation and provide the Owner with an opportunity to voluntarily correct the same. Except for circumstances involving hazards to persons or property, the Owner shall be given at least thirty (30) days from the date of notice to**

**voluntarily correct the alleged violation.** ~~If the Owner refuses or delays in so complying with said notice, then the Association shall have the right to perform said work specified in the Committee's notice to the Owner.~~ **Should the Owner fail to voluntarily or take appropriate steps to correct the alleged violation, the matter shall be referred to a public hearing pursuant to the Rules and Regulations adopted by the Board of Directors in Section 9.17 below. If, after notice and an opportunity for a hearing, the Board affirms the Architectural Control Committee's determination, then the Association shall have the right to correct the violation, and add the costs of correcting the violation to the assessment to which the Lot is subject. This process is in addition to, and does not diminish, the Association's authority to impose fines for the same conduct or to take legal action to enforce the Bylaws, Declaration, or Rules and Regulations of the Association as provide in the Oregon Planned Community Act**

**6.4 The Architectural Control Committee shall recommend to the Board of Directors for adoption, Rules and Regulations that establish a process for receiving and responding to Owner complaints about alleged violations of the Declaration, Bylaws, and Rules and Regulations of the Association. Notwithstanding the filing of a complaint or action by the Architectural Control Committee or Board of Directors, an aggrieved Owner may maintain an action for violation of the Bylaws, Declaration or the Rules and Regulations of the Association in accordance with the Oregon Planned Community Act.**

## 7. ENCROACHMENTS.

~~If any portion of a party wall or other part of a Home or structure, including but not limited to roof overhangs, entry porches, decks, steps and fireplaces, now or hereafter constructed by Declarant upon said property~~ **existing on the Properties as of the date of this Declaration** encroaches upon any part of the Common Areas other than those parts of the Common Areas actually used for sanitary and storm sewers, or upon the Lot or Lots used or designated for use by another Lot Owner, an easement for the encroachment is granted and reserved and shall exist, and be binding upon ~~the Declarant and upon~~ all present and future Owners of such encroaching building or structure for the purpose of ~~occupying same.~~ **maintaining, repairing and restoring in the same condition such encroachment.**

## 8. EASEMENTS.

All conveyances of land situated in the Properties, ~~made by the Declarant and by all persons claiming by, through, or under the Declarant,~~ shall be subject to the foregoing restrictions, conditions and covenants, whether or not the same be expressed in the instruments of conveyance, and each and every such instrument of conveyance shall likewise be deemed to grant and reserve, whether or not the same be declared therein, mutual and reciprocal easements over and across all of the Common Areas of said Property for the purposes of traveling by foot or resting or otherwise being therein, and over, under and across all portions of said property (except those portions thereof actually intended to be occupied as living space in any building now or hereafter located upon said property), for the purpose of building, constructing and maintaining underground or concealed electric and telephone lines, gas, water, sewer, storm

drainage lines, radio and television antennae and cables, and other utilities and services now or thereafter commonly supplied by public utilities or municipal corporations and upon all Common Areas for constructing and maintaining thereon streets, private improvements controlled by the Association, community and recreational facilities, ornaments and statues, swimming pools, lawns, landscaping and planted areas thereon. In the event there is a failure, or a need to adjust, relocate, or alter any underground system, the Owner or any subsequent Owner will be responsible for any and all costs. The property shall be permanently subject to these restrictions. All of said easements shall be for the benefit of all present and future Owners of property subject to the jurisdiction of the Association by recorded covenants and restrictions, recorded as hereinabove provided, and their tenants, contract purchasers and guests. Said easements and rights of use, however, shall not be unrestricted but shall be subject to reasonable rules and regulations governing said right of use, as promulgated from time to time by the Directors of the Association in the interest of securing maximum safe usage of said easements without unduly infringing upon the privacy of the Owner or occupant of any part of said property. An easement over, upon and across all parts of the Properties is granted and reserved to the Association, its successors and assigns to the extent reasonably required to perform maintenance reasonably necessary or advisable to protect or preserve the value of the Common Areas, Properties and the Homes thereon. **These areas include, but are not limited to, all areas delineated on the Plat accompanying this Declaration.**

