



DECLARANT: HARDENBROOK ENTERPRISES, INC.
AN OREGON CORPORATION

AMENDED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR WEST DEAN

WHEREAS, the Declaration of Protective Covenants, Conditions, Restrictions and
Easements for West Dean was recorded in Book 2006 at Page 11348, Official records, Deschutes
County, Oregon and

WHEREAS, by a vote amounting to 100 percent of the total votes entitled to be cast have
consented to the following amendment,

NOW, THEREFORE, the Declaration of Protective Covenants, Conditions, Restrictions
and Easements for West Dean are hereby amended as follows:

The Declaration of Protective Covenants, Conditions, Restrictions and Easements for West Dean
was recorded in Book 2006 at Page 11348, Official records, Deschutes County, Oregon are
replaced, in their entirety, by the following:

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**DECLARATION OF PROTECTIVE COVENTANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR WEST DEAN**

THIS DECLARATION is made this ____ day of October 2006 by Hardenbrook Enterprises, Inc.; an Oregon Corporation ("Declarant").

RECITALS

- A. Declarant owns or controls certain real property within the City of Bend, Deschutes County, Oregon. Declarant proposed to develop this property as a subdivision to be known as "West Dean".
- B. Purchasers of property within West Dean hereby consent to the Master Plan for West Dean approved by the City of Bend, as the same may subsequently be amended. By adoption of such Master Plan and this Declaration, Declarant is not committing itself to take any action for which definite provision is not made below. One who acquires property in West Dean will have the advantage of any further development of West Dean, but shall not have any legal right to insist that there be development except as provided in this instrument or in the instruments which hereafter may be recorded annexing areas to West Dean and subjecting areas to this Declaration.
- C. Declarant has recorded the plat of West Dean in the plat records of Deschutes County, Oregon. Declarant desires to subject the property described in such plat to the conditions, restrictions and charges set forth in this instrument for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares that the property described in Section 2.1 below shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

- 1.1 **"Assessments"** means all assessments and other charges, fines and fees imposed by the Association on an owner in accordance with this Declaration or the Bylaws of the Association, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments as described in Article 10 below.
- 1.2 **"Association"** means the nonprofit limited liability company to be formed to serve as the owners association as provided in Article 8 below, and its successors and assigns.
- 1.3 **"Board of Directors" or "The Board"** means the duly appointed or elected board of directors of the Association, which is invested with authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Owners will elect the Board of Directors.
- 1.4 **"West Dean"** means the Initial Development and any Additional Property annexed to this Declaration.
- 1.5 **"Bylaws"** means the duly adopted bylaws of the Association set forth in the attached Exhibit A as the same may hereafter be amended or replaced.
- 1.6 **"Declarant"** means Hardenbrook Enterprises, Inc., an Oregon corporation, and its successors and assignees if such successor or assignee should acquire Declarant's interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.
- 1.7 **"Improvement"** means every structure or improvement of any kind, including but not limited to a fence, wall driveway, swimming pool, storage shelter, landscaping or other product of construction efforts on or in respect to the Property.
- 1.8 **"Initial Development"** means the real property referred to in Section 2.1 below.
- 1.9 **"Limited Common Easement Areas"** means those easements established for the exclusive use or enjoyment of Certain Lots as designed in this Declaration or any declaration annexing property to West Dean.
- 1.10 **"Living Unit"** means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, together with any permitted Accessory Dwelling Units.

