

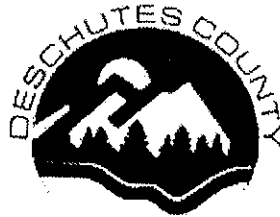


Wingel's instrument

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Certificate Page



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**RESTATED AND AMENDED DECLARATION
OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR VILLAGE WIESTORIA HOMEOWNERS ASSOCIATION**

6
3/2

This restated and amended declaration of covenants, conditions and restrictions supersedes all prior recorded declaration of covenants, conditions and restrictions and supplements or amendments thereto, including, but not limited to, those recorded in the official records for Deschutes County, state of Oregon, as follows:

Declaration of Covenants, Conditions and Restrictions recorded May 29, 1997, Document No. 97-18397, Volume 449, Pages 1466-1501, and any and all subsequent Amendments thereto, including, but not limited to, the following Amendments: March 19, 1999, Document No. 99-13688 and September 20, 2002, Document No. 2002-51844.

The undersigned hereby certify that they are the President and Secretary, respectively, of the association, VILLAGE WIESTORIA HOMEOWNERS ASSOCIATION, and are authorized by the Board of Directors to execute this Restated Declaration and record the same in the Official Records for Deschutes County, State of Oregon.

This development is a planned development as defined by O.R.S. 94.550, et seq. and City of Bend Code, Chapter 10-10, Development Code, to be administered by the Association named above, for the subdivisions and properties more particularly described on Exhibit A.

WHEREAS, the Association has heretofore been incorporated under the laws of the State of Oregon as a non-profit mutual benefit corporation, VILLAGE WIESTORIA HOMEOWNERS ASSOCIATION, for the purpose of exercising the functions hereinafter described;

WHEREAS, Covenants, Conditions, Restrictions, reservations, servitudes, easements and liens which affect the subject properties and which provide for amendment have heretofore been recorded;

WHEREAS, the requisite percentage of Lot Owners have approved this Restated and Amended Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, this Corporation hereby establishes these Restated and Amended Covenants, Conditions and Restrictions for the benefit of the Owners of all Lots at Village Wiestoria.

NOW, THEREFOR, this Association and Owners/Members hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting

the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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ARTICLE 1

DEFINITIONS

1.1 Definitions. The Following definitions shall apply in this restated Declaration of Covenants, Conditions and Restrictions and any amendments hereto:

1.1.1 "Architectural Review Committee" or "ARC" shall refer to a separate body (committee) appointed by the Board of Directors to carry out the functions described in Article 6 hereof.

1.1.2 "Articles" shall mean the Articles of Incorporation of Village Wiestoria Homeowners' Association, an Oregon non-profit corporation, as filed with the Secretary of State, State of Oregon.

1.1.3 "Association" shall mean and refer to Village Wiestoria Homeowners' Association, an Oregon non-profit corporation, its successors and assigns.

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

1.1.5 "Bylaws" shall mean and refer to the Bylaws of the Association.

1.1.6 "Common Area" shall mean and refer to that area of land shown on the recorded Plat, which area has been subjected to this Declaration, including any improvements thereon, which is intended to be devoted to the common use and enjoyment of the Members and, if additional property is annexed to the Association and subjected to the terms and provisions of this Declaration, the Articles and the Bylaws, that area of land shown on any plat thereof, including any improvements thereon, which is intended to be devoted to the common use and enjoyment of the Members.

1.1.7 "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in this restated Declaration of Covenants, Conditions and Restrictions for Village Wiestoria Homeowners' Association.

1.1.8 "Home" shall mean and refer to any portion of a structure situated on a Lot, which portion is designed and intended for use and occupancy as a residence by a single family or household.

1.1.9 "Living Unit" shall mean and refer to any portion of a structure situated on a Lot or Lots, which portion is designed and intended for use and occupancy as a residence by a single family or household.

1.1.10 "Lot" shall mean and refer to each and any lot which is shown on the Plat and which is subject to this Declaration. "Lot" shall not include any lot or tract that is designated for use as Common Area on the Plat, in the Declaration or in any supplemental declaration annexing additional property to the Association.

1.1.11 "Members" shall mean and refer to Owners, who by virtue of their ownership of a Lot, are members of the Association.

1.1.12 "Occupant" shall mean and refer to the occupant of a Home who shall be either the Owner, a lessee or any other person authorized by the Owner to occupy the premises.

1.1.13 "Owner" shall mean and refer to the owner of record, whether one (1) or more persons or entities, of the fee simple title to any Lot or to a purchaser in possession under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

1.1.14 "Plat" shall mean and refer to the plats for Village Wiestoria, Phases 1 & 2, both of which have been recorded in the County of Deschutes and which depict the Lots and Common Area.

1.1.15 "Property" shall mean and refer to all real property that is subject to this Declaration, including Lots, the Common Area Tract and all improvements located thereon.

1.1.16 "Rules and Regulations" shall mean and refer to the documents containing rules, regulations and policies adopted by the Board of the Association, as such documents may be from time to time adopted or amended.

1.1.17 "Tracts" or "Common Area Tracts" shall mean and refer to those parcels of land that are designated as a Tract or Common Area on the Plat and those so designated on a recorded plat for any additional property annexed to the Association and subjected to this Declaration, the Articles, and the Bylaws.

1.1.18 "Village Wiestoria" shall mean the Lots and Common Area described on the Plat or on any recorded plat for any additional property annexed to the Association and subjected to this Declaration, the Articles, and the Bylaws.

1.1.19 "Village Wiestoria Homeowners' Association" is an Oregon nonprofit corporation, membership in which is held by all Owners of Homes in Village Wiestoria.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

The real property that is and that shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in the City of Bend, Deschutes County, Oregon, and is shown on the Plats of Village Wiestoria, Phases 1 and 2, which have been filed in the plat records of Deschutes County, State of Oregon.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1 Non-Severability. The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by any Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference thereto in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and agrees that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interest in the Common Area and Lots described in this Article 3 shall be subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recording of this Declaration and thenceforth shall be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Village Wiestoria.

3.2 Ownership of Lots. Title to each Lot in Village Wiestoria shall be conveyed in fee to an Owner. If more than one (1) person and/or entity owns an undivided interest in the same Lot, such persons and/or entities shall constitute one (1) Owner.

3.3 Ownership of Common Areas. Title to any Common Area is in and held by the Association. If additional property is annexed to the Association and subjected to this Declaration, the Articles, and the Bylaws, title to any additional common area shall be conveyed to the Association not later than sixty (60) days after seventy-five percent (75%) of the Lots shown on the plat pertaining to such additional property have been conveyed to purchasers or six (6) months after the supplemental declaration annexing the additional property to the Association has been recorded, whichever is earlier.