~~In addition, an easement over, upon and across all parts of the Common Area is reserved by the Declarant, its successors and assigns who acquire undeveloped Lots for development, or who represent public or private utilities, for the purpose of constructing the project, installing and maintaining utility services or any other requirements needed in the development of the Declarant's property.~~

## 9. USE RESTRICTIONS.

The following restrictions shall be applicable to the real property described above and shall be for the benefit of and limitations upon all present and future Owners of the Properties, or any interest therein:

9.1 All Owners are members of the Association and entitled to an equal share in the rights, interest and privileges and obligations as such, including the right to use all recreational and other Common Areas owned by such Association subject to the rules and regulations and restrictions applicable thereto.

9.2 **Except for activities related to the rental or sale of Lots, or a Home Occupation as provided herein,** No commercial activities of any kind shall be carried on in a Home or in any of the Common Areas without the consent of the Association, ~~except activities related to rental or sale of Lots. This provision~~ **This Section**, however, shall not be construed as to prevent or prohibit an Owner from maintaining his professional records or accounts, handling his personal business or professional telephone calls, or conferring with business or professional associations, clients or customers, in his Home. **This Section shall not prohibit an Owner from pursuing a "Home Occupation" provided that the Owner secures the necessary**

**approval of the City of Eugene, conforms to all conditions of that approval and limits parking associated with the Home Occupation to the driveway on the Lot.**

9.3 ~~With the exception of a lender in possession of a Lot following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no~~ Owner shall be permitted to lease his Home for transient or hotel purposes. ~~No Owner may rent less than his entire Home.~~ Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the By-Laws and rules and regulations of the Association and the Oregon-Landlord Tenant law, that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. The Board of Directors, at its sole discretion, ~~may~~ require termination of the tenancy in the event of any such breach by the tenant. All leases shall be required to be in writing. Any such lessee shall be entitled to the use and enjoyment of the Common Area, provided an Owner may not sever the right to the use and enjoyment of the Common Area from the right to occupy his Lot and the improvements thereon by means of lease or otherwise. For purposes of this Section, the term "lease" includes, without limitation, a month-to-month rental arrangement. Other than the foregoing, there is no restriction on the right of any Owner to lease his Home. **If the Owner uses a Property Manager or other agent to oversee the rental agreement, the Owner shall ensure that the Property Manager or agent conforms to and requires the tenants to conform to the Declaration, Bylaws and Rules and Restrictions of the Association. Any violations and fines resulting from actions by, the tenant, Property Manager or other agent will be assessed to the Owner of the Lot.** ~~This section shall not apply to Declarant during the time Declarant owns Lots in the Properties.~~

9.4 **No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except** A maximum of three (3) dogs and/or Cats can be kept and maintained on any ~~one property at one time,~~ **household pets, such as dogs, cats or other tame, domestic household pets, provided such household pets are not permitted to run loose and are not kept, bred or maintained for any commercial purpose, and provided they** do not create objectionable odor or noise. ~~Dogs are not permitted to run loose and must be leashed at all times when on the Common Area or not inside fenced areas. No animals, livestock or poultry of any kind shall be kept on any part of said property to be raised or bred for any commercial purpose.~~

9.5 No part of the Properties shall be used or maintained as a dumping ground **or storage** for rubbish, trash, garbage or any other waste. No garbage, trash or other waste shall be kept or maintained on any part of the Properties except in a sanitary container. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean, odorless and sanitary condition. All garbage containers shall be placed so as not to be visible from any street. ~~9.16 Storage, of any kind, including, but not limited to, goods, chattels, merchandise, material, fuel, supplies or machinery shall be within walls of the Home, or enclosed by tight fences that completely screen it from sight. There shall be no storage of material of any kind in the parking areas. The Architectural Control Committee may regulate the nature of items which may be placed in or on windows, decks, patios, and the outside walls that are visible from other Lots or the Common Area.~~

9.6 No noxious or offensive conditions shall be permitted upon any part of the Properties nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Home occupants shall exercise extreme care in making noise or in the use of musical instruments, radios, televisions, amplifiers and motorized vehicles that may disturb other Owners.