- 1.11 **"Lot"** means a platted lot within the property.
- 1.12 **"Master Plan"** means the Development Plan of West Dean approved by the City of Bend, Oregon, as the same may hereafter be amended.
- 1.13 **"Mortgage"** means a mortgage or a trust deed; "mortgagee" means a mortgagee or a beneficiary of a trust deed; and "mortgagor" means a mortgagor or a grantor of a trust deed.
- 1.14 **"Owner"** means a person or person, including Declarant owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an owner from obligations incurred prior to termination.
- 1.15 **"Project"** means any separately designated and developed portion of the Property and comprised of discrete type of development or use, including, without limitation Townhomes or other attached dwellings. Any such Project shall be designated as a Project in the Project Declaration, this Declaration or the declaration annexing such portion of the Property to West Dean.
- 1.16 **"Sold"** means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.
- 1.17 **"The Property"** means West Dean.
- 1.18 **"This Declaration"** means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.
- 1.19 **"Turnover Meeting"** means the meeting called by Declarant pursuant to Section 8.7 below; at which Declarant will turnover administrative responsibility for the Property to the Association.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

- 2.1 **Initial Development.** Declarant hereby declares that all of the real property described below is owned and shall be owned conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All real property within that certain plat entitled "West Dean," filed in the plat records of Deschutes County, Oregon, in Book 2006 at Page 11348 of Plat Records.

- 2.2 **Improvements.** Declarant does not agree to build any other Improvements on the Property other than as required by the City of Bend, but may elect, at Declarant's option, to build additional Improvements.

ARTICLE 3

PROPERTY RIGHTS IN LOTS

- 3.1 **Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, contained in Article 6 below, and all other provisions of this Declaration and the Provisions of any supplement or amendment to this declaration and any applicable project Declaration.
- 3.2 **Easements Reserved.** In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easement for the benefit of Declarant and the Association.
- (a) **Right of Entry.** Declarant and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such lot.
 - (b) **Utility Easements.** Easement for installation, maintenance, repair or replacement of utilities and drainage facilities are hereby reserved over, under and through portions of certain Lots, as shown on any recorded plat. Within the easements, the Association will not permit any structure, planting or other material to be placed or permitted to remain on the easement area which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of 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.
- Declarant or the Association may (and, to the extent required by law, shall) grant easements to Declarant, municipalities or utility companies for performing utility services.
- 3.3 **Alley Easements.** Alley Easements are recorded on Lots 1 through 14 of the Initial development for the benefit of adjoining Lot Owners. The Lot Owners so benefited

shall have a perpetual easement over and upon the Alley Easement Area for the purpose of ingress, egress, construction, access, maintenance, repair and reconstruction of the alley. The costs of maintenance of the alley easement area shall be the responsibility of the Association. The placement of temporary or permanent impediments to the use of the subject easement is strictly prohibited.

3.4 Side Yard Easements

Standard Lot Side Yard Easement. Adjoining side yards between two Lot Living Units, where there is no fence nor common wall along the boundary line, shall be subject to a cross easement for maintenance of the Living Units and to allow the occupant of each of such Living Units access to the rear yard of their Lot. The cross easement shall be over the first 48 inches from the common property line, thereby creating an eight foot wide pathway centered between the Living Units. Each Owner shall be responsible for maintaining such Owner's portion of the easement area surface and to keep the easement area clear of obstruction which in any manner might hinder access to their rear yards. The Association shall settle any disputes between Owners relating to such easement area.

3.5 Party Walls. Each wall which is built as part of the original construction of the dwellings within the Property placed upon the dividing line between Lots shall constitute a "party wall," and the following provisions shall apply:

- (a) **General Rules of Law to Apply.** The general rules of the law of the State of Oregon regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply to all such party walls, to the extent such rules are not inconsistent with the provisions of this section. Each party to the party wall shall have a perpetual easement over that part of the Lot of the other Lot on which the party wall is located for party wall purposes.
- (b) **Maintenance and Repairs.** The Owner of each Lot sharing a party wall shall pay any costs associated with maintaining the interior portions of the party wall on its respective side. All repairs or maintenance necessary to maintain the structural integrity of the party wall shall be shared equally by the Owners using the wall. The decision whether to undertake a particular repair and who shall be responsible with carrying out the repair of the party wall shall be agreed upon by the Owners, or in the case of a dispute over this matter, the questions shall be determined by arbitration as provided below.
- (c) **Damage to Party Wall.** In the event of damage to or destruction of the party wall from any cause, other than the negligence of either party sharing the wall, then the Owners shall, at their joint expense, repair or rebuild the party wall, and each party, its successors and assigns, shall have the right to the full use of the wall so repaired or rebuilt. If either party's action or negligence causes the damage to or destruction of the wall, such negligent party shall bear the entire cost of repair or reconstruction. In the event of any dispute as to the cause of the damage or the repair or restoration of the party wall, the matter shall be determined by arbitration as provided below.

