

**AMENDED & RESTATED DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR WESTWOOD III TOWNHOMES**

This AMENDED & RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WESTWOOD III TOWNHOMES ("Declaration") is made and entered into as of this **XXXX** day of **XXXX**, 2015 by **WESTWOOD III TOWNHOMES HOMEOWNER'S ASSOCIATION**, an Oregon DOMESTIC NONPROFIT CORPORATION ("Association").

**ARTICLE 1  
RECITALS**

**1.1** Pursuant to Article 10 of the originally recorded Declaration of Protective Covenants, Conditions and Restrictions for Westwood III Townhomes ("Original Declaration"), the Association hereby repeals, revokes and extinguishes the previously-recorded Original Declaration and amendments thereto and completely replaces that same with this Amended Restated Declaration of Protective Covenants, Conditions and Restrictions for Westwood III Townhomes.

**1.2** The property that is hereby made subject of this Declaration (the "Property") is located in Lane County, Oregon, and legally described on the attached Exhibit A.

**1.3** The purpose of this Declaration is to provide for the general governing rules of the Association, to provide for certain exterior maintenance of the Building Structures of the Property, to provide for maintenance and repair of the Common Area and Landscaped Areas, and to set forth other terms and conditions governing the use and enjoyment of the Property.

**1.4** The original developer and Declarant hereunder, Westleigh Partners, an Oregon partnership, ("Declarant" or "Developer") was the owner of certain real property which was platted and recorded in File 73, Slides 85 and 86, Lane County Oregon Plat Records, as Westwood P.U.D. The Property is part of Westwood PUC. Certain portions of Westwood P.U.D. were platted as Common Areas as hereafter defined, identified as "Parcel A" and "Common Area" on the Westwood P.U.D. plat. The "Parcel A" portion consists of the private roadways, which were fully improved subsequent to the recording of the plat of Westwood P.U.D., and are available for the use and benefit of all owners of lots within Westwood P.U.D. The "Common Area" portion consists of areas lying adjacent to lots within Westwood P.U.D., intended to be improved with landscaping as and when buildings are constructed on the adjacent lots. Both the "Parcel A" and "Common Area" were declared as subject to the Restated and Amended Declaration of Covenants, Conditions and Restrictions of Westwood Planned Unit Development, recorded at Reel 1062R, Clerk's Reception Number 8012962, on March 13, 1980 Lane County Oregon Official Records (the "Westwood Declaration"). A deed of "Parcel A" and the "Common Areas" of Westwood P.U.D. was recorded at Reel 1062R, Clerk's Reception Number 8013544, March 17, 1980, Lane County Oregon Official Records purporting to vest ownership in the Westwood Homes Association. The Westwood Declaration at Article III contemplates development of all property within the Westwood P.U.D. in phases in any manner consistent with the general P.U.D. ordinances of the City of Eugene and specific ordinance relating to Westwood P.U.D., with separate and individual covenants, conditions and restrictions, homeowner's associations and the like and may provide that the development of the property not be subjected to the Westwood Declaration, Bylaws and Articles of Incorporation. Developer elected to develop the Property with a separate and individual homeowner's association with its separate declaration, bylaws and articles of incorporation. An easement of access over the "Parcel A" roadways, together with the obligation to maintain and repair the "Parcel A" roadways jointly and equally with all

owners of lots within Westwood P.U.D., was declared to exist pursuant to Article III of the Westwood Declaration. Developer elected to improve the portions of the Common Areas immediately contiguous to the Property (defined as "Adjacent Common Areas" below) with privacy fencing and landscaping and to provide for the management and maintenance thereof.

**1.5** The Association hereby declares that the Property is hereby made subject to all of the conditions, covenants, restrictions, and provisions of this Declaration.

## **ARTICLE 2 DEFINITIONS**

When used in this Declaration, the following terms shall have the following meanings.

### **2.1 Articles**

"Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.

### **2.2 Adjacent Common Areas**

"Adjacent Common Area" shall mean those portions of the Common Area being contiguous to the Property. The attached Exhibit B describes the approximate boundaries of the Common Area.

### **2.3 Assessment**

"Assessment" shall mean any assessment levied against one or more Owners by the Association for payment of expenses relating to the Property and shall include Regular, Special, and Limited Assessments as those terms are defined herein.

### **2.4 Architectural Review Committee**

"Architectural Review Committee" shall mean the committee appointed pursuant to Article V of this Declaration.

### **2.5 Association**

"Association" shall refer to the WESTWOOD III TOWNHOMES HOMEOWNER'S ASSOCIATION and shall include such corporation's successors and assigns.

### **2.6 Board**

"Board" shall mean the duly elected board of directors of the Association.

### **2.7 Building Lot**

"Building Lot" shall mean a platted lot within the Property, but does not include any tract marked as common or open space on the plat of Westwood P.U.D. "Unit" may be used interchangeably with "Building Lot."

## **2.8 Building Structures**

"Building Structures" shall mean a building structure that is comprised of one or more contiguous dwelling units constructed and located on Building Lots, including, without limitation, garage structures located on the same Building Lots, or whether attached to or detached from the Building Structure.

## **2.9 Bylaws**

"Bylaws" shall mean the Bylaws of the Association, as amended from time to time.

## **2.10 Common Area**

"Common Area" shall mean those areas designated as common, open space or as a private street or roadway on the plat of Westwood P.U.D. ("Common Area" and "Parcel A").

## **2.11 Improvement, General**

A "General Improvement" shall mean every structure or improvement of any kind, including but not limited to a wall, driveway, storage shelter, patio, deck or other products of construction efforts on or in respect to a Building Lot, excepting those specifically designated as "Special Improvements" by the Board.

## **2.12 Improvement, Special**

A "Special Improvement" shall mean all fencing around Building Lots, as well as the installation of a satellite dish or exterior antennas, a hot tub, an air conditioning unit or other large mechanical or electrical features the Board designates as Special Improvements, which are more specifically governed under Section 5.1 herein.

## **2.13 Landscaped Areas**

"Landscaped Areas" shall mean all portions of a Building Lot other than those portions occupied by a Building Structure or designated as any Outdoor Living Area or containing paved driveways or walkways.

## **2.14 Limited Assessment**

"Limited Assessment" shall mean an assessment levied against an Owner by the Association for costs and expenses incurred by the Association for corrective action performed pursuant to this Declaration and required as a result of the willful or negligent actions or omissions of such Owner or such Owner's tenants, guests, contractors or invitees.