**9.7 Each Owner shall be responsible for maintaining, and keeping in good order and repair, the exterior of his/her Home, yard and fences within lot lines. Any changes or alterations to the properties seen from the Common Areas shall be prohibited, unless approved by the Architectural Control Committee. Changes or alterations include but are not limited to the following;**

- (a) ~~Owners are expressly prohibited from painting or changing the exterior color of the home or other structures;~~ **(added from section 9.12)**
- (b) **Altering or adding to any structure or building exterior, including but not limited to, garage, roof, fence, patio, or walls; (added from section 9.12)**
- (c) No Home Owner, resident, lessee, invitee or agent shall install wiring for electrical ~~or~~, telephone ~~installations~~, television, radio or any other antennas, ~~grills~~, machines or air-conditioning ~~Homes units~~, or similar devices on the exterior of the structures that protrude through, or are attached to, the wall, window or the roof of the Homes or building, ~~except as authorized in writing by the Architectural Control Committee.~~**(added from section 9.13)**
- (d) ~~9.15~~ No party wall shall be altered so as to diminish the fire resistance, sound transmission or structural capabilities of said wall. **(added from 9.15)**

~~9.7—No trailer, camper, truck, tent, garage, barn, shack, outbuilding, or any structure of a temporary nature shall at any time be used as a residence temporarily or permanently on any part of the properties. Driveways shall not be used for storage, other than that enclosed by walls of the structure. MERGED WITH 9.18~~

~~9.8—Parking of boats, trailers, motorcycles, motor vehicles not operated in regular family use, trucks, truck campers and like equipment shall not be allowed on any part of the Properties or Common Areas, nor on public or private ways adjacent thereto, excepting only within the confines of an enclosed garage, and no portion of same may project beyond the enclosed area except under permit approved by the Board of Directors. All other parking of equipment as above described shall be prohibited except in such other areas as may be prescribed by the Board of Directors may designate from time to time, and for which the Directors may assess require a parking fee and limit the use and duration thereof and/or permit. The authority of this Section shall not be construed as a requirement that the Board of Directors provide such parking areas. The Architectural Control Committee shall approve or assess all parking, permits and/or fees, following rules set by the Board of Directors. (ADDED TO 9.14 (a) and (c))~~



~~9.9.8~~ All Common Areas are to be maintained by the Association and no Owner shall make changes in landscaping; removal or trimming of trees, lawns or shrubs will not be permitted. No tree or any other plants located in the Common Area may be removed without approval of the Architectural Control Committee or Board of Directors.

~~9.10~~ **9.9** All walks and streets are for the use of Association members on an equal basis, subject to reasonable rules and regulations promulgated from time to time in writing by the Directors. It shall be the responsibility of each member to allow maximum ease of pedestrian and vehicular ingress and egress over walks and streets. ~~Automobile parking in front of garages, in the driveways, on sidewalks or obstruction or barrier to any access which would interfere with any other member's use is strictly prohibited. No parking is allowed in areas not expressly dedicated to parking. Garage doors shall be closed and locked when not in use.~~ **(STRIKE THROUGH ADDED TO SECTION 9.14 (b))**

~~9.11~~ **9.10** Unless written approval is first obtained from the Architectural Control Committee, no sign of any kind shall be displayed to the public view on or from any Lot or Home, or the Common Area, except signs to advertise Lots and Homes for sale or lease, limited to one sign per lot of not more than 18 inches by 24 inches.

~~9.12~~ Owners are expressly prohibited from painting or changing the exterior of any building, including but not limited to, garage, roof, fence, patio, doors or walls without written permission of the Architectural Control Committee. **MERGED WITH 9.7 (a) and (b)**

~~9.13~~ No Home Owner, resident, lessee, invitee or agent shall install wiring for electrical or telephone installations, television, radio or any other antennas, grills, machines or air conditioning Homes, or similar devices on the exterior of the structures that protrude through, or are attached to, the wall, window or the roof of the Homes or building, except as authorized in writing by the Architectural Control Committee. **MERGED WITH 9.7 (c)**

~~9.14~~ **9.11** Association ~~The board of Directors may establish Rules and Regulations limiting the use will have jurisdiction over activities permitted, designed to promote the safety and welfare of the persons or properties,~~ in the Common Areas. ~~All disputes, complaints or matters of change in existing or future use restrictions will be submitted to the Association Directors for binding determination.,~~