- (d) **Drilling Through Party Wall.** Either party shall have the right to break through the party wall for the purpose of repairing or restoring sewerage, water and other utilities, subject to the obligation to restore the wall, including common foundation wall and/or roof, to its previous structural and cosmetic condition at such party's own expense and the payment to the adjoining Owner of any damages negligently caused thereby.
- (e) **Alterations.** Neither party shall alter or change a party wall, including foundation wall and associated roof, in any manner, interior decorations excepted, and the party walls shall always remain in the same location as when first erected.
- (f) **Downspouts.** Downspouts, if any, attached to the Unit and placed upon Lot lines shall be maintained at the joint expense of the adjoining Owners. The cleaning, repairing, painting, replacing of such downspouts and catch basins and drains shall be shared equally by the adjoining Owners.
- (g) **Arbitration.** In the event of any disputes arising concerning a party wall, or under the provisions of this Section 5.5, the Board of Directors of the Association shall act as arbitrators and their decision shall be final.

ARTICLE 4

GENERAL USE RESTRICTIONS

- 4.1 **Structures Permitted.** No structure shall be erected or permitted to remain on any Lot except structures containing Living Units constructed during Initial Development or to replace such structure in case of catastrophic loss.
- 4.2 **Residential Use.** Lots shall only be used for residential purposes. Except with the consent of the Board of Directors of the Association, 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 such Lot. Home occupations conforming to applicable governmental regulation will be permitted. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home for purposes of sales or rental in West Dean, and (c) the right of the Owner of a Lot to maintain his professional 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 Living Unit. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be

observable outside of the Living Unit and that the activities would not be in violation of applicable governmental ordinances.

- 4.3 **Leasing and Rental of Living Unit.** No Owner may not lease or rent his Living Unit for a period of less than thirty (30) days. All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and any Leasing and Rental Guidelines established by the Association, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or rules and regulations, the Board may require the Owner to terminate such lease or rental agreement.
- 4.4 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to owners or occupants. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.
- 4.5 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective owners. All dogs shall be kept on a leash while outside a Lot. An Owner or occupant may be required to remove a pet upon receipt of the third written notice from the Association Board of Directors of violations of any rule, regulation or restriction governing pets within the property.
- 4.6 **Maintenance of Structures and Grounds.** Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and fences on alleys and other exterior improvements and glass surfaces, walks, lights and fences on alleys and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the Association. In addition, each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Lot neatly trimmed, property 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 and shall be restored within a reasonable period of time.
- 4.7 **Recreational and Commercial Vehicles.** Except as may otherwise be provided in the rules and regulations of the Association, parking of boats, trailers, motorcycles, trucks, campers or other recreational or commercial vehicles or equipment, regardless of weight, and parking of any other vehicles with a gross vehicle weight in excess of 9,000 pounds shall not be allowed to remain overnight on any part of the Property or on public streets.

within the Property, excepting only within areas designated for such purposes by the Board of Directors of the Association or within the confines of an enclosed garage or screened area, the plans of which shall have been reviewed and approved by the Association prior to construction, and no portion of the same may project beyond the screened area. If there is no rear fencing and the vehicle could be seen from outside the Lot other than from the Front Yard, the vehicle must also be screened from view from that direction as well. Vehicles may not be used for storage of materials for more than forty-eight (48) hours without approval from the Association. Any vehicle in violation of this Section can be towed or impounded as provided in Section 11.1(c) below.