3.4 Owners' Rights of Enjoyment and Easements. The Association recognizes as important to property values, safety, livability and enjoyment of owning and living in Village Wiestoria uniformity, consistency and well maintained properties. Every Owner shall have a right and easement of enjoyment in and to the Common Area and a non-exclusive easement for ingress and egress to and from the Common Area which shall be attached to and shall pass with the title to every Lot, subject to the following provisions:

(A) Rules & Regulations. The right of the Association to adopt reasonable Rules and Regulations regarding use of the Common Area and properties, including limiting the number of guests and charging reasonable fees for use of the facilities, and the right to establish reasonable monetary penalties for violations of these Restated CC&Rs and the rules established. A copy of the Restated Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered to each owner of the address on file with the association or its agent via U.S. Mail and shall be binding upon all Owners and Occupants of all Lots upon the date of delivery or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws.

(B) Suspension of Use of Facilities. The right of the Association to suspend the use of any Common Area and/or Common Area facilities of an Owner or its tenant, guest or family member after reasonable notice and an opportunity to be heard by the Board of Directors of the Association. The period may be:

(1) For any period during which any assessment against his Lot remains unpaid; and/or

(2) For any reasonable period of time the violation of any of the published Rules and Regulations continues.

(C) Dedication or Granting of Easements Over Property. Limitations or restrictions as outlined in Article 3, Section 3.5 hereof.

(D) Use of Facilities. Where an Owner leases or rents property in the development to others, or places other persons in the residence, the Owner retains rights to use the Common Area and/or Common Area facilities and the residents of the home enjoy those same rights.

(E) Power of Association to Sell, Dedicate or Transfer Common Area. ORS 94.665 provides the Association with the right to sell, dedicate or transfer any portion of the Common Property or to create a security interest therein. Except as to the grant of easements for utilities and similar or related purposes, no such sale, dedication or transfer shall be effective unless approved by eighty percent (80%) of the votes.

3.5 Easements. Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article 3.

3.5.1 Easements on Plat. The Common Area and Lots are subject to the easements and rights of way shown on the Plat.

3.5.2 Utility and Drainage Easement. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

3.5.3 Slope Control Easements. Slope control areas are reserved in accordance with the grading established within the subdivision. Within these slope control areas no structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems or which may change the direction of flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

3.5.4 Encroachment and Easements.

(1) There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and as between adjacent Lots due to the placement, settling, or shifting of the improvements constructed, reconstructed or altered thereon, including, but not limited to, fireplace chimneys, porches, siding and roofs, to a distance of not more than three (3) feet as between a Lot and Common Area and not more than one (1) foot as between adjacent Lots, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area, along a line perpendicular to such boundary at such point; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to the willful conduct on the part of an Owner, tenant, or the Association, subsequent to the original construction of the units referred to herein.

(2) There shall be reciprocal appurtenant easements for the maintenance and repair of the common foundations, common fences, and common walls.

(3) There shall be reciprocal appurtenant easements for the conveyance of storm water run off between adjacent Lots or Lots and Common Areas, as the case may be.

3.5.5 Association's Easements. Such easements as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws and Articles, as the same may be amended or supplemented, hereby are reserved to the Association and its duly authorized agents and representatives. In using the easements affecting Owners' Lots, the Association shall take to interfere in the Owners' use of their Lots as little as reasonably practicable and shall restore or repair any easement area on a Lot to its prior condition if any damage arises from use of it.

3.5.6 Easement to Governmental Entities. A nonexclusive easement over the Common Area hereby is reserved and granted to all governmental and quasi-government entities, agencies, utilities, and their agents for the purposes of performing their duties within Village Wiestoria.

ARTICLE 4 **LOTS AND HOMES**

4.1 Residential Use. Lots shall be used for residential purposes only. Except with the consent of the Board, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot; nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph 4.1 shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of any contractor or homebuilder to construct residences on any Lot or to store construction materials and equipment on such Lots in the normal course of construction and (c) the right of the Owner of a Lot to maintain his professional or personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers in his residence. The Board shall not approve commercial activities otherwise prohibited by this paragraph 4.1 unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

Notwithstanding the foregoing, such activities as are approved by the Board and that do not unreasonably interfere with Owner's use and enjoyment of their Homes may take place in the Village Wiestoria Community Center, a building currently located on lot 32 and known as "The Depot". Potential uses include wedding receptions, meetings and conferences, family reunions and similar activities, so long as such activities and/or events shall operate in accordance with Rules and Regulations adopted by the Board for this facility. Additionally, such building may be used for a community center, library, post office and similar purposes by the Association and its members. All uses must be legal

and in compliance with the city of Bend ordinances.

4.2 Construction of Homes. No construction, reconstruction or exterior alterations shall occur on a Lot unless the approval of the ARC is first obtained pursuant to Article 6 hereof. Considerations such as siting, shape, size, color, design, height, solar access, compatibility with the Village Wiestoria design theme, or material may be taken into account by the ARC in determining whether to consent to any proposed project. The following minimum standards apply to all Lots:

4.2.1 Height. The top plate of the second story shall not be higher than twenty-five (25) feet from the unfinished floor of the first story. No Home shall exceed two (2) stories in height above the ground;

4.2.2 Floor Area. The square footage area of a single-story Home shall not be less than nine hundred (900) square feet, and the square footage area of a two-story Home shall not be less than twelve hundred (1,200) square feet, exclusive of basements, attics, patios, decks, porches, balconies and garages;

4.2.3 Garages. A garage for housing at least one (1) car must be constructed on the Lot. One (1) additional parking space shall be provided on each Lot either within a garage or uncovered, but substantially screened from other Lots and the Common Area;

4.2.4 Multifamily Buildings. No multifamily buildings shall be permitted unless each Home in such building is located on a separate platted Lot.

4.2.5 Party Walls and Similar Structures.

(1) General Rules of Law To Apply. Each wall, fence, driveway or similar structure built as a part of the original construction of the Units which serves and/or separates any two adjoining Unit shall constitute a party structure. To the extent not inconsistent with the provision of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts of omission shall apply thereto.

(2) Sharing of Repair and Maintenance. All Owners who make use of the party structure shall share the cost of reasonable repair and maintenance of such structure equally.