~~9.15~~ No party wall shall be altered so as to diminish the fire resistance, sound transmission or structural capabilities of said wall. **(moved to 9.7(d))**

~~9.16~~ Storage of any kind, including, but not limited to, goods, chattels, merchandise, material, fuel, supplies or machinery shall be within walls of the Home, or enclosed by tight fences that completely screen it from sight. There shall be no storage of material of any kind in the parking areas. The Architectural Control Committee may regulate the nature of items which may be placed in or on windows, decks, patios, and the outside walls that are visible from other Lots of the Common Area, or outside the Properties. **MOVED TO 9.5**

~~9.17~~ **9.12** Other than the Common Areas, no **buildable** Lot shall be used except for single-family residential purposes and no building shall be erected thereon except dwellings, garages and storage units. ~~9.7~~ **No trailer, camper, truck, tent, garage, barn, shack, outbuilding, or any structure of a temporary nature shall at any time be used as a residence temporarily or permanently on any part of the properties. Driveways shall not be used for storage, other than that enclosed by walls of the structure. (ADDED FROM 9.7)**

~~9.18~~ **9.13** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or Common Areas.

~~9.19~~ **9.14** Vehicular traffic on the Properties will be limited to fifteen (15) miles per hour as a safety precaution. This speed shall apply to all motor vehicles, including but not limited to motor scooters, motorcycles, automobiles and trucks. **The use or parking of any vehicles in the Common Areas or on any properties designated on the Plat map attached hereto, shall be subject to the following;**

- (a) Parking of boats, trailers, motorcycles, motor vehicles not operated in regular family use, trucks, truck-campers and like equipment shall not be allowed on any part of the Properties **or Common Areas, nor on public or private ways adjacent thereto, excepting only within the confines of an enclosed garage; (first sentence of section 9.8)**
- (b) Automobile parking ~~in front of garages, in the driveways,~~ on sidewalks or obstruction or barrier to any access which would interfere with any other member's use is strictly prohibited. No parking is allowed in areas not expressly dedicated to parking. ~~Garage doors shall be closed and locked when not in use.;~~ **(second sentence from section 9.10)**
- (c) All other parking ~~of equipment~~ as above described shall be prohibited except in such **other** areas as ~~may be prescribed by the~~ **Board of Directors may designate from time-to-time, and** for which the Directors may assess **require** a parking fee ~~and limit the use and duration thereof~~ **and/or permit.** The authority of this Section shall not be construed as a requirement that the **Board of Directors** provide such parking areas. **The Architectural Control Committee shall approve or assess all parking, permits and/or fees, following rules set by the Board of Directors. (section 9.8 not included in section (a) above)**

~~9.20~~ Sections 9.2, 9.3, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.16 and 9.17, shall not be applicable to Declarant, the original builders, or the original sales agents during the construction and sales period, or their successors and assigns whom acquire Lots for the purpose of development.

~~9.21~~ **9.15** No Lot may be subdivided or combined with other Lots, unless approved by the Architectural Control Committee, **and seventy-five percent (75%) of the Owners. Provided, however, that with the approval of the Architectural Control Committee, the City of Eugene, and the appropriate mortgage holders, Owners of abutting lots may relocate or eliminate all or a portion of their common property line by property line adjustment, as long as the same does not result in the increase or decrease of the number of lots in the subdivision plat of the Properties.**

~~9.22~~ **9.16** When these covenants do not cover a situation, the rules and regulations of the City of Eugene shall be applied. In all cases where there are conflicting rules showing a difference in requirements, the stricter of the two is to be used. The decision of the Board of Directors shall govern in determining which rule is the strictest.