- 4.8 **Vehicles in Disrepair.** No Owner shall permit any vehicle, which is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot unless screened from view, on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five (5) days following the date on which the Association mails notice to him, the Association may have the vehicle removed from the property and charge the expense of such removal to the Owner. Any vehicle parked in violation of this Section can be towed or impounded as provided in Section 11.1(c) below.
- 4.9 **Noisy and Hazardous Vehicles.** The Board of Directors may restrict access to the Property of any vehicle, which, in the reasonable determination of the Board of Directors, is too noisy or constitutes a safety hazard.
- 4.10 **Parking.** Parking of vehicles by Owner shall be restricted to the Owner's garage or driveway. No car shall remain parked on Nathan Way or Damascus overnight for seven (7) or more consecutive nights.
- 4.11 **Signs.** No signs shall be erected or maintained on any Lot except that not more than one "For Sale", "For Lease" or "For Rent" sign placed by the owner, Declarant or by a licensed real estate agent, not exceeding sixteen (16) inches high and twenty-four (24) inches long, may be temporarily displayed on any Lot, except that two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot. The restrictions contained in this paragraph shall not prohibit the temporary placement of one "political" sign on any Lot by the Owner subject to reasonable regulations adopted by the Association relating to size and length of display.
- 4.12 **Rubbish and Trash.** Trash, garbage and other waste shall be kept in sanitary containers, screened from public view. No part of the Property shall be used as a dumping ground for trash, garbage, waste, debris or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots or streets. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors of the Association, the Association may have such materials removed and charge the expense of such removal to the Owner.

- 4.13 **Landscape.** Each Owner shall be responsible for installing and maintaining the landscaping on any portion of the Lot in a neat and well-kept condition, such maintenance to include but not be limited to watering in conformance with applicable ordinances of the City of Bend. An Owner may not remove street trees. Vegetation around structures shall be maintained or modified for a minimum distance of thirty (30) feet around structures to prevent the rapid spread of fire to or from the building site. This provision shall not preclude the establishment of typical residential landscaping such as trees, shrubs, bulbs, perennials and other groundcover generally associated with residential development, but is intended to prevent the overgrowth of grasses and shrubs which exist unmaintained on a site an which could contributed to the rapid spread of fire. All landscaping (including front and side yards) shall be completed within six (6) months from the date of occupancy of the Living Unit constructed thereon. Landscaping must include at least grass and bark dust unless the Board adopts a formal Xeriscape plan, and shall be maintained in harmony with surrounding landscaping. No weeds, noxious plants, or unmaintained vegetation shall be planted or allowed to grow. No tree over six inches (6") in diameter measure four feet (4') above adjacent grade may be removed without the prior approval of the Association.
- 4.14 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently, except during the period of initial construction of a dwelling on the Lot. No structure may be occupied prior to connection to power, water, and sewer and approval by the City of Bend.
- 4.15 **Fences and Hedges.** No fences or boundary hedges shall be installed without prior approval of the Association consistent with Design Guidelines adopted by the Association and the City of Bend Conditions of Approval for West Dean. Fences may not exceed four (4) feet in height. Fences must be well constructed of cedar materials and may not detract from the appearance of the adjacent structures and buildings.
- 4.16 **Service facilities.** Service Facilities (garbage cans, fuel tanks, clotheslines, clothesline poles and other outside drying of clothes, linens and such, firewood, gardening tools, and equipment, etc.) shall be screened from view from the street and neighboring properties. Appliances may not be stored outside. All heat pumps and condenser units (or other utilities and devices commonly placed out of doors) shall receive special consideration to provide visual screening and noise reduction.
- 4.17 **Outside Furniture and Hot Tubs.** Furniture left outside a Living Unit shall be limited to items commonly accepted as outdoor or patio furniture. Hot tubs are allowed with the prior written permission of the Board of Directors. The hot tub must be installed out of sight of the main traffic patterns. Locking covers are required and shall remain locked when not in use.
- 4.18 **Window Coverings.** Window coverings visible from the outside of the Living Unit must be: (a) in good working order; (b) a neutral color compatible with the home/trim color; and (c) of a design and materials standard in the window dressing industry such as drapes, mini0blinds, etc. Sheets, blankets, plastic paper, foil, etc. are not allowed.