## **2.15 Outdoor Living Area**

"Outdoor Living Area" shall mean the portion of a Building Lot and/or Adjacent Common Area that is located immediately adjacent to a Building Structure and is screened, enclosed, or set off in any manner to create a private outdoor living/landscaped area. General and Special Improvements may be made to the Outdoor Living Areas by the Owner of the corresponding Building Lot, with the approval of the Architectural Review Committee, in accordance with Article 5.

## **2.16 Owner**

"Owner" shall mean any person or entity, including the Association, at any time owning a Building Lot, including any vendee to whom possession has passed under a recorded land sale contract, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Building Lot, including any vendor who has surrendered possession under a recorded land sale contract.

## **2.17 Regular Assessment**

"Regular Assessment" shall mean an assessment against all Owners to meet the expenses of the Association.

## **2.18 Special Assessment**

"Special Assessment" shall mean an assessment levied against all Owners to satisfy any actual or projected deficiency between the expenses of the Association and the amounts realized through Regular Assessments.

# **ARTICLE 3 THE ASSOCIATION**

## **3.1 Organization**

Westwood III Townhomes Homeowners Association ("Association") is an Oregon nonprofit corporation. The Articles for the Association shall provide for the Association's perpetual existence, but if the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association, existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles and Bylaws as if they had been drafted to constitute the governing documents of the unincorporated association.

## **3.2 Membership and Voting Rights**

**3.2.1** During the entire period of any Owner's ownership of one or more Building Lots, such Owner shall be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership; and need not be confirmed or evidenced by any certificate or acceptance of membership. If a Building Structure is non-owner occupied the occupant or tenant will not become a member of the Association and will not be entitled to exercise voting rights of the Owner.

**3.2.2** Voting rights within the Association shall be allocated one vote per Building Lot. If an Owner owns more than one Building Lot, the Owner has one vote for each Building Lot owned. The Board of Directors is entitled to vote on behalf of any Building Lot that has been acquired by or on behalf of the Association. However, the Board is not entitled to vote any Building Lot in any election of directors. The method of voting is specified in the Bylaws.

### **3.3 Powers and Obligations**

The Association shall have, exercise and perform all of the powers, duties and obligations

- (a) granted to the Association by this Declaration;
- (b) of a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act and of a homeowner's association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time; and
- (c) otherwise necessary or desirable for the purpose of carrying out the functions of the Association, pursuant to this Declaration or otherwise, promoting the general benefit of the Owners within the Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein and accompanied by changes in the Articles or Bylaws made in accordance with such instruments and with the Oregon Nonprofit Corporation Act.

### **3.4 Liability**

Neither the Association nor any officer or member of the Board shall be held liable by any Owner for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act by the Association or any of its officers or any member of the Board, provided that the officer or member of the Board has acted in good faith and actual knowledge in their service to the Association. Each officer and director or designated committee member of the Association in consideration of their services as such, shall be indemnified, defended and held harmless by the Association for any actions taken or not taken during their service to the Association from and against any loss, expense, liability, damage, claim (including reasonable attorneys' fees), reasonably incurred by the officer or member of the Board in connection with the defense of any action, suit, or proceeding, civil or criminal, to which the officer or member of the Board may be a party by reason of being or having been a director or officer or designated committee member of the Association, except to the extent such expenses and liabilities are covered by any type of insurance.

### **3.5 Association's Rules and Regulations**

The Board, at its own discretion, or the Association from time to time may adopt, modify or revoke such rules and regulations governing the conduct of persons and the operation and use of Building Lots and the Common Area and Landscaped Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Upon adoption, a copy of the rules and regulation and a copy of each amendment, modification, or revocation thereof shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and occupants of all Building Lots upon the date of delivery.

### **3.6 Special Duties of the Association**

Without limiting the generality of the general powers and duties of the Association set forth above the Association shall have the power and obligation to conduct and perform the following duties, the costs of which shall be borne as provided in Article 4.

### **3.6.1 Maintenance of Building Exteriors, Common Area, and Landscaped Areas**

Maintenance obligations concerning Building Exteriors, Common Areas, Outdoor Living Areas and Landscaped Areas are allocated between the Association and the Owners as described in this section. The respective duties of the Association and the Owners may be reallocated by proper amendment to this Declaration.

**3.6.1.1 By the Association.** The Association shall be responsible for a) maintenance of the painting on the exteriors of all Building Structures; b) maintenance and repair of the Adjacent Common Areas (including any utilities servicing the Common Areas thereon) to the extent not maintained by governmental authorities and c) maintenance and repair of all Landscaped Areas.

#### **3.6.1.1.a Maintenance of the exterior of Building Structures.**

Maintenance shall include the painting of all exterior surfaces, (but excluding the repair and replacing of exterior doors, shingles, trim, posts or other actual parts of the Building Structure); maintaining, repairing and replacing exterior lighting fixtures, rain gutters and down spouts, and moss treatments for the roofs. The decision as to the nature and extent of maintenance that is required for a particular Building Structure and the timing of such maintenance shall be solely within the discretion of the Board.

#### **3.6.1.1.b Maintenance of the Adjacent Common Area and**

**Landscaped Areas.** The Association shall maintain, repair and, as necessary, replace grass, sod, trees, shrubs and bushes in a neat, clean and attractive condition and maintain and repair all underground sprinkler systems and sprinkler timing devices. Adjustments to the landscaping, including but not limited to the addition, removal or replacement of specific plants, are at the sole discretion of the Board.

#### **3.6.1.1.c Public Areas.**

The Association shall be responsible for all relationships with the Westwood Homes Association regarding the ownership, maintenance, and management of the "Common Areas" and "Parcel A" roadway of Westwood P.U.D., including, but not being limited to, the determination of any and all joint and equal obligations thereby with the other owners of lots lying within Westwood P.U.D.