**9.17 After giving written notice and the opportunity to be heard, the Board of Directors may levy fines for violations of the Declaration, Bylaws, Rules and Regulations of the Association. The Board shall adopt Rules and Regulations specifying the manner and timing of the written notice and opportunity to be heard. The fine levied shall be based on a schedule adopted by resolution of the Board of Directors and delivered to each Lot or mailed to the mailing address of each Lot or the mailing addresses designated in writing by the Owners.**

## 10. INSURANCE, DAMAGE, CONDEMNATION.

10.1 It shall be the duty of each Owner to procure and maintain at all times fire and liability insurance coverage, and shall upon request, cause the insurance company to furnish to the Association a certificate showing such insurance to be in effect. If the Owner fails to furnish the Association with such certificate, the Association may, if it desires (but it shall not be so obligated) obtain such insurance. The Association shall assess the cost of such insurance against the Owner, and such assessment shall become a lien and collectible and enforceable in the same manner as all assessments provided for herein. The policy(ies) (hereinafter referred to as the "policy") is more specifically described below:

- (a) The Owner shall procure and maintain a policy or policies with extended coverage endorsement, fire, E.C.E., and special E.C.E. for as nearly as practicable to one hundred percent (100%) of the insurable replacement cost value of the Home, without deductions or depreciation.
- (b) ~~The Board shall procure and maintain a policy to insure the Declarant, the Board of Directors, officers, the Managing Agent, other employees of the Association and the Home Owners against liability to the public or the Owners (of the Home and of the common elements, and their invitees or tenants) incident to or arising out of the ownership and/or use of the property, or operation of contractors of construction work under a comprehensive general liability form. There shall be excluded from the policy coverage of a Home owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omission~~

~~of such Home owner and liability incident to the ownership and/or use of the part of the property as to which such Home Owner has the exclusive use or occupancy. Limits of liability under such insurance shall not be less than \$500,000.00 for one person, \$1,000,000.00 for any one accident and \$300,000.00 for property damage.~~ **or policies with extended coverage endorsement, fire, E.C.E., and special E.C.E. for as nearly as practicable to one hundred percent (100%) of the insurable replacement cost of all insurable improvements in the common property, if the insurance is available at a reasonable cost.**

**(c) The Board shall procure and maintain a policy to insure the Association, Board of Directors, officers, the Managing Agent, other employees of the Association against liability to the public incident to or arising out of the ownership or use of the Common Areas, or any damage or injury caused by the Association or its agents under a comprehensive general liability form. Limits of liability under such insurance shall not be less than \$500,000.00 for one person, \$1,000,000.00 for any one accident and \$300,000.00 for property damage.**

10.2 Insurance obtained by the Association shall be governed by the following provisions:

The association shall assess the cost of such insurance against each Owner, on a prorated basis, and such assessment shall be a lien and be collectible and enforceable in the same manner as all assessments provided for herein.

- (a) Workman's compensation insurance to the extent necessary to comply with any applicable laws.
- (b) All policies shall be written with a company licensed to do business in the State of Oregon and holding a rating of "A" or better by the Best's Insurance Reports current at the time the insurance is written or, prior to the initial meeting of the Association, one acceptable to Declarant and shall contain appropriate waivers of subrogation.
- (c) All losses under policies hereafter in force regarding the Association shall be settled exclusively by the Board of Directors or its authorized representative.

10.3 Damage, Destruction and Replacement. In the event of substantial damage to or destruction of a building or one or more Homes, all available insurance proceeds shall be used to repair, reinstate, rebuild, or replace the building (hereinafter called the "work") in accordance with the original plans and specifications, or if the work according to the original plans and specifications is not permissible under the applicable laws and regulations, then in accordance with other plans and specifications approved by the Board. In the event of any deficiency between said insurance proceeds and the cost of the work, each affected Owner shall pay said

deficiency. The Owner must repair or restore damage to any improvement on Owner's Lot. If the Owner fails to take action as required hereunder, the Association may take such action and all expenses incurred therewith shall be a charge upon the subject Lot and the Owner, and be enforceable according to Article 4.1 and 4.9 hereof.