4.2.6 Construction Debris. Every contractor building any improvement upon any Lot or the Common Area shall furnish trash containers and at all times shall keep the premises free from accumulation of trash and scrap caused by construction. Trash shall not be allowed outside a designated trash and scrap area and any that does intrude beyond shall be cleaned up immediately. Upon completion of the work, all remaining trash and scrap shall be disposed of legally. Tools, construction equipment, machinery, and surplus

materials shall be removed from the site. The ARC shall be entitled to enter upon any construction site within Village Wiestoria and to clean up, remove and dispose of materials on-site, to charge the contractor for any costs incurred by the ARC in performing such acts, and to recover such costs and attorneys' fees and court costs in a legal action against the contractor.

4.2.7 Construction Activities and Noise. Construction activities shall not take place before 8:00 a.m. or after 6:00 p.m. on weekdays and Saturdays. Construction activity is not permitted on Sundays and nationally recognized Holidays. Radios and any other music producing devices are not allowed on construction sites. Pets shall not be permitted on any construction site.

4.2.8 Certificate of Occupancy. A certificate of occupancy shall be obtained from the City of Bend Building Department before any home within Village Wiestoria may be occupied or rented.

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

4.3 **Completion of Construction.** The construction of any building on any Lot, including painting and all exterior finish, shall be completed within one (1) year from the beginning of the construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the ARC. The Lot and building area shall be kept reasonably clean, in workmanlike order and free of litter during the construction period with a garbage disposal facility located on site or as close to the construction site as reasonably practicable during such construction period. If construction has not commenced within three (3) months after the project has been approved by the ARC, the approval shall be deemed to be revoked unless the Owner has applied for and received an extension of time from the ARC.

4.4 **Landscaping.** Landscaping within each Lot shall commence within thirty (30) days after and shall be completed within six (6) months after the final building inspection by the local government jurisdiction. Both the initial landscaping plan and any subsequent material modifications must receive ARC approval prior to construction thereof.

4.5 **Maintenance of Lots and Homes.** Each Owner shall maintain those portions of his Lot not maintained by the Association and all improvements on such Lot in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement of and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the ARC. In addition, each Owner shall

keep all shrubs, trees, grass and plantings of every kind on his Lot and in adjoining Common areas, not maintained by the Association, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner. Any Lot or improvement thereon that is so damaged shall be restored within a reasonable period of time.

4.6 Rental of Homes. An Owner in good financial standing with the Association (meaning assessments are current, no fines are outstanding, and no current violations of the Governing Documents exist) shall be entitled to rent or lease his residence, subject to prior Board approval and the following conditions:

4.6.1. **Verification of Intent to Rent or Lease.** Prior to renting or leasing of property, the owner shall give written notice to the Board or its Agent of the intent to Lease and shall provide the information required by this section 4.6, as applicable to the particular property. The Board or its Agent will respond in writing within 7 calendar days of receipt of written intent to rent or lease property acknowledging receipt of required materials and, where applicable, approving the Lease or placing the Owner on a Waitlist.

4.6.2 **Written Rental Agreements Required.** A written rental or lease agreement entered into by and between the Owner and the tenant must specify that: (i) the tenant shall be subject to all provisions of the Declaration, Bylaws and Rules and Regulations of the Association and (ii) a failure to comply with any provision of the Declaration, Bylaws and Rules and Regulations shall constitute a default under the rental agreement;

4.6.3 **Minimum Rental Period.** A rental may be only used for residential purposes for a term no less than six months.

4.6.4 **Tenant Must Be Given Documents.** The Owner must provide each tenant a copy of the Declaration, Bylaws and Rules and Regulations.

4.6.5 **Board Shall Be Notified.** The Owner shall provide the Board or its Agent with contact information of the renter or leasee. If the property is professionally managed, the owner shall also provide emergency contact information for the management company.

4.6.6 **Limitations on Rental or Lease of Residences.** For purposes of this Sub-section 4.6.6, studio or one bedroom dwellings above garages ("Above Garage Dwellings," as authorized by Section 4.22 of the former CC&Rs), as well as the property located at 912 NE Revere Avenue (Lot 23), shall be excepted and shall not count against the rental ceiling as described in Sub-section 4.6.6(2).

(1) For the purposes of these covenants, non-owner occupants shall be considered renters, with the exception of immediate family

members, i.e. parents and/or children. Rentals to immediate family members are allowed without regard to the Rental Ceiling. Notwithstanding the foregoing, the requirements of CC&R 4.6.1 and 4.6.2 will apply to leases between any Owners and immediate family members, assuming a written lease exists.

(2) Except as otherwise provided in this Section 4.6, without receiving a response on a request for Verification of Intent to Rent or Lease from the Board or its Agent pursuant to paragraph 4.6.1, the Board or its Agent shall issue a rent or lease approval for complying new leases provided that the Approval will not result in more than 20% or 10 homes (the "Rental Ceiling") being occupied by non-owner occupants.

(3) Once a rental is occupied by the Owner, the residence is then considered a non-rental home. To once again become a rental home, the Owner must meet all the conditions of CC&R 4.6 and obtain a Lease Approval by the Board., except for Grandfathered Owners who are not restricted by the Rental Ceiling limits of paragraph 4.6.6(2).

(4) Those Owners of Homes prior to the approval of this Amendment to the Declaration ("Grandfathered Owners") shall not be restricted from renting or re-renting their units under a Rental Ceiling nor placed on a waiting list as long as they continue in ownership of the home, provided, however, that such Grandfathered Owners shall comply with the requirements of Sections 4.6.1 through 4.6.5, and 4.6.6(6) below as to notice of termination of rental only, and the Grandfathered Owner's rented home shall be included for counting purposes in determining whether the Rental Ceiling is met or exceeded for purposes of making determinations on applications by new Owners to be allowed to rent to non-family members.

(5) Effect of Rental Ceiling. If an Owner wishes to rent a home, but is prohibited from doing so because of the application of the Rental Ceiling, the Association shall place the Owner's name on the Rental Waiting List provided for in Section 4.6.6(6) below.

(6) Rental Waiting List. Each Owner who has rented his or her residence shall promptly give notice to the HOA upon termination of Rental Status and indicate whether or not the Owner intends to rent or lease again. If the Owner intends to rent or lease again, the Owner will have 60 days to rent or lease the Owner's property. If the Owner does not intend to immediately rent or lease again, once notification is made, and such termination reduces the number of rentals below the Rental Ceiling, the HOA will notify all Owners on

the Waiting List that another home will be available to be rented. The Owner at the top of the list will have 10 days to decide whether he or she will exercise their option to lease their home. If this option is exercised, they will have 60 days to follow through with the lease. If the first Owner declines, the option to lease will move down to the next person with the same time frames applied for exercising the option. Any Owner who fails to exercise their option will be moved to the bottom of the list. If at any time in the process an Owner who has exercised their option to lease their home should decide not to follow through, they shall notify the HOA so as to give the option to the next Owner on the list.