**3.6.1.2 By the Owners.** The maintenance responsibilities described in Section 3.6.1.1 specifically do not include the following duties, which are the sole responsibility of the Owners of the Building Lots:

#### **3.6.1.2.a Building Structures.**

Maintenance of all exterior items of hardware and the Building Structure not specifically described in Section 3.6.1.1 including maintaining, repairing or replacing exterior doors; exterior window casements, sashes and frames; foundation systems (including footings, stem walls, piers, posts, retaining walls and drain systems); framing systems (including siding, exterior walls, roof rafters and trusses, floor joists and trusses, roof and wall sheathing and moisture layer wrapping); walkways and driveways; electrical and mechanical doorbells and knockers; and air-conditioning and heating equipment and devices. The exterior roof shingles and all materials of the roof are the sole responsibility of the homeowner to maintain, repair or replace for any action other than a casualty loss. The owner must obtain an Architectural Committee approval of any style and color of roofing materials. Furthermore it is strongly recommended that all units of the same building should replace the roof at the same time.

**3.6.1.2.b Landscaped Areas.** Owners shall not in any manner permanently alter or remove the existing plantings or landscape materials of the Adjacent Common Area and Landscaped Areas without permission of the Architectural Review Committee. Violation shall require the homeowner to restore the altered area to its original condition at the Owner's expense, within a specified time as directed by the Board. A homeowner may plant annuals in the front yard areas without seeking approval from the Architectural Review Committee but must maintain those annuals throughout the growing season and must remove those annuals at the end of the growing season.

**3.6.1.2.c Snow Removal.** Each Owner of a Building Lot shall also be responsible for removal of snow and ice from the Owner's Building Lot.

**3.6.1.2.d Outdoor Living Areas.** Repairing, replacing, restoring or cleaning of glass and landscaping and other General and Special Improvements (including, without limitation, decks and patios, air conditioning units, satellite dishes, hot tubs and other features added by the owner to their property) located within the Outdoor Living Areas; installation, maintenance, and repair of the fence around each building unit are the shared responsibility of the homeowners that share that fence line. Actions involving designated Special Improvements shall be subject to such rules and regulations as may be adopted by the Board from time to time.

**3.6.1.2.e Interior of Building Structures.** The Owners of Building Lots shall also be responsible for maintaining, repairing, and replacing the interiors of their respective dwelling units within the Building Structures; including without limitation, maintaining, repairing, and replacing electrical wiring and fixtures, plumbing pipes and conduits, all fixtures and appliances (whether built-in or free-standing), air-conditioning, heating, sewage disposal and interior fire-protection systems and all amenities and hardware located within the interiors of the Building Structures.

## **3.6.2 Insurance**

**36.2.1 By the Association.** The Association shall obtain and maintain in effect from reputable insurance companies authorized to do business in the State of Oregon, public liability and property damage insurance with respect to all Common Areas, in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons and property damage, whether caused by the negligence of the Association or otherwise. However, such policy(ies) shall not be for an amount of less than \$1,000,000.00 per person, per occurrence and such policy(ies) shall provide that the coverage thereunder cannot be canceled or substantially modified without at least 10-days' written notice to the Association. Additionally, the Association shall obtain and maintain in effect from such companies fire and extended coverage casualty insurance (including coverage for damage resulting from vandalism and malicious mischief) with respect to each Building Structure and the Common Area (including any insurable Improvements thereon), in an amount equal to 100% of the replacement cost thereof. The casualty coverage may be obtained on a "blanket" basis. The Association may obtain such other and further policies of insurance as it deems advisable. The casualty insurance to be obtained by the Association pursuant to this Section 3.8.2.1 shall include the following terms, if these are reasonably available:

- (a) a waiver of subrogation by the insurer as to any claims against the Board, any Owner, or any guest of an Owner;
- (b) a waiver by the insurer, of its right to repair and reconstruct instead of paying cash;
- (c) a provision that no policy may be canceled, invalidated or suspended because of any action of an Owner;

- (d) a provision that no policy may be canceled, invalidated or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association correct the defect and allows the Association a reasonable time to make the correction; and
- (e) a provision that any "other insurance" clause in any policy shall exclude from its coverage all Owners' policies.

**3.6.2.2 By the Owners.** Each owner of a Building Lot shall obtain and maintain in effect from reputable insurance companies authorized to do business in the State of Oregon, public liability and property damage insurance with respect to such Building Lot, in an amount of not less than \$300,000.00 per person per occurrence. Additionally, each Owner shall obtain and maintain in effect from such companies fire and extended coverage casualty insurance (including coverage for damage from vandalism and malicious mischief) with respect to all insurable Improvements located on such Building Lot, other than the Building Structure thereon, in an amount equal to 100% of the replacement cost thereof. Each Owner shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to that Owner's personal property. Additionally, each Building Lot Owner shall obtain and furnish to the Board of Westwood III Homeowner Association a certificate of insurance indicating they are in compliance with this section 3.6.2.2 of the CC&Rs.

## **ARTICLE 4 ASSESSMENTS**

### **4.1 Creation of Lien and Personal Obligation of Assessments**

Each current Owner of any Building Lot does hereby covenant, and any future Owner of any Building Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant, to pay to the Association all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 8.6, shall be a charge on the land and shall be a continuing lien upon the Building Lot against which each such assessment or charge is made. Such assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 8 below. No Owner may avoid such personal obligation by abandonment of his or her Building Lot.

### **4.2 Regular Assessments**

#### **4.2.1 Commencement**

Regular Assessments against all Building Lots commenced on the date on which the first Building Structure was constructed on a Building Lot and was substantially ready for occupancy.

#### **4.2.2 Amount of Annual Regular Assessment**

The total Annual Regular Assessment against all Building Lots shall be based up on an annual budget prepared by the Board, with respect to projected expenses of the Association, including, without limitation, the following:

- (a) maintenance, repair and operation of the Building Structures, to the extent provided in Section 3.6.1.1 (a), (b) and (c) (except that any replacement of exterior surfaces shall be by Special Assessment), Common Area and Landscaped Areas;
- (b) premiums for all insurance policies the Association is required or permitted to maintain pursuant to this Declaration;
- (c) professional management fees and expenses, employees' salaries, and legal and accounting costs;
- (d) any deficits remaining from the previous fiscal year of the Association;
- (e) reasonable contingency reserves of the Association, established at the discretion of the Board; and
- (f) such other and further costs, expenses, obligations, and liabilities as the Board, in its discretion, may incur for the management, operation and maintenance of the Property and the Association, in accordance with Declaration.

#### **4.2.3 Allocation of Assessments**

All Regular Assessments shall be allocated among all Building Lots, on the basis of one (1) assessment per Building Lot.