- 4.19 **Air Conditioning units.** Window or portable air conditioning units are prohibited.
- 4.20 **Firearms and Fireworks.** Firearms shall not be discharged within West Dean at any time. Firearms are to be unloaded at all times while in West Dean. Weapons including "BB" guns, pellet guns, dart guns, paint-ball guns and any other weapon capable of firing a projectile are considered firearms. Oregon statutory law prohibits the use of certain types of fireworks. Only fireworks considered legal and which are both silent and handheld will be allowed. Owners and their guest must clean up any fireworks discharged in West Dean.
- 4.21 **Nonbiodegradable Substances.** No motor oil, paint or other caustic or nonbiodegradable substance may be deposited in any street drain, sewer system or on the grounds within West Dean. Any fine and/or costs associated with the cleanup of any nonbiodegradable substance that is caused by any Owner or their guests shall be the responsibility of the offending Owner.
- 4.22 **Antennas and Satellite Dishes.** Exterior antennas, satellite receiver and transmission dishes and other communication devices greater than one meter in diameter shall not be permitted to be placed upon any Lot except with prior approval of the Association.
- 4.23 **Exterior Lighting or Noisemaking Devices.** All exterior lighting and noisemaking devices shall comply with applicable municipal ordinances.
- 4.24 **Pest Control.** No Owner shall permit any thing or condition to exist upon any portion of the Property, which shall induced, breed or harbor infectious plant or animal diseases or noxious insects or vermin.
- 4.25 **Grades, Slopes and Drainage.** Each Owner of a lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot without the express written permission of the Association, and then only to the extent and in the manner specifically approved. No structure, plantings or other material shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratio, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.
- 4.26 **Additional Restrictions.** Each Owner of a Lot, and such Owner's family, tenants, employees, guests and invitees, shall also comply with any additional use restrictions contained in any supplemental declaration annexing such Lot to West Dean and in any Project Declaration applicable to such Lot.
- 4.27 **Building Materials.** All building materials to be incorporated into and visible as a part of the external structure of any building or other structure may be regulated by the Association. No exterior Improvement shall be commenced, erected, placed or altered on any Lot. All paints shall be of a color commonly accepted as an earthtone.
- 4.28 **Completion of Improvements.** All structures (including flat work and landscaping) constructed within the Property shall be erected and completed within one year after the

commencement of construction. All remodeling, reconstruction or enhancement of structures shall be completed within one year of the commencement of construction. Commencement of construction shall be deemed to be the date upon which a building permit was first issued for the construction, or, if no building permit was obtained, the date on which lot clearing, demolition or remodeling commenced.

- 4.29 **Association Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory rules and regulations governing the conduct of persons and operation and use of the Property (including, without limitation, use of playground and parking areas) as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property. The Association Board of Directors thereof, shall deliver a copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation promptly to each Owner. The Board of Directors of the Association may adopt the rules and regulations, except as may be otherwise provided in the Bylaws of the Association.

ARTICLE 5

ASSOCIATION

Declarant shall organize an association of all of the owners within West Dean. Such Association, its successors and assigns, shall be organized as an Oregon nonprofit limited liability company under the name "West Dean Owners Association" or such similar name as Declarant shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

- 5.1 **Organization.** Declarant shall, before the first Lot is conveyed to an owner organize the Association as a nonprofit limited liability company under the general nonprofit limited liability company laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, an unincorporated association of the same name shall automatically succeed it. In that event the assets of the Association shall be dedicated to a public body, or 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, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, the Articles of Incorporation and Bylaws of the Association shall govern any successor-unincorporated association as if they have been made to constitute the governing documents of the unincorporated association.
- 5.2 **Membership.** Every Owner of one or more Lots within the Property shall immediately upon creation of the Association and thereafter during the entire period of such owner's ownership of one or more lots within the Property be a member of the Association. Such membership shall commence, exist and constitute 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.