4.6.7 Hardship Exception. Where, on written application from a homeowner that would otherwise be restricted from renting or leasing due to the application of the Rental Ceiling, the Board determines that a hardship exists whereby, due to circumstances beyond the control of the Owner, that Owner would suffer serious harm by virtue of the limitation on renting contained in this Section 4.6, the Board may, in its discretion, grant an owner a waiver of the Rental Ceiling for a temporary period not to exceed twelve (12) months.

4.6.8 Penalty for Non-Compliance. In the event a homeowner leases a residence without prior notification to, and where applicable the approval of the HOA and/or is not in full compliance with the applicable requirements set forth in this Section 4.6, that homeowner may be assessed fines monthly for non-compliance pursuant to rules and regulations adopted by the Board pursuant to 4.6.10 below, these CC&Rs, or the Bylaws, and may be required to remove the tenant within such reasonable times and under such circumstances as the Board, by rule, may adopt from time to time.

4.6.9 Preexisting Leases. Within thirty (30) days from the date of notification to all Owners of the adoption and recording of the provisions of this Article 4.6, each Grandfathered Owner who has rented a home to a tenant who was in occupancy prior to the date of recording of this amended Section 4.6 shall file a copy of the Rental Application for that home with the Association. A lease in effect prior to the recording date and filed with the Association as required by this paragraph shall be referred to as a "Preexisting Lease." Any tenant occupying a home pursuant to a Preexisting Lease shall be permitted to continue the tenancy and renew or extend the lease thereafter without complying with the provisions of this Article 4.6 other than the requirements of paragraph 4.6.2; provided, however, that any subsequent renewals or extensions are in writing and are submitted to the Association for registration and check for compliance with paragraph 4.6.2 prior to the expiration of the lease term then in effect; and also provided that the assignment or subletting of a home under a Preexisting Lease or the sale of the home by its Owner shall terminate the right to renew or extend a Preexisting Lease under this Section.

4.6.10 Rulemaking Authority. The Board of Directors, pursuant to this Article and the Bylaws, Section 7.5, shall have authority to enact rules from time to time

for the efficient and expedient administration of these provisions, including but not limited to placing requirements for the registration of leases, requiring owner screening of tenants, establishing a waiting list program, designating penalties for non-compliance, and the adoption of forms and procedures for management of the program through a management company, by a committee, or other authorized designee as determined by the Board in its discretion. Nothing herein shall be construed to require the Board to adopt additional rules in order to effectuate the provisions in this Section 4.6.

4.7 Animals. No animals, livestock or poultry of any kind shall be kept, bred or raised on any lot with the exception of dogs, cats, birds, fish and other household pets kept largely indoors with the provisions they are not allowed to roam free and are not kept, bred or maintained for commercial purposes. All animals shall be housed inside the home or in the fenced portion of the home's rear or side yard.

4.7.1 Control. All pets must be leashed and/or otherwise under the control and restraint of their owners at all times. Owners and residents must pick up after their pets if the pets defecate in the Common Areas or on any property of others. The Board may impose standards and fines into Rules and Regulations for the reasonable control and keeping of household pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the properties by the Owners and residents. Owners are subject to fines for failure to adhere to those requirements.

4.7.2 Nuisance. The Association shall have the right to prohibit any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to other Owners and residents. An Owner may be required to remove a pet upon the receipt of the third notice in writing from the Board of violation of any rule, regulation or restriction governing pets within the Property.

4.7.3 Vicious Animals. Any pet which the Board of Directors reasonably determines is vicious or dangerous to Owners of Lots, their families and guests, shall be removed by the Owner thereof immediately upon written notice from the Board of Directors. At the Owner's request after such removal, a hearing will be held by the Board of Directors to review its determination. Any animal which is considered vicious under any City of Bend or County of Deschutes ordinance shall be conclusively deemed a vicious animal which the Board of Directors shall exclude from the Property. All pets are also subject to the laws and regulations of the City of Bend and County of Deschutes.

4.8 Nuisance. No noxious, harmful or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area that interferes with or jeopardizes the enjoyment of, or that is a source of annoyance to, the Owners or other Occupants.

4.9 Vehicle Restrictions.

4.9.1 Parking. No vehicle, including trailers, boats, campers and other

recreational vehicles or equipment, regardless of weight, shall be parked on any part of any Lot, other than a paved driveway or Common Area, including streets and alleys, for more than six (6) hours per day or such other period as may be permitted by the Association Rules and Regulations. Owners shall use their garages to park their vehicles and shall not park them in the common areas or on the private streets and alleys.

4.9.2 **Storage.** No boats, jet skis, campers, house trailers, recreational vehicles, or trailers shall be stored in such a manner as to be visible from the street or adjacent streets. Structures erected or covers to hide violations will not be considered proper compliance. No disabled or inoperable vehicles (including those currently not registered) may be stored in the driveway or on any street. No vehicles may be parked on any lawn.

4.9.3 **Vehicles in Disrepair.** No Owner shall permit any vehicle that is in a state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Area for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in a "state of disrepair" when the Board reasonably determines that its presence offends the Owners or Occupants. Should any Owner fail to remove such vehicle within five (5) days following the date on which the notice is mailed to him by the Association, the Association may have the vehicle removed from the Property and may charge the expense of such removal to the Owner.

4.10 **Signs.** No signs shall be erected or maintained on any Lot except that not more than one (1) "For Sale" or one (1) "For Rent" sign placed by the Owner or a licensed real estate agent may be temporarily displayed on any Lot. All signs must comply in shape, size, color and design with standards established by the Board.

4.11 **Rubbish and Trash.** No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Areas or any other Lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any similar materials from any Lot, any streets or Common Area where deposited by him within five (5) days following the date on which notice is mailed to him by the Board, the Association may have such materials removed and may charge the expense of such removal to the Owner.

4.12 **Fences and Hedges.** No fences or boundary hedges shall be installed without prior written approval of the ARC.

4.13 **Service Facilities.** Service facilities (garbage containers, fuel tanks, clotheslines, etc.) shall be screened such that the service facilities are not visible at any time from the street or neighboring properties.

4.14 **Antennae and Satellite Dishes.** Exterior antennas, microwave, aerial,

tower or other devices for the transmission or reception of television, radio or other forms of sound or electromagnetic radiation shall not be erected, constructed or placed on any Lot without the affirmative vote or written consent of seventy-five percent (75%) of the votes allocated in the Association; provided however that Lot 13 (commonly known as 928 NE Revere Ave., Bend, OR shall be allowed to continue the preexisting authorization from the ARC dated 3-13-98 allowing the use of a US Tower Crank-Up Antenna, Mast Model #MA550-MDP. With prior written consent from the ARC, exterior satellite dishes with a surface diameter of twenty-four (24) inches or less may be placed on any Lot so long as they are not visible from the street or neighboring properties.