#### **4.2.4 Notice of Regular Assessments and Time for Payment Thereof**

Regular Assessments shall be made on a monthly basis. Subject to amendment by the Board, the Association shall give written notice to each Owner as to the amount of the Regular Assessment with respect to each Building Lot, a minimum of 15 days prior to the end of each fiscal year, with the Regular Assessment commencing on the first day of the first month of the new fiscal year. The Regular Assessment shall be due and payable as the Board shall determine.

#### **4.3 Reserve Account**

The Association is required, pursuant to ORS 94.595, to maintain a reserve account in the name of the Association for replacement and repair of common property and to prepare, review and update the reserve study and maintenance plan as required by ORS 94.595.

#### **4.4 Special Assessments**

In addition to the Regular Assessments authorized hereby, the Board shall have the authority to levy Special Assessments to satisfy any actual or projected deficiency between the expenses of the Association and the amounts realized through Regular Assessments. Special Assessments shall be allocated among the Owners of Building Lots similarly to the Regular Assessments. Special Assessments are payable as the Board may from time to time determine, within 30 days after the mailing of notice thereof to the affected Owners.

#### **4.5 Limited Assessments**

The Association may levy against any owner a Limited Assessment equal to the costs and expenses incurred by the Association, including legal fees, for corrective action performed pursuant to this Declaration when such action is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's tenants, guests, contractors, or invitees.

#### **4.6 Statement of Account**

Upon payment of a reasonable fee, which shall be established by the Board but shall not exceed \$50.00, and upon written request of any Owner or any mortgagee, prospective mortgagee, or prospective purchaser of a Building Lot, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Building Lot and the amount of the current monthly Assessments and the dates on which such Assessments become or became due. Such statement shall be conclusive upon the Association, in favor of persons who rely thereon in good faith. Unless such request for a statement of account is complied with within 20 days, all unpaid Assessments that become due prior to the date of making such request shall be subordinate to the lien of a mortgagee that acquired its interest subsequent to requesting such statement. If a prospective purchaser makes such request, the lien for such unpaid Assessments shall be released automatically if (i) the statement is not furnished within the 20-day period provided herein, (ii) additional written request is made by such purchaser and is not complied with within 10 days, and (iii) the purchaser subsequently acquires the Building Lot.

### **ARTICLE 5 ARCHITECTURAL REVIEW COMMITTEE**

#### **5.1 Architectural Review**

It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials and to assure harmony of external design with existing Building Structures and Improvements with respect to topography and finished grade elevations.

No Special or General Improvement shall be commenced, erected, placed, altered or maintained on any Building Lot, by an Owner, until the design plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved by the Architectural Review Committee. Further, a homeowner may request approval through the Architectural Review Committee to add limited plantings to the front yard or HOA common areas.

The Board is responsible for developing guidelines and policies for the installation, maintenance or modification of Special Improvements. Such guidelines may be modified from time to time as the Board deems appropriate. Owners and the Architectural Review Committee must utilize these guidelines in their planning and review of proposed Special Improvements.

#### **5.2 Procedure**

In all cases that require Architectural Review Committee approval or consent pursuant to this Declaration, the provisions of this Article 5 shall apply. The procedure and specific requirements for Architectural Review Committee approval or consent may be set forth in Design Guidelines adopted from

time to time by the Architectural Review Committee. The Architectural Review Committee may charge a reasonable fee to cover the cost of processing an application for its approval.

### **5.3 Committee Decision**

The Architectural Review Committee shall render its decision on an application for approval of the design of an Improvement or any other proposal submitted to it for approval or consent within 15 business days after it has received a complete, written application therefore. A complete application shall specify the approval or consent requested and be accompanied by all material reasonably required or desired by the Architectural Review Committee to make an informed decision on such application. If the Architectural Review Committee fails to render approval or disapproval of such application within 30 working days after the Architectural Review Committee has received a complete application, or if no suit to enforce the terms of this Declaration has been commenced within one year after completion of construction of the Improvement, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

### **5.4 Committee Discretion**

The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed Improvement if the Architectural Review Committee finds the proposed Improvement would be inappropriate for the particular Building Lot or incompatible with the design standards that are the Architectural Review Committee intends for the Property. Consideration of siting, shape, size, color, design, height, solar access, impairment of the view from other Building Lots within the Property, effect on the enjoyment of other Building Lots or the Common Area, disturbance of existing terrain and vegetation, long term potential costs to the Association, and any other factors the Architectural Review Committee reasonably believes to be relevant, may be taken into account by the Architectural Review Committee in determining whether or not to approve or condition to its approval of any proposed Improvement or Landscape modification.

### **5.5 Membership; Appointment and Removal**

The Architectural Review Committee shall consist of at least three (3) persons appointed by the Board. The Association shall keep on file a list of the names and addresses of the members of the Architectural Review Committee. The Board may remove any member of the Architectural Review Committee from office at any time and may appoint new or additional members at any time. If the Board fails to make such appointments, the Board shall serve as the Architectural Review Committee.

### **5.6 Majority Action**

Except as otherwise provided herein, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee without the necessity of a formal meeting. The Architectural Review Committee may render its decision in writing, either in paper or electronic format, setting forth the action taken by the members consenting thereto.

### **5.7 Liability**

The scope of the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, or other similar considerations. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder, or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to

act of the Architectural Review Committee or a member thereof, provided only that the member has, in accordance with the actual knowledge possessed by the Architectural Review Committee or by such member, acted in good faith.

### **5.8 Nonwaiver**

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

### **5.9 Appeal**

Any Owner adversely affected by a decision of the Architectural Review Committee may appeal to the Board. Appeals shall be made in writing within 10 days after the Architectural Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board within 15 business days after receipt of such notifications.

### **5.10 Effective Period of Consent**

The Architectural Review Committee's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the work has been commenced, or the Owner has applied for and received an extension of time from the Architectural Review Committee.