- 5.3 **Voting Rights.** The Association shall have two classes of voting membership.
- 5.4 **Class A.** Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.
- 5.5 **Class B.** The Class B member shall be the Declarant and shall be entitled to three votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
- (i) When ninety percent (90%) of the Lots of the last phase of West Dean have been sold and conveyed to Owners other than a successor Declarant; or
 - (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.
- 5.6 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:
- (a) The powers, duties and obligations granted to the Association by this Declaration.
 - (b) The powers and obligations of a nonprofit limited liability company pursuant to the general nonprofit limited liability company laws of the State of Oregon.
 - (c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act.
 - (d) Any additional or different powers, duties and obligations 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 its provisions, accompanied by changes in the Articles of incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit limited liability company laws of the State of Oregon.
- 5.7 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:
- (a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

- (b) Insurance. The Association shall obtain and maintain in force policies of insurance as provided in this declaration or the Bylaws of the Association.
- (c) Rulemaking. The Association shall make, establish, promulgate, amend and repeal rules and regulations as provided in Section 6.30 of this Declaration.
- (d) Assessments. The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.
- (e) Enforcement. The Association shall perform such acts, whether or not expressly authorized by this declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the rules and regulations adopted by the Association, including without limitation, enforcement of the decisions of the Association.
- (f) Employment of Agents, Advisors, and Contractors. The Association through its Board of Directors, may employ the services of any person or limited liability company as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such person or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of this Declaration.
- (g) Borrow Money, Hold Title and Make Conveyances. The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration, and subject to Section 4.4(d) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interest therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within West Dean conveyed to the Association by Declarant.
- (h) Transfer, Dedication and Encumbrance of Common Area. Except as otherwise provided in Section 4.4(d) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

- (i) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefore to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Ares, without being required to render such services to those of its members who do not assent to such charges and to such other rules and regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate such service for which there is no demand or adequate funds to maintain the same.
- (j) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

5.8 **Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the association shall indemnify the managing agent and its officer and employees from any such claims, other than for gross negligence or intentional misconduct.

5.9 **Interim Board; Turnover Meeting.** Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the Turnover meeting following termination of Class B membership. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership in accordance with Section 8.3 above. At the turnover Meeting the interim directors shall resign and their successors shall be elected by the Owners as provided in this Declaration and in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this Section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

5.10 **Contracts Entered into by Declarant or Prior to Turnover meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association prior to the turnover Meeting shall have a term not in excess of three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon

not less than thirty (30) days notice to the other party given not later than sixty (60) days after the Turnover Meeting.

- 5.11 **Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Deschutes County, Oregon. Declarant hereby adopt, on behalf of the Association, the initial Bylaws attached as Exhibit A to this Declaration.

ARTICLE 6

MAINTENANCE, UTILITIES AND SERVICES

- 6.1. **Maintenance.** The Association may at its option, in the discretion of the Board of Directors, assume the maintenance responsibilities for the common maintenance of alleys, driveways, roofs and siding within West Dean. In such event, all costs of such maintenance may be assessed only against the Owner or Owners of Lots to which the services are provided and may be Individual Assessments for the purposes of this Declaration. The assumption of this responsibility may take place either by contract or because, in the opinion of the Association Board of Directors, the level and quality of service than being provided is not consistent with the community-wide standard of West Dean.
- 6.2. **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be, including, without limitation, exterior lighting for Common Areas. Neither the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to person, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefore.
- 6.3. **Services.** The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, landscape services, garbage and trash removal for Common Areas and security services.
- 6.4. **Project Maintenance.** The Association may at its option, in the discretion of the Board of Directors, assume the maintenance responsibilities set out in any Project Declaration for any Project located on the Property, after giving the responsible Project Owner or Association reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against the Owner or Owners of Lots in the Project to which the services are provided and shall be Individual Assessments for the