4.15 Exterior Lighting or Noisemaking Devices. Except with the consent of the ARC, no exterior lighting or noisemaking devices, other than security and fire alarms, shall be installed or maintained on any Lot. The ARC shall not unreasonably withhold its consent to exterior lighting along walkways, over entry doors and on patios/decks.

4.16 Damage or Destruction to Home and/or Lot. If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (i) restore the damaged improvements or (ii) remove all damaged improvements, including foundations, and leave the lot in a clean and safe condition within 90 days of the event. Any restoration proceeding under (i) above must be performed in accordance with the provisions of Article 6.

4.17 Right of Maintenance and Entry by Association. If an Owner fails to perform maintenance and/or repair that he is obligated to perform pursuant to this Declaration and if the Board determines, after notice and a hearing (given pursuant to the provisions of the Bylaws), that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Village Wiestoria, the Board may cause such maintenance and/or repair to be performed and may enter any Lot whenever entry is necessary in connection with the performance of such maintenance and/or repair that the Board is authorized to undertake. Entry shall be made with as little inconvenience to the Owner of the Lot as practicable and only after advance written notice of not less than forty-eight (48) hours, except in emergency situations. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot as a special assessment.

4.18 City Ordinances and Regulations. The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that the ordinances and regulations of the City of Bend are more restrictive or provide for a higher or different standard, the ordinances and regulations of the City of Bend shall prevail.

4.19 Multi-Family Dwellings. No two-family, or more, dwellings are permitted on any lot. No single family dwelling is permitted to house more than one family. Exceptions are those homes that were granted permission under the original CC&R's.

4.20 Tree Removal. No trees with a diameter of six (6) inches or more, measured at a height of six (6) feet above ground level, may be removed from any Lot

without the prior written approval of the ARC. In addition, when a tree's location, type, size or height falls within the City of Bend tree removal regulations, compliance with those regulations is required.

ARTICLE 5

COMMON AREA

5.1 Use of Common Areas. Use of Common Areas shall be subject to the provisions of the Declaration, Bylaws, Articles and Rules and Regulations promulgated by the Board. There shall be no use of the Common Area except by Owners, Occupants, and their invitees. Prior written approval of the Board is required for the following:

- (A) The placement or construction of any obstacle of any part of the Common Area.
- (B) The storage of any material in the Common Area.
- (C) Altering, in any way, the facilities, land or intended use of any Common Area.
- (D) Carrying on any activity in the Common Area that might increase the rate of insurance carried by the Association.

5.2 Maintenance of Common Area. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area, including, without limitation, all drainage systems and pathways thereon. The Association shall keep the Common Area and improvements thereon in good condition and repair, shall provide for all necessary services and shall cause all acts that may be necessary or proper to assure the maintenance of the Common Area standards overseen by "Grounds Committee" or its agent.

5.3 Alterations to Common Area. Only the Association shall construct, reconstruct, or alter any improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an improvement may be made at any Board or Association meeting. The Board may adopt, reject or modify any such proposal, subject to the limitations contained in the Bylaws and this Declaration.

5.4 Funding. Expenditures for alterations, maintenance or repairs to an existing capital improvement for which a reserve has been collected shall be made from the reserve account. As provided in Section 8.5 hereof, the Board may levy a special assessment to fund any construction, alteration, repair or maintenance of an improvement for which no reserve has been collected or for which the balance in the reserve account is insufficient to cover the cost of the proposed improvement.

5.5 Landscaping. All landscaping on any Lot shall be maintained and cared for

in a manner consistent with the care, condition and quality of the Common Area landscaping. Any weeds or diseased or dead lawn, tree, ground cover or shrubs shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. The Association shall be responsible for all landscaping located in Common Areas.

5.6 Condemnation of Common Area. If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be received and expended by the Board in a manner that, in the Board's discretion, is in the best interest of the Association. The Association shall represent the interest of all Owners in any negotiations, suit or action or settlement relating to such matters.

5.7 Damage or Destruction of Common Area. If any Common Area is damaged or destroyed by an Owner or any of his or her Occupants, guests, tenants, licensees, agents or members of his family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair the damage and restore the area in a workmanlike manner as originally constituted or otherwise, in the discretion of the Board. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is responsible for such damage.

ARTICLE 6

ARCHITECTURAL REVIEW COMMITTEE

6.1 Architectural Review. No improvement, including landscaping, shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, material, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and the harmony of exterior design with the existing improvements and landscaping. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, nor shall the ARC's review analyze structural, geophysical, engineering or other similar factors. Such compliance and analysis are the responsibilities of the Owners. The procedure and specific requirements for review and approval of construction may be set forth in design guidelines adopted from time to time by the ARC. In all cases in which the ARC's consent is required by this Declaration, the provisions of this Article 6 shall apply.

6.2 Architectural Review Committee. Appointment and Removal. The ARC shall consist of no fewer than three (3) members and no more than five (5) members appointed by the Board. The Board of Directors shall serve if no Committee of three (3) can reasonably be appointed. The term of office for each member of the ARC shall be one

(1) year unless lengthened by the Board at the time of appointment or unless the Board serves as the ARC, in which event the terms of ARC members shall be the same as their terms as Board members. The Board may appoint any or all of its members as ARC members, and the ARC shall not be required to include non-Board members. The Board may appoint one (1) or more members who are not Owners but who have special expertise regarding the matters which come before the ARC to the ARC. In the sole discretion of the Board, such non-Owner members of the ARC may be paid.

6.3 Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC without the necessity of a meeting and without the necessity of consulting the remaining members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

6.4 Duties. The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article 6. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping and similar features that may be used in Village Wiestoria; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

6.5 ARC Decision. The ARC shall render its approval or denial decision with respect to a construction proposal within thirty (30) working days after it has received all materials required by it with respect to the application. All decisions shall be in writing. In the event that the ARC fails to render its decision of approval or denial in writing within thirty (30) days of receiving all material required by it with respect to the proposal, the application shall be deemed approved.

6.6 ARC Discretion. The ARC may, at its sole discretion, withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC determines are appropriate for Village Wiestoria. Siting, shape, size, color, design, height, solar access, effect on the enjoyment of other Lots or the Common Area, effect on an easement and any other factors which the ARC reasonably believes to be relevant may be taken into consideration by the ARC in determining whether to consent to any proposed work.