### **5.11 Estoppel Certificate**

Within 15 business days after written request therefore is delivered to the Architectural Review Committee by an Owner, and upon payment to the Architectural Review Committee of a reasonable fee, if any, fixed by the Architectural Review Committee to cover costs, the Architectural Review Committee shall provide such Owner with an estoppel certificate executed by a member of the Architectural Review Committee and acknowledged, certifying with respect to any Building Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements made or done upon or within such Building Lot by the Owner comply with this Declaration or (b) such Improvements do not so comply. If the estoppel certificate states that the Improvements do not comply, such certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

### **5.12 City of Eugene Disclaimer Statement**

The Declaration constitutes a private agreement among the owners of lots within Westwood III Townhomes and will not be enforced by the City of Eugene. This Declaration has not been approved or disapproved by the City and does not restrict the City's authority adopt or amend its development regulations. There may be conflicting requirements between this Declaration and the City's regulations. The City will limit its review of a development application and the issuance of permits to the requirements of its regulations and any condition of approval. It is the duty of every person engaged in development within Westwood III Townhomes to know the requirements of this Declaration. In the event there is a conflict between a City regulation and this Declaration, any questions regarding this Declaration shall be directed to the Architectural Review Committee. The City will not be liable for any approvals or

permits which are granted in compliance with City regulations, but which are not in compliance with these covenants.

## **ARTICLE 6 PROPERTY RIGHTS AND EASEMENTS**

### **6.1 Owners' Use and Occupancy**

Except as otherwise expressly provided in this Declaration or in the plat in which a Building Lot was platted, the Owner of a Building Lot shall be entitled to the exclusive use and benefit of such Building Lot, including without limitation, the Landscaped Area thereon and any Outdoor Living Area dedicated to such Building Lot. If an Owner leases or rents its Building Lot, such lease or rental agreement shall be expressly subject to the terms and conditions of this Declaration. The Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time and reasonable intervals, enter upon any Building Lot for the purpose of determining whether or not the use of and/or Improvements on such Building Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass, conversion or otherwise to create any right of action in the Owner of such Building Lot. The Association may grant or assign easements over or with respect to any Building Lot, to municipalities or other utilities performing utility services and to communication companies.

### **6.2 Owner's Easements of Enjoyment**

Subject to the provisions of this Declaration, every Owner and the Owner's invitees shall have a right and easement of enjoyment in and to the Adjacent Common Area except portions thereof dedicated as Outdoor Living Areas. This easement shall be appurtenant to and shall pass with the title to every Building Lot. Use of the Adjacent Common Area shall not result in unreasonable disturbance of occupants of the Building Structures and shall be subject to such rules and regulations as may be adopted by the Board from time to time.

### **6.3 Title to Common Area**

Fee title to the Common Area (and the Adjacent Common Area) is vested in the Westwood Homes Association.

### **6.4 Extent of Owner's Rights**

The rights and easements of enjoyment in the Adjacent Common Area created hereby shall be subject to the following and all other provisions of this Declaration.

#### **6.4.1 Association's and Owners' Easements**

For the benefit of the Association and all Owners of Lots within the Property, the following easements over, under and upon the Common Area;

- (a) an easement for installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board and any such easement shown on any plat of the Property;

(b) an easement for construction, maintenance, repair and use of the Common Area and any common facilities thereon; and

(c) an easement for the purpose of making repairs to any existing structures on the Common Area.

#### **6.4.2 Utility and other Municipal Easements**

The Association may (and, to the extent required by law, shall) grant or assign easement to municipalities or other utilities performing utility services and to communication companies.

#### **6.4.3 Use of the Common Area**

Except as otherwise provided in this Declaration, the Adjacent Common Area shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Adjacent Common Area. The Board shall have authority to abate any trespass and encroachment upon the Adjacent Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

#### **6.4.4 Limitations on Use**

Use of the Adjacent Common Area by the Owners shall be subject to the provisions of this Declaration, and to the following:

(a) the right of the Association to suspend the use rights of an Owner, to the extent provided in Article 8 below and

(b) the right of the Association to adopt, amend and repeal rules and regulations, in accordance with this Declaration and the Bylaws.

#### **6.5 Delegation of Use**

In accordance with the Bylaws, any Owner may delegate to the members of the Owner's family and to his or her tenants or contract purchasers, in each case, who reside on the Building Lot, the Owner's right of enjoyment of the Adjacent Common Area.

#### **6.6 Encroachments**

If any encroachment results from construction, reconstruction, repair, shifting, settlement or other movement of any portion of the Property, an easement for the encroachment shall exist to the extent that any Building Lot or Common Area encroaches on any other Building Lot or Common Area. An easement shall continue for the purpose of maintaining the encroachment so long as the encroachment exists. Nothing in this Section 6.6 shall relieve an Owner of liability in case of an Owner's willful misconduct.

#### **6.7 Maintenance Easement**

An easement is hereby reserved in favor of the Association and its successors, assigns, contractors, agents and employees, over and across each Building Lot, for purposes of accomplishing the maintenance, repair and replacement of the exteriors of Building Structures and landscaping and other Improvements located upon the Landscaped Areas.

**ARTICLE 7**  
**ADDITIONAL RESTRICTIONS AND DUTIES**

**7.1 Structures Permitted**

Except to the extent expressly provided or contemplated in this Declaration, no Improvements shall be erected or permitted to remain on any Building Lot except Improvements designed for residential living.

**7.2 Residential Use**

Building Lots are to be used for residential purposes. No part of properties shall be used directly or indirectly, for any business, commercial, civil, manufacturing, mercantile, storing, vending, or other such nonresidential purposes excepting home offices not entailing the employment of third persons on the premises. No outward appearance of a business is permitted; traffic, parking, lighting, etc. may not be in excess of normal in the neighborhood. The home office must be incidental and secondary to the use as a dwelling and may not infringe on Common Areas in any way.

**7.3 Offensive or Unlawful Activities**

No noxious or offensive activities shall be carried on upon any Building Lot or Common Area, nor shall anything be done or placed on any Building Lot or Common Area if it interferes with or jeopardizes the enjoyment of other Building Lots or the Common Areas or is a source of annoyance to residents. No unlawful use shall be made of a Building Lot or any part thereof, and all laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**7.4 Use of Outdoor Living Areas**

Outdoor Living Areas shall be generally used for patios/decks, private planting and landscaping areas. Clotheslines are permitted to be used within the Outdoor Living Areas if they are no higher than fence height, are not visible from the street, and are not attached to a fence or Building Structure. Additional uses requiring structural modifications or installation of equipment are considered Improvements, either General or Special, and must be approved by the Architectural Review Committee.

**7.5 Parking**

Parking of boats, trailers, oversized trucks, truck campers or other recreational vehicles or equipment and vehicles in excess of 3,000 pounds gross vehicle weight shall not be allowed on any part of the Property or on public streets adjacent thereto. No vehicles shall be parked on any part of the property except within the confines of an enclosed garage or within areas designated by the Board for parking purposes such as driveways or marked street locations.