purposes of this Declaration. The assumption of this responsibility may take place either by contract or because, in the opinion of the Association Board of Directors, the level and quality of service than being provided is not consistent with the community-wide standard of West Dean.

6.5. **Owner's Responsibility.** Except as otherwise provided in this Declaration, applicable Project Declarations, or by written agreement with the Association, all maintenance of the Lots and Improvements thereon as provided in Section 6.6 above shall be the sole responsibility of the Owner thereof, who shall maintain such Lot, in a new and attractive condition in accordance with the community-wide standard of West Dean. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard, and the Project Association or the Project in which the Lot is located has failed to adequately provide such maintenance. Before assuming the maintenance responsibilities, the Board of Directors shall notify the Owner and any applicable Project Association in writing of its intention to do so, and if such Owner or the Project Association has not commenced and diligently pursued remedial action within fifteen (15) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 11.5 below. Such charges shall be an Individual Assessment and lien on the Lot as provided in Section 10.8 and 11.2 below.

6.6. **Damage Liability.** Any damage to any Common Area by Owners, their children, agents visitors, friends, relative, tenants, occupants or service personnel shall be repaired by the owner within fifteen (15) days following the date on which notice is mailed by the Association informing the Owner of such violation. If the damage has not been repaired within such time, then the Association shall perform such repair and the cost shall be assessed to the Owner as an Individual Assessment.

ARTICLE 7

ASSESSMENTS

7.1 **Purpose of Assessments** levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners and occupants of West Dean and for the improvement, operation and maintenance of the Common Areas.

7.2 **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments, all as more particularly described below.

7.3 **Apportionment of Assessments.** Lots owned by Declarant shall not be subject to Annual Assessments, Special Assessments or Emergency Assessments until such time as

the Lot is occupied for residential use, except that Annual Assessments for reserves as described in Section 10.11(b) below shall begin accruing for all Lots, including Lots owned by Declarant, from the date the first Lot is conveyed. Declarant, however, may defer payment of the accrued reserve assessments for a lot until the date the Lot is conveyed, but not beyond the date of the Turnover meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association. The books and records of the Association shall reflect the amount owing from the Declarant for all reserve assessments. All Lots other than unoccupied Lots owned by Declarant shall be subject to assessment and shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments. Notwithstanding the provisions of this Section, however, a supplemental declaration annexing a specific Common Area facility may specify a special allocation of assessing the costs of operating and maintaining the facility on such Common Area in order to more fairly allocated such costs, taking into account the extent of use or other factors. Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence. No owner by the Owner's own action may claim exception from liability for contribution towards common expenses by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

7.4 **Annual Assessments.** The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over-assessment and any common profits of the Association. The budget shall take into account the numbers of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated becoming subject to assessment during the fiscal year. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.11 below. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in 110.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary for the Budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

7.5 **Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Before the Turnover Meeting, any

Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

- 7.6 **Emergency Assessments.** If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any owner's Assessments on a current basis, the Board of Directors of the Association shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefore, and levy an Emergency Assessment for the amount required to meet all such expenses on a current bases ("Emergency Assessment"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the Turnover Meeting described in Section 8.7, and the Special Assessment must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the class B member. Emergency Assessments shall be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.
- 7.7 **Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("Individual Assessment"). Individual assessments include, without limitation, charges for services provided under Sections 8.5(i), 8.10, 9.5, 9.6 and 9.7 and any common expense that is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with provisions of this Declaration or the rule and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.
- 7.8 **Operations Fund.** The association shall keep all funds received by it as Assessments, other than reserves described in Section 9.11, separate and apart from its other funds, in a bank account in the State of Oregon in the name of the Association to be known as the "Operations Fund." All expenses of the Association shall be paid from the Operations Fund or the Reserve Fund referred to in Section 9.11. The Association shall use such funds exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Ares and of the Lots situated upon the Property, including but not limited to:
- (a) Payment of the cost of maintenance, utilities and services.