6.7 Nonwaiver. Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.8 Appeal. Any Owner adversely affected by action of the ARC may appeal such action to the Board. Appeals shall be made in writing within ten (10) days of the

ARC's written ruling and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board is already acting as the ARC, the appeal shall be treated as a request for a rehearing, but in such case the Board must actually meet and receive evidence and argument. A final, conclusive decision shall be made by the Board within thirty (30) days after receipt of such notification. The determination of the Board shall be final.

6.9 Effective Period of Consent. The ARC's consent to any proposed work shall automatically be revoked three (3) months after issuance unless construction of the work has been commenced or the Owner has applied for and has received an extension of time from the ARC. Once commenced, any such work shall be completed within six (6) months.

6.10 Determination of Compliance. From time to time, the ARC may inspect all work performed and may determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

6.11 Noncompliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an approval granted, and if the Owner fails to agree to and diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, then at the expiration of the third (3rd) day from the date of such notification, the ARC shall provide notice to such Owner of a hearing at which such Owner's continuing noncompliance shall be considered. The hearing shall be held not more than thirty (30) days after the date of the notice of noncompliance. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it. The ARC shall then require the Owner to remedy or remove the same within ten (10) days after the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or within any extension of such period as the ARC, at its discretion, may grant, the ARC may remove the noncomplying improvement, remedy the noncompliance, or file suit to compel compliance. The costs of such action, including all attorneys' fees and other costs incurred to enforce compliance, whether incurred before or after suit is filed, at trial or on any appeal or review therefrom, shall be assessed against the Owner and his Lot.

6.12 Liability. Neither the ARC nor any member thereof shall be liable to any Owner, Occupant, builder or the Association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided that the ARC or member has, in accordance with its or his actual knowledge, acted in good faith.

6.13 Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairman of the ARC and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof either: (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration and any Rules and Regulations promulgated by the Board or the ARC or (b) such improvements do not so comply, in which event, the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such non-compliance. The Owner, his heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as among the ARC, the Association and all Owners and such persons deriving any interest through any of them.

6.14 Approval of Contractors and Insurance. Contractors providing services in connection with the development or improvement of any Lot shall be subject to the following requirements:

- (A) General Contractors and subcontractors shall be licensed as required by Deschutes County and the City of Bend Building Department;
- (B) General contractors shall warrant all materials and workmanship to be of good quality and to remain in good condition for a period of one (1) year;
- (C) A general contractor shall furnish to the Association evidence of public liability insurance in amounts reasonably acceptable to the ARC;
- (D) Combined single limits of \$1,000,000 shall be deemed acceptable.

6.15 Other Applicable Law. All improvements must be constructed in full compliance with all applicable governmental building codes. All ARC review and inspection procedures are intended to assure compliance only with aesthetic considerations. The ARC is not responsible for design or construction defects or failure of the building to meet appropriate building codes.

ARTICLE 7

MEMBERSHIP IN THE ASSOCIATION

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

7.2 **Proxy.** Each Owner may cast his vote in person, pursuant to a proxy executed by the Owner, or by written ballot, as provided by ORS 94.658. An Owner may not revoke a proxy given pursuant to this Section 7.2 except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.

7.3 **Voting Rights.** The Members shall have voting rights as set forth in the Bylaws, with one (1) vote for each Lot owned.

7.4 **Procedure.** All meetings of the Association, the Board, the ARC, and Association committees shall be conducted pursuant to such rules of order as from time to time may be adopted by the Board. Notwithstanding which rule of order is adopted, the chairman shall be entitled to vote on all matters and not merely to break a tie vote. A tie vote shall not constitute a majority vote or approval of any motion or resolution.

ARTICLE 8

FUNDS AND ASSESSMENTS

8.1 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants and for the improvement, operation and maintenance of the Common Areas.

8.2 **Covenants to Pay.** Each Owner covenants and agrees to pay the Association the assessments and any additional charges levied pursuant to this Article 8.

8.2.1 **Funds Held in Trust.** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of Village Wiestoria as provided in this Declaration. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be

deemed automatically transferred to the successor in interest of such Owner.

8.2.2 Offsets. No offset against any assessment shall be permitted for any reason, including, without limitation, an offset based on any claim that the Association is not properly discharging its duties.

8.3 Basis of Assessment. Assessments, including the Reserve Account assessment, are levied against each and all Lots, excluding only the lot or lots owned by the Association.

8.4 Annual Assessments. Annual assessments for each fiscal year shall be established when the Board approves the budget for the next fiscal year. Annual assessments shall be levied on a fiscal year basis. The fiscal year shall be the calendar year unless another year is adopted by vote of the Board members. Unless otherwise specified by the Board, annual assessments shall be due and payable in monthly installments on the first day of each month during the term of this Restated Declaration.

8.4.1 Budget. The Board annually shall prepare and approve a budget and distribute a summary copy thereof to each Owner, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, not less than thirty (30) days and not more than ninety (90) days before the beginning of the fiscal year. If the Board fails to adopt a budget, the last adopted annual budget shall continue in effect.

8.4.2 Reserve Study and Maintenance Plan. The Board shall conduct an annual reserve study or review and update an existing study pursuant to ORS 94.595(3). The board and/or its agent shall prepare a maintenance plan for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under the Restated Declaration pursuant to ORS 94.595 (4). A copy of the Reserve Study will be provided to any Owner upon written request to the Board. Request must be made annually.

8.4.3 Allocation of Assessments. The total amount of assessments set forth in the budget shall be divided among and charged equally against each and all Lots, excluding only the Lot or Lots owned by the Association.

8.4.4 Non-Waiver of Assessments. If, before the expiration of any fiscal year, the Association fails to fix the amount of annual assessments for the next fiscal year, the amount of annual assessments established for the preceding year shall remain in effect until the Association fixes a new amount of annual assessments.

8.5 Special Assessments. The Board shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

8.5.1 Deficits in Operating Budget. To correct a deficit in the operating budget, by vote of a majority of the Board;

8.5.2 Breach of Documents. To collect amounts due to the Association from an Owner for breach of the Owner's obligations under the Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

8.5.3 Repairs. To make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or reserve accounts, by vote of a majority of the Board; and

8.5.4 Capital Additions. To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

8.6 Accounts.

8.6.1 Types of Accounts. Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank, which accounts shall be clearly designated as (i) the Current Operating Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Special Assessments shall be deposited into one of the two accounts, whichever is deemed by the Board to be appropriate. Withdrawal of funds from the Association's Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and an officer of the Association who is not a Director.