**7.6 Vehicles in Disrepair**

No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked upon any Building Lot or on the Common Area for a period in excess of 48 hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the occupants of the neighborhood. Should any Owner fail to remove such vehicle within five days following date on which notice is mailed to such Owner by the Association, the

Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

#### **7.7 Signs**

No signs shall be erected or maintained on any Building Lot except signs approved as to appearance and location by the Architectural Review Committee.

#### **7.8 Rubbish and Trash**

No building 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 sanitary container for proper disposal and out of public view. If any default under this section 7.8 exists for a period longer than ten days after written notice of such default is mailed to the responsible Owner by the Association, the Association shall have, in addition to any other rights under this Declaration or law or in equity, the remedies specified in Section 8.2 (a), (b) and (c). Upon resolution of the Board, duly enacted, all Owners shall utilize the trash collective services of a single designated company and pay to the Association the standard rate for monthly service and shall not permit containers to be in public view excepting at such time(s) as designated by the Board from time to time.

#### **7.9 Temporary Structures**

No structure of a temporary character nor any trailer, basement, tent, shack, garage, barn or other outbuilding on any Building Lot shall be used at any time, either temporarily or permanently, as a residence.

#### **7.10 Shared Walls**

**7.10.1 General Rules of Laws to Apply.** Each interior wall that is built as a part of the original construction of a Building Structure and is placed on the dividing line between Building Lots shall constitute a shared wall. To the extent not inconsistent with the provisions of this section, the general rules of law regarding shared walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Fencing and other exterior property lines or construction are not considered shared walls under this definition but are covered separately.

**7.10.2 No Breach of Shared Walls.** Each owner shall ensure that any shared wall separating the owner's dwelling unit from other dwelling units within the same Building Structure are not punctured or otherwise breached by such owner or the owner's occupants, lessees, invitees, contractors, agents or family members.

**7.10.3 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a shared wall shall be shared by the owners who make use of the wall, in proportion to such use.

**7.10.4 Destruction by Fire or other Casualty.** If a shared wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it. If other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof, in proportion to such use, without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**7.10.5 Weatherproofing.** Notwithstanding any other provision of this section, an owner who, by negligent or willful act, causes the shared wall to be exposed to the elements by damaging any exterior shell of the building shall bear the whole cost of repairing the damage caused thereby and of furnishing the necessary protection against such elements.

**7.10.6 Right to Contribution Runs with Land.** The right of any owner to contribution from any other owner under this section shall be appurtenant to the former owner's lot and shall pass to such owner's successor in title.

**7.10.7 Arbitration.** If any dispute arises concerning a shared wall or under the provisions of this section, the dispute shall be conclusively resolved by arbitration. Each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision by a majority of all arbitrators shall be final and binding.

## **7.11 Pets**

No animals, livestock or poultry of any kind shall be raised, bred for commercial purposes or kept on any part of the Properties except dogs, cats or other tame, domestic household pets, provided that all pets except cats shall be kept on a leash under the personal control and in the presence of the owner and at all time. Pets are limited to two (2) per lot.

## **7.12 Storage of Personal Property**

No Personal property or materials shall be stored on any portion of the Common Areas or Outdoor Living Areas except as may be expressly permitted by the Rules and Regulations of the Board adopted from time-to-time.

## **7.13 Ownership Restrictions**

**7.13.1** No person may own more than two (2) properties within this Association at any given time.

**7.13.2** No property within the Westwood III Homeowners Association may be sold to a business entity, company or corporation.

## **7.14 Non Owner Occupied/Rental/Leasing Restrictions**

**7.14.1 Non Owner Occupied Allowance.** Subject to approval by the Board of Directors or its designee, an Owner's Building Structure may be non-owner occupied. Such occupants or tenants shall always be under the control of and subject to the Declaration, Bylaws, rules and regulations of the Association and the Board of Directors.

### **7.14.2 Non Owner Occupied Limitations**

**7.14.2.1** No more than seven (7) Units may be non-owner occupied at any one time.

**7.14.2.2** Any Building Structure must be lived in by the owner of record for a minimum of one (1) year prior to requesting approval for non-owner occupancy. Exceptions to the one-year requirement may be made pursuant to rules and regulations adopted by the Board from time to time.

**7.14.2.3** If the ownership of a non-owner occupied Building Structure is sold, transferred or otherwise conveyed to a new Owner, the Building Structure may not be again non-owner occupied until the requirements of this section are met. If a Building Lot is non-owner occupied and then reoccupied by the Owner, the Building Structure may not be again non-owner occupied until the requirements of this section are met.

### **7.14.3 Non Owner Occupied Approval Conditions**

**7.14.3.1** Before a Building Structure becomes non-owner occupied, an Owner shall notify in writing the Board of Directors or its designee of the Owner's intent. The procedure and specific requirements for approval may be set forth in rules and regulations adopted from time to time by the Board. A reasonable fee may be charged to cover the cost of processing an application for its approval. The Board or its designee may, at its sole discretion, withhold consent to any application to rent or lease if the Board or designee finds that the proposed tenancy would be inconsistent with this Declaration and/or the rules and regulations having been duly adopted by the Board.

**7.14.3.2** The Board or its designee shall render its decision on an application for approval or consent of an owner to rent or lease within two (2) business days after receipt of a complete, written application therefore, together with all required documentation. If the Board or its designee fails to render approval or disapproval of such application within three (3) business days after receipt of a complete application, approval will not be required and related provisions of this Declaration shall be deemed to have been fully complied with.

**7.14.4 Liability.** Neither the Board nor any member thereof, nor the Board's designee, if any, shall be liable to any owner or any prospective tenant for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Board, any member thereof, or the Board's designee.