10.4 Condemnation of Common Area. In the event that all or any portion of the Common Area is appropriated as the result of condemnation or threat thereof, the following rules and guidelines shall apply:

- (a) Representation by Association. The Board of Directors of the Association shall have the right and duty to represent each of the Owners for the purpose of negotiating and contesting, if it deems so doing to be necessary or appropriate, any condemnation award offered by the condemning authority in question and may authorize expenditures and assessments to retain adequate counsel or other experts for such purposes.
- (b) Allocation of Condemnation Award. The Board of Directors of the Association shall allocate and distribute any condemnation award received by it with respect to the Common Area to the Owners in proportion to the diminishment in fair market value incurred by them with respect to their respective Lots and improvements as a result of said condemnation.
- (c) Arbitration. In the event of any controversy arising under this Section, each of the disputing parties shall choose one (1) arbitrator and such arbitrators shall choose one (1) additional arbitrator. The three arbitrators shall resolve the controversy by majority vote and said decision shall be binding upon the disputing parties; provided, any action or decision of the Board of Directors pursuant to this Section shall carry a rebuttable presumption of correctness for purposes of said arbitration proceedings. The disputing parties each shall pay all the fees and expenses of the arbitrator designated by each of them and shall pay equally all fees and expenses of the third arbitrator. The disputing parties each shall pay their own expenses in connection with the arbitration.
- (d) Retention of Rights. No provisions of this Section 11.4 shall be construed as negating the right of the individual Owners to such incidental relief as the law may provide as a result of the condemnation of the Common Area.
- (e) Notice to Mortgagee. Holders of first mortgages on any Lot and/or the improvements thereon shall receive timely written notice of any condemnation or eminent domain proceeding affecting the Common Areas or any portion thereof.

## **11. DISPUTE RESOLUTION.**

**Except for the collection of assessments that are not attributable to fines, or for those circumstances in which irreparable harm to a party due to delay, before initiating litigation or an administrative proceeding in which the Association and an owner have an**

adversarial relationship, the party who intends to initiate litigation or an administrative proceeding shall offer to use a dispute resolution program available in Lane County that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address contained in the records of the Association, for the other party. The party receiving the notice shall have ten (10) days from receipt of the offer to accept. Acceptance of the offer must contain the name, address and telephone number of the body administering the dispute resolution program. If the party receiving the notice does not accept within ten (10) days or the dispute resolution process takes longer than thirty (30) days from receipt of the offer, the other party may proceed with litigation or an administrative proceeding. Should a party fail to make an offer before commencing litigation or an administrative proceeding, then upon motion of the other party that process shall be stayed for a period of thirty (30) days and both parties shall participate in the dispute resolution process.

(Continuing section numbers change)

## 12 GENERAL PROVISIONS.

~~11.1~~ **12.1** Enforcement. All restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions contained in this Declaration shall bind an inure to the benefit of and be enforceable by any proceeding at law or in equity, by Declarant, the Association and the Owner or Owners of any portion of said property and their heirs and assigns, and each of their legal representatives, and failure by Declarant or by the Association or by any of the Property Owners or their legal representatives, heirs, successors or assigns to enforce any of such conditions, restrictions, or charges herein contained shall in no event be deemed a waiver of the right to do so. Upon request, the holders of the first mortgages shall be entitled to receive written notice from the Association of any default in the performance by the Lot Owner/mortgagee of any obligation under this Declaration or the By-Laws of the Association which is not cured within thirty (30) days. In the event of any litigation to enforce or interpret any of the provisions of this Declaration of Covenants, Conditions and Restrictions, including any appellate proceedings and any proceedings in United States Bankruptcy Court, the prevailing party shall be entitled to recover reasonable attorney fees from the other.

~~11.2~~ **12.2** Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

~~11.3~~ Assignment. Any or all rights, powers and reservations of Declarant herein contained may be assigned to the Association or to any other corporation or association which is organized or which may hereafter be organized and which will assume the duties of the Declarant hereunder pertaining to the particular rights, powers and reservations assigned; and upon any such corporation evidencing its intent in writing to accept such assignment and assume such duties, it shall to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. All

rights of Declarant hereunder reserved or created shall be held and exercised by Declarant, so long as it owns any interest in any portion of the Properties.

**11.4.12.3**      Amendments.

- (a)      How Proposed. Amendments to this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights. A proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment.
  
- (b)      Approval Required. Except as may otherwise be provided in this Declaration, any of the covenants and restrictions of this Declaration, except for the easements granted above, may be amended if such amendment is approved by seventy-five percent (75%) of the members of the Association. ~~Any amendment which would limit or diminish any special Declarant rights established in this Declaration, including the right of the Declarant to annex additional phases, shall require the written consent of the Declarant.~~
  
- (c)      Recordation. All amendments shall become effective when reduced to writing, executed by the appropriate Association officers and recorded in the Lane County Deed Records.