8.6.2 Reserve Account for Replacing Common Property. The Association shall maintain a reserve account, in the name of the Association, which account shall be called the "Reserve Account," and which shall be kept separate and apart from all other funds of the Association. Except as provided in Section 8.6.2(a) below, the Reserve Account shall be used exclusively for replacement of items of property held by the Association that normally require replacement, in whole or in part, within three (3) to thirty (30) years after acquisition thereof ("Common Property") and not for regular or periodic maintenance and expenses. The assessment for this account shall be included with the annual assessment in accordance with the provisions of Section 8.4 and 8.6.1 above. The Reserve Account shall be maintained in full compliance with ORS (Oregon Revised Statute) 94.595.

8.6.2(a) Assessments. Not less often than annually, the Association shall inventory all items of Common Property and shall estimate the remaining life of each item of Common Property and the current replacement cost of each of such items. The Association may identify items for which a reserve account assessment is required because those items are insurable and are insured by a common carrier of all-purpose risk insurance. For the purpose of funding the Reserve Account, the Association shall impose an

assessment to be called the "Reserve Account Assessment" against each Lot within Village Wiestoria, using the budgeting method as set forth in Section 8.4.1. The total Reserve Account Assessment shall be equal to the sum of the estimated replacement cost of each item of Common Property which has an estimated life of greater than three (3) but less than thirty (30) years, divided by the estimated number of years of life for such item of Common Property (not the estimated years of life remaining).

8.6.2(b) Loan From Common Property Reserve Account. The Board of Directors may borrow funds from the Common Property Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet other temporary expenses. In accordance with ORS 94.595(6)(b), funds borrowed to meet high seasonal demands or temporary expenses under Subsection 8.6.2 (b) must be repaid from special assessment or maintenance fees within six (6) months of the date on which such funds are borrowed.

8.6.2(c) Increase and/or Reduction of Reserve Account Assessment. At any time future assessment for the Reserve Account may be increased and/or reduced by the vote of Owners of Lots representing seventy-five percent (75%) of the votes computed in accordance with Section 7.3.

8.6.2(d) Investment of Reserve Account. Nothing in this Section 8.6 prohibits the prudent investment of reserve account funds, subject to any constraints imposed by Oregon State Law, the Board of Directors of the Association, the Bylaws or the Rules and Regulations.

8.6.2(e) Refunds of Assessments. Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots.

8.6.3 Current Operating Account. All other allowable costs may be paid from the Current Operating Account.

8.7 Default in Payment of Assessments, Enforcement of Liens.

8.7.1 Personal Obligation. All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligations of all Owners of the Lot to which such assessments pertain. In a voluntary conveyance (that is, one other than through foreclosure or a deed in lieu of foreclosure), the grantees shall be jointly and severally liable with the grantor(s) for all Association assessments imposed through the

recording date of the instrument effecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien; and any mortgage or deed of trust that was granted to an institutional lender and that was recorded previously to the record of the Association's notice of lien.

8.7.2 Association Lien. At any time when any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any management agent, may file a notice of lien in the deed records of Deschutes County, Oregon, against the Lot to which the delinquency pertains. Once filed, such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorneys' fees (whether or not suit or action is instituted) and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time, but not later than six (6) years after the latest lienable charge has been imposed. The lien of the Association shall be superior to all other liens and encumbrances except for property taxes and assessments; any first mortgage, deed of trust or land sale contract that was recorded previously to the recording of the Association's notice of lien; and any mortgage or deed of trust that was granted to an institutional lender and that was recorded previously to the recording of the Association's notice of lien.

8.7.3 Interest, Fines, Late Fees, Penalties. The Board, in its reasonable discretion, may from time to time adopt resolutions to set the rate of interest and to impose late fees, fines and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, any Rules and Regulations, and any rules and regulations adopted by the ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the assessment billing addresses of such Owners. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violation of this Declaration, the Bylaws or any Rules or Regulations, other than late fees, fines or interest arising from an Owner's failure to pay regular or special assessments may not be imposed against an Owner or his Lot until such Owner is given an opportunity for a hearing, as elsewhere provided herein.

8.7.4 Acceleration of Assessments. If an Owner is delinquent in payment of any monthly assessment or any installment on a special assessment, the Association, upon not less than ten (10) days' written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

8.7.5 Association's Right to Rents/Receiver. In any foreclosure suit by the Association with respect to an Association lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his Lot or shall be entitled to the appointment of a receiver. Any default by the Owner in any provisions of the Declaration or Bylaws shall be deemed to be a default by the Owner of any mortgage to which the

Owner is a party or to which the Lot is subject.

8.8 Reallocation upon Annexation or Withdrawal of Property. When additional property is annexed to the Association, the Board of Directors shall, within sixty (60) days of the annexation, recalculate the budget in accordance with Section 8.4.1, based upon the additional lots and common areas and recalculate assessments for each Lot based upon the methods set forth in Section 8.4. The Association shall send notice of the assessment to the Owners of newly annexed Lots not later than sixty (60) days after the annexation or with the next occurring (annual, bi-annual, or monthly) assessment, whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days from the date the notice is mailed or at such time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. If additional Lots are annexed to the Association during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots which were within Village Wiestoria prior to the annexation in the manner specified in Section 8.4 above, except that notice of the adjustment in the assessment shall be sent to Owner not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. To the extent that any adjustment results in a credit for the Owner, such credit shall be applied toward the next occurring payment or payments on the annual assessment.

ARTICLE 9

GENERAL PROVISIONS

9.1 Records. The Board shall preserve and maintain minutes of the meetings of the Association, the Board and any Board committees. The Board or its agent also shall keep detailed and accurate financial records, including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and Board committees and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies

9.2 Indemnification of Directors. Officers, Employees and Agents. The Association shall indemnify any director, officer, employee or agent who was or who is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association), by reason of the fact that he is or was a director, officer, employee or agent of the Association or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture,

trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent shall not of itself create a presumption that a person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, that a person did not have reasonable cause to believe that his conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a director, officer, employee or agent shall have a right of contribution over and against all other directors, officers, employees or agents and members of the Association who participated with or benefited from the acts which created said liability.

9.3 Enforcement, Mediation, Arbitration, Attorneys' Fees. The Association, the Owners, and any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may pertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by the Association, any Owner, or a mortgagee to enforce any covenant, condition or restriction herein contained shall in no event be deemed to be a waiver of its right to do so thereafter.

It is a principle of Village Wiestoria that disagreements and disputes between Owners and/or between an Owner and the Association be resolved as civilly and inexpensively as possible. Accordingly, all such disputes and disagreements arising out of or relating to interpretations or alleged violations of the Association's Declaration, Bylaws or Rules and Regulations, which are not resolved between the parties, except for nonpayment of assessments, shall be mediated.