**7.14.5 Non waiver.** Consent by the Board or its designee to any application for non-owner occupancy shall not be deemed to constitute a precedent or waiver impairing the right to withhold approval as to any similar application thereafter proposed or submitted for approval or consent. Consent to a particular non-owner occupancy of a Building Structure shall not be deemed to constitute consent to any assignment or sublease, in whole or in part, of the Building Structure. Such proposed assignment or sublease must be submitted for approval pursuant to this Section 7.14 and the rules and regulations related to non-owner occupancy that are duly adopted by the Board from time to time

**7.14.6 Renewal; Extension; Modification.** Consent to a tenancy shall be limited to the initial term and conditions thereof and specifically shall not include any extension, renewal, modification and amendment thereof. Such extensions, renewals, modifications or amendments must be submitted for approval pursuant to this Section 7.14 and the rules and regulations related to non-owner occupancy that are duly adopted by the Board from time to time

**7.14.7 Default; Penalties.** If any default under this section 7.14 exists for a period of longer than five (5) days after written notice of such default is mailed to the responsible owner by the Association, the Association shall have, in addition to any other rights under this Declaration or at law or in equity, the remedies specified in Sections 8.2 (a), (b), and (c). Should an owner enter into a rental or lease agreement or otherwise permit occupancy of the Owner's Building Structure without first having obtained the prior written consent of the Board or its designee, a penalty in the amount of twenty dollars (\$20.00) per day (adjusted yearly by the Portland Area Consumer Price Index for all consumers) shall be assessed against the owner from the date of occupancy by such tenant(s) until the occupancy is forth in

this article 7. This assessment shall constitute a Limited Assessment and be levied and collected in the manner provided at Article 4 herein. Should any tenant violate any provisions of this Declaration and/or the rules and regulations duly adopted by the Board from time to time, the Association may notify the owner of the violation, together with a demand to cure the violation if it is of a continuing nature and/or take appropriate actions to prevent repeated violations if it is of a periodic nature. In addition to other remedies, if any continuing violation exists for a period longer than five (5) days after written notice of such violation is mailed to the responsible owner by the Association, a penalty in the amount of twenty dollars (\$20.00) per day (adjusted yearly by the Portland Area Consumer Price Index All Consumers) shall be assessed against the owner from the date the violation commenced until cured, which assessment shall constitute a Limited Assessment levied and collectible in the manner set forth at Article 4 herein. In addition to any other remedy, if any violation of a periodic nature is repeated after five (5) days of written notice of such initial violation is mailed to the responsible owner, a penalty in the amount of fifty dollars (\$50.00) for each repeated violation shall be assessed against the responsible owner, which assessment shall constitute a Limited Assessment levied and collectible in the manner set forth in section Article 4 herein. The Association shall promptly mail notice to the responsible owner of the continuance or any repeat of the violation and the levy of the assessment.

**7.14.8 Institutional Financing.** Restrictions on the number of non-owner occupied units are designed to ensure that at all times all owners will be able to obtain customary mortgage financing from institutional lenders by satisfying the requirements which may from time-to-time be imposed as conditions to customary mortgage financing by lending institutions and/or the secondary mortgage markets and/or mortgage insurers, and to maintain the market value of the properties

In no event shall the Board or its designee approve a rental or lease of any Building Structure if such rental or lease would result in the inability of owners within the Properties to obtain permanent institutional mortgage financing on terms and conditions customarily offered by the institutional lending industry, including, but not being limited to the percentage limitation of non-owner occupants for the Properties imposed by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veteran's Administration and rules of individual lending institutions.

## **ARTICLE 8 ENFORCEMENT**

### **8.1 General Enforcement**

If any Owner shall violate any provision of this Declaration, the Bylaws, or any rules or regulations adopted by the Association, governing the use of Building Lots or the Common Area, the Association, acting through the Board, may in writing notify the Owner that the violations exist and that such Owner is responsible for them and may, after affording the Owner reasonable notice and opportunity to be heard, do any or all of the following:

(a) impose reasonable fines upon the owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid into the maintenance and operation account of the Association; or

(b) bring suit or action against such owner to enforce this Declaration.

Nothing in this section, however, shall give the Association the right to deprive any Owner to access to and from such Owner's Building Lot.

## **8.2 Non-qualifying Improvements and Violation of General Protective Convenience**

If any Owner constructs or permits to be constructed on such Owner's Building Lot an Improvement contrary to the provisions of this Declaration or causes or permits any Improvement, activity, condition, or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Building Lot, the Association, acting through the Board, may in writing notify the Owner of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Building Lot, the Improvements thereon, and the owner's use thereof into conformance with this Declaration. If the Owner is unable or unwilling to comply with the Association's specific directives for remedy or abatement or the Owner and the Association cannot agree on a mutually acceptable solution within the framework and intent of this Declaration, after the Owner has been afforded notice and opportunity to be heard and within 60 days after such notice, the Association, acting through the Board, shall have, in addition to any other rights or remedies provided in this Declaration, at law, or in equity the right to do any or all of the following:

- (a) impose reasonable fines against the Owner in the manner and amount the Board deems appropriate in relation to the violation;
- (b) enter the offending Building Lot (which entry shall not subject the Association, the directors of the Association, or any agent or representative thereof to liability for trespass, conversion, or any other claim for damages) and remove the cause of such violation or alter, repair or change the item that is in violation of the Declaration, in such a manner as to make it conform thereto. The Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the maintenance and operation account of the Association, provided that no items or construction shall be altered or demolished in the absence of judicial proceedings; and/or
- (c) bring suit or action against the Owner on behalf of the Association and other Owners, to enforce this Declaration.

## **8.3 Default in Payment of Assessments; Enforcement of Lien**

If an Assessment or other charge levied under this Declaration is not paid within 30 days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid, at the rate set forth below and, in addition, the association may exercise any or all of the following remedies:

**8.3.1 Suspension of Rights: Acceleration.** The Association may suspend such Owner's voting rights and right to use the Common Area until such amounts, plus other charges under this Declaration are paid in full and may declare all remaining periodic installments of any Assessment or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of Access to and from such Owner's Building Lot.

**8.3.2 Lien.** The Association shall have a lien against each Building Lot for any Assessment levied against such Building Lot and for any fines or other charges imposed under this Declaration or the bylaws, against the Owner of the Building Lot, from the date on which the Assessment, fine, or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.382, as they may be amended from time to time. The Association through its duly authorized agents, may bid on the Building Lot at such foreclosure sale and may acquire

and hold, lease, mortgage and convey the Lot. If any Assessment is payable in installment, the full amount of the Assessment is a lien from the date the first installment of the Assessment becomes due.

**8.3.3 Suit or Action.** The Association may bring an action to recover a money judgment for unpaid Assessments, fines and charges under this Declaration, without foreclosing or waiving the lien described in Section 8.3.2. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

**8.3.4 Other Remedies.** The Association shall have any other remedy available to it by law or in equity.

#### **8.4 Notification of First Mortgagee**

The Board shall notify any first mortgagee of any building lot, or any default in performance of the terms of this Declaration by the building lot owner if the default is not cured within 60 days.