~~12.~~ **13** SOLAR PROTECTED LOTS. Lots 4 through 10, 31, 32, 38 through 42, and 45, all in "West Eugene Village", and Lot 84, and Lots 103 through 108, inclusive, all in "West Eugene Village – 1<sup>st</sup> Addition", and Lots 147 through 152, Lots 154 through 157, Lots 170 through 172, and Lots 175 through 178, inclusive, all in "West Eugene Village – 2<sup>nd</sup> Addition", comply with the basic solar Design Standard from EC 9.060(j)(3). An adjustment is granted for the remainder of the lots within the subdivision, pursuant to EC 9.060(j)(5)(a). This adjustment does not exempt the subject lots from compliance with the solar setback requirements of the Eugene Code, which will be applied at the time dwellings are constructed or sited upon individual lots (i.e. conjunction with building permit review).

~~13.~~ **14** Wetlands Protection.

RECITALS:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto, which contains wetlands to be maintained in accordance with the Permit Number approved by the Oregon Division of State Lands ("Division"); a site map of the wetlands area is attached hereto as Exhibit "B".

WHEREAS, Declarant desires to provide for the preservation of the wetlands area, and to this end desires to subject it to the covenants, restrictions, easements and other encumbrances hereinafter set forth, each and all of which is and are for the benefit of the wetlands area.

NOW, THEREFORE, the Declarant declares that the wetlands area shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements and other encumbrances hereinafter set forth in this Declaration.

A. General Plan of Development. Declarant currently manages the site for the purpose of wetland mitigation. Current management is in accordance with DSL Det. #92-0074.

B. Use Restrictions and Management Responsibilities. The wetlands area shall be used and managed for wetland mitigation purposes in accordance with DSL Det. 92-0074. Declarant and all users of the wetlands area are subject to any and all easements, covenants and restrictions of record affecting it.

1. The wetlands area shall be perpetually maintained in a natural condition, in order to promote conditions on the Property for a wetland environment with streams, ponds, water control structures, native shrubs and trees, and open areas. If necessary to achieve the stated purpose of this Declaration, the owner shall comply with the requirements of DSL Det. 92-0074
2. Domestic livestock shall not be allowed on the wetlands area.
3. No agricultural activity shall be permitted upon the wetlands area except as needed to encourage establishment of the wetland community and to control incursion of noxious or non-native plant species.
4. The owner shall take reasonable care to prevent any petroleum products, chemicals, or other deleterious materials from entering any water on the wetlands area. The owner shall also take reasonable care to minimize turbidity increases in any water on the wetlands area so as to protect water quality and reduce damage to aquatic life.
5. No part of this Declaration may be terminated, amended, modified or revoked without the written approval of the Oregon Division of State Lands. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the laws of the State of Oregon. If one or more of these covenants or restrictions becomes illegal, null or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.
6. The Oregon Division of State Lands shall have the right to enforce these covenants and restrictions. In the event of any violation or threatened violation of any of these covenants and restrictions, the Oregon Division of State Lands shall have the right to collect damages and the right to enjoin such violation or threatened violation in a court of competent jurisdiction.



7. No breach or violation of these covenants or restrictions shall terminate this Declaration.
8. Failure by the Oregon Division of State Lands to insist upon the strict performance of any one or more of these covenants shall not be construed as a waiver or a relinquishment for the future violation of any covenant or restriction.
9. Any instrument of transfer, conveyance or encumbrance affecting all or part of the wetlands area shall set forth this Declaration by reference.
10. Nothing contained in this Declaration shall be deemed to be a gift or a dedication of any of the wetlands area to the general public or for the use of the general public or for any public purpose whatsoever, it being the intention that this Declaration will be strictly limited to the purpose stated herein.
11. These covenants do not in any way affect the owner's water rights in any surface water outside the boundaries of the wetlands area.

C. Resolution of Document Conflicts. In the event of any conflict between this Declaration and DSL Det. #92-0074, DSL Det. #92-0074 shall control.