If the disagreeing or disputing parties cannot agree upon a solution, they shall select a mediator. If they cannot agree upon a mediator, then one shall be selected through the process provided by a recognized mediation service designated by the first party who notifies the other of the mediation service selected. The fees and other charges of the mediation shall be split equally between the parties.

If mediation is unsuccessful, then an arbitrator shall be selected using the same process as for a mediator, i.e. by mutual agreement or through a recognized arbitration service selected by the first party to notify the other. The award of the arbitrator shall be final and unappealable, and such award may be entered in an appropriate court to be enforced in the same manner as a judgment of that court. The arbitrator shall award to the prevailing party the reasonable attorneys' fees and other costs incurred in the arbitration.

and in the previously unsuccessful mediation.

The Association's Board of Directors may maintain a list of mediation and arbitration services willing to provide services required under this Section 9.3 and, if such list is maintained, mediation and arbitration services selected under this Section 9.3 shall be selected from such list.

All assessments made by the Association against owners, including, without limitation, assessments to pay operating expenses, reserves, special assessments, fines, interest and late fees, shall be imposed and collected in the manner provided herein and in the Planned Community Act. The suit for collection of the assessments or foreclosure of the Association's lien to secure the assessments may be filed by the Association in the appropriate court. In such suit or action, the prevailing party shall be entitled to its reasonable attorneys' fees and costs as shall be awarded by the court in such suit or action and in any appeal therefrom.

9.4 Equitable Remedies. In addition to awarding damages or other legal remedies, the arbitrator shall have the power and authority to award equitable remedies, including, without limitation, prohibitory and mandatory injunctions and specific enforcement. Such equitable awards shall be entered in an appropriate court to be enforced in the same manner as any other arbitrator's award entered in such court. If, for any reason, a court finds that the arbitrator does or did not have the appropriate authority to award a particular form of equitable relief, then the parties to the dispute may litigate the matter before an appropriate court, both as to legal and equitable issues. The prevailing party in such litigation shall be entitled to its reasonable attorneys' fees and costs incurred in pursuing such litigation to be set by the trial court or the appellate court on appeal

9.5 Construction: Severability. This Declaration and all declarations annexing property to the Association shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and all declarations annexing property to the Association shall be deemed to be independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

9.6 Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees; provided, however, that amendments that do not constitute rescission of the planned community may be adopted as provided in Section 9.7 below. Additionally, any such rescission that affects the

Common Area shall require the prior written consent of the City of Bend, and, if any provision of this Declaration violates the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or, in the event the rule against perpetuities applies, until twenty-one (21) years after the death of the last survivor of the now living descendants of Queen Elizabeth II.

9.7 Amendment. As provided by ORS 94.590, and except as otherwise provided in Section 9.6 hereof and the restrictions set forth elsewhere herein, this Declaration may be amended at anytime by an instrument approved by not less than seventy-five percent (75%) of the total votes of each class of Members that are eligible to vote. Any amendment must be executed, recorded and certified as provided by law; provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents and those of the Oregon Non-Profit Corporation Acts and Oregon Planned Community Act.

9.8 Private Agreement. This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Village Wiestoria and the City of Bend is under no obligation to enforce any of its provisions. Likewise, the ARC and the Association are under no obligation or duty to enforce City of Bend regulations or to warrant to Owners that proposed improvements comply with City of Bend regulations, such being the sole and exclusive responsibility of the Owner proposing said improvements. This Declaration does not restrict the City of Bend's authority to adopt or amend its development regulations. The City of Bend shall limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot or an improvement in Village Wiestoria to know the requirements of this Declaration and the covenants and agreements contained herein. In the event a City of Bend regulation conflicts with a provision of this Declaration, any question regarding which provision controls shall be directed to the ARC. While the ARC lacks authority to authorize the Owner to violate a City of Bend standard, it may require the Owner to meet standards that meet or exceed the City's standards. The City of Bend shall not be liable for any approvals or permits that are granted in compliance with City of Bend regulations but that are not in compliance with this Declaration.

9.9 Resolution of Document Conflicts. In the event of a conflict among any of the provisions in the documents governing Village Wiestoria, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration of Covenants, Conditions and Restrictions;
2. Articles of Incorporation;
3. Bylaws;
4. Rules and Regulations.

The provisions of the Oregon Planned Community Act, ORS 94.550 et seq., shall be paramount to the provisions in all of the above listed documents.

9.10 Notices. Any notice or document permitted or required by these Covenants may be delivered either personally by US mail or email. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited as certified or registered mail in the United States Mail with postage prepaid, addressed as follows: if to the Association, Village Wiestoria Homeowners Association, 850 NE Wiest Way, Bend, OR 97701; if to an owner, at the address given by him at the time of his purchase of a lot or at his lot within Village Wiestoria. The address of a party may be changed by him at any time by notice in writing delivered as provided herein.

Mailings, general correspondence, notices of annual meetings, board meetings, special meetings and proxy solicitation may be by personal delivery, first class mail, fax or email. A roster of Owners shall be maintained and distributed by the Association Secretary. It is the responsibility of each Owner to notify the Secretary of changes or corrections in his roster information.

ARTICLE 10

SINGLE LIVING UNIT ON TWO LOTS

Subject to compliance with applicable land use laws, ordinances and regulations, including obtaining necessary permits, any person owning two (2) contiguous Lots may build a single Living Unit upon those two (2) Lots. Upon completion of such Living Unit, the two (2) Lots shall continue to be treated as two (2) lots for the purposes of this Declaration and the Bylaws, including, without limitation, voting and allocation of assessments among the Lots. The construction of such Living Unit shall remain subject to architectural review in the same manner as all other construction subject to this Declaration. For the purposes of this Article 10, Lot 6, together with the West one-half of lot 7, shall be considered one lot. Likewise, Lot 8, together with the East one-half of Lot 7, shall be considered one lot.

ARTICLE 11

ADOPTION

It is hereby certified that this restated Declaration of Covenants, Conditions & Restrictions has been adopted by Village Wiestoria Homeowners Association, and shall be recorded in the Deed Records of Deschutes County, together with the Restated Bylaws of the Village Wiestoria Homeowners Association.

DATED this 16th day of September, 2009

Village Wiestoria Homeowners Association

By: Robert Ellsworth Robert Ellsworth
Robert Ellsworth, President

By: Alyce Dudley Alyce Dudley
Alyce Dudley, Secretary



STATE OF OREGON,

County of Deschutes

} ss.

On September 23rd 2009, before me personally appeared Robert Ellsworth
and Alyce Dudley

whose identity was established to my satisfaction, and who executed the foregoing instrument, acknowledging to me that the same was executed freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.

Rachael Baker

Notary Public for Oregon

My commission expires 12.3.2011