#### **8.5 Subordination of Lien to Mortgages**

The lien for the assessment or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Building Lot if the mortgage or deed of trust was made in good faith and for value and was recorded prior to the recordation of the notice of the lien for assessment or charges. Sale or transfer of any Building Lot shall not affect the assessment lien, provided that the sale or transfer or any Building Lot subject to a mortgage or deed of trust pursuant to a decree of foreclosure thereunder of pursuant to a proceeding, deed or assessment, notice of which was recorded after the recording of the mortgage or trust deed. Any such sale or transfer, however, shall not release the Building Lot from liability for any assessments or charges thereafter becoming due or from the lien of such subsequent assessments or charges.

#### **8.6 Interest, Expenses and Attorney's Fee**

Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid, at a rate three percentage points per annum above the prime rate as of the due date thereof, or at such other rate as may be established by the Board but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge for each delinquent assessment may be charged in an amount to be established from time to time by resolution of the board and not to exceed 30% of such assessment. If the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by resolution of the Board. If the Association shall bring any suit or action to enforce this Declaration or to collect any money due thereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses, including a foreclosure title report, incurred by the Association in connection with such suit or action, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney's fees at trial and upon any appeal or petition for review thereof.

## **8.7 Non exclusiveness and Accumulation of Remedies**

An election by the Association to pursue any remedy provided for violation of this Declaration, shall not prevent concurrent or subsequent exercise of any other remedy permitted thereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suit for injunctions and specific performance, available under applicable law to the Association, to recover damages or to enjoin, abate, or remedy and violation of this Declaration, by appropriate legal proceedings.

## **ARTICLE 9 CASUALTY**

The Association shall be responsible for repairing, reconstruction and rebuilding all damage to or destruction of (a) the structural components of the Building Structures and (b) the Common Area, subject to the provisions of this Article 9 and of damaged or destroyed portions of the structural component of the Building Structures and the Common Area to substantially the same condition in which these existed prior to such damage or destruction unless owners of at least 75% of the Building Lots and at least 75% of first mortgagees of Building Lots agree that the damaged or destroyed portions shall not be rebuilt and/or restored. Rebuilding and/or restoration shall begin within 60 days following the damage or destruction. If the proceeds of the insurance policies held by the Association are insufficient to fund the full cost of rebuilding and/or restoration, the difference between the amounts of such proceeds and such cost shall be charged to all Owners, by means of a special Assessment. If the required number of Owners and first mortgagees of Building Lots agree that the damaged or destroyed portions of the Building Structures and/or Common Area shall not be rebuilt and/or restored, the proceeds of the insurance policies held by the Association shall be distributed on an equitable basis among the Owners of the affected Building Lots, in such manner as the Board shall determine. The Association shall represent the Owners in any proceeding, negotiation, settlements or agreement relating to the payment of proceeds under any insurance policies held by the Association.

## **ARTICLE 10 MISCELLANEOUS**

### **10.1 Term**

The covenants, conditions and restrictions of this Declaration shall be perpetual unless amended or extinguished by a written instrument executed by members holding at least 75 percent of the voting power of the Association and recorded in the deed records of Lane County.

### **10.2 Amendment and Repeal**

**10.2.1** Except as expressly provided herein, this Declaration or any provision thereof, as from time to time in effect with respect to all or any part of the property, may be amended or repealed by the vote of Owners holding not less than 75 percent of the total voting power of the Association or may be amended as provided in ORS 94.585.

**10.2.2** Any such amendment or repeal shall become effective only upon recordation in the deed records of Lane County, of a certificate of the president or secretary of the Association setting forth in full

the amendment, amendments, or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration.

### **10.3 Notices**

Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered personally, electronically or by paper mail. If delivery is made by paper mail, it shall be deemed to have been delivered 72 hours (for domestic mailings) or 144 hours (for international mailings) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such a person to the Association for the purpose of such service of such notice or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time, by notice in writing to the Association.

### **10.4 Right of Enforcement**

Except as otherwise provided herein, any Owner of any Building Lot covered by this Declaration shall have the right to enforce any or all of the provisions hereof against any property covered by this Declaration and against the Owners thereof.

### **10.5 Remedies Cumulative**

Each remedy provided herein is cumulative and not exclusive.

### **10.6 Joint Owners**

In any case in which two or more persons share the ownership of any Building Lot, regardless of the form or ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility, and the act of consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest. However, if such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

### **10.7 Lessees and Other Invitees**

Lessees, invitees, contractors, agents, family members, and other persons entering the property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Building Lot and other areas within the property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons, in the same manner and to the same extent as if the failure had been committed by the Owner.

### **10.8 Non-Waiver**

The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the rights to enforce any such provision or any other provision of said restrictions.

#### **10.9 Restrictions Construed Together**

All of the provisions hereof shall be liberally construed together to promote and effectuate the general plan and scheme of the property.

#### **10.10 Restrictions Severable**

Each of the provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

#### **10.11 Singular Includes Plural**

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular.

#### **10.12 Captions**

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

## **EXHIBIT A**

### **Legal Description**

Lots 54 through 74, Westwood P.U.D., AS PLATTED AND RECORDED IN FILE 73, Slides 85 and 86, Lane County, Oregon.

## **EXHIBIT B**

That portion of the Common Area lying within WESTWOOD P.U.D., as platted and recorded in File 73, Slides 85 and 86, Lane County Oregon Plat Records; said portion being all Common Area lying westerly of the following line within said WESTWOOD plat:

Beginning at a point which is the most North Southeast corner of Lot 74 of said WESTWOOD P.U.D. plat; thence South 30 39'00 East 59.53 feet to the most East Northeast corner of Lot 69 of said Plat; thence South 32 43'27 East 302.08 feet to a corner on the Easterly boundary of Lot 53 of said Plat; thence running along the Easterly boundary of said Lot 53 and 52 of said Plat along the arc of a 30.11 foot radius curve right (the long chord of which bears South 19 55'41 East 13.34 feet) 13.45 feet; thence continuing along Easterly boundary of said Lot 52 and Lots 51 and 50 of said Plat South 07 07'30 East 83.79 feet to the Southeast corner of said Lot 50, all in Eugene, Lane County, Oregon.