- (b) Payment of the cost of insurance as described in the Bylaws of the Association.
- (c) Payment of taxes assessed against the Common Areas and any improvements thereon.
- (d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

7.9 Reserve Fund

- (a) Establishment of Account. Declarant shall conduct a reserve study as described in paragraph (c) of this section and establish a bank account in the State of Oregon in the name of the Association (the "Reserve Fund") for replacement of common properties that will normally require replacement in whole or in part in more than three (3) and less than thirty (30) years, for exterior painting of the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items. The Reserve Fund need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.
- (b) Funding of Reserve Fund. The Reserve Fund shall be funded by Assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Lot. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.
- (c) Reserve Studies. The reserve portion for the Initial Assessment determined by Declarant shall be based on a reserve study described in paragraph (c) or other sources of information. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board of Directors, in its discretion, may deem appropriate. The reserve study shall include:
 - (i) Identification of all items for which reserves are to be established;
 - (ii) The estimated remaining useful life of each item as of the date of the reserve study;
 - (iii) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life;

- (iv) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.
- (d) **Use of Reserve Fund.** The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Funds so borrowed from the Reserve Fund must be repaid from Assessments. Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund. In addition to the authority of the Board of Directors under paragraph (c) of this section, following the second year after the Turnover Meeting, the Association may elect to reduce or increase future Assessments for the Reserve Fund by an affirmative vote of not less than seventy-five (75%) of the voting power of the Association and may, on an annual basis by a unanimous vote, elect not to fund the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

7.10 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any 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 Association Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 11.5, shall be a charge on the land and shall be a continuing lien upon the 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 11 below.

7.11 Voluntary Conveyance. In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Lot up to the time of the Grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, upon request of a prospective purchaser, the Board of Directors of the Association shall make and deliver a statement of the unpaid Assessments against the grantor in excess of the amount set forth in the statement.

ARTICLE 8

ENFORCEMENT

- 8.1 **Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or shall violate any provisions of this Declaration, the Bylaws of the Association or the rules and regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within fifteen (15) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have the right to do any or all of the following:
- (a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing which fines shall constitute Individual Assessments for purposes of this Declaration;
 - (b) enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Association as an Assessment, provided that no times of construction shall be altered or demolished in the absence of judicial proceedings;
 - (c) Cause any vehicle parked in violation of this Declaration or the rules and regulations to be towed and impounded at the Owners' expense;
 - (d) Suspend the voting rights for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Living Unit; and
 - (e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.
- 8.2 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:
- (a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such

amounts plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any owner of access to and from his Lot.

- (b) The Association shall have a lien in accordance with ORS 94.709 against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the owner of the Lot.
- (c) 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 paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- (d) The Association shall have any other remedy available to it by law or in equity.

8.3 **Reports to First Mortgagees.** In response to a written request of any first mortgagee of a Lot, the Association shall report to such mortgagee whether such Lot is current or past due with respect to Assessments.

8.4 **Subordination of Lien to Mortgages.** The lien of the Assessments or charge provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

8.5 **Interest, Late Charges and Expenses.** 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 which is the greater of eighteen percent (18%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recoding 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 of Directors of the Association.

- 8.6 **Costs and Attorneys' Fees.** In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.
- 8.7 **Nonexclusiveness 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 another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.
- 8.8 **Enforcement by City of Bend.** The provisions of this Declaration relating to preservation and maintenance of Common Areas shall be deemed to be for the benefit of the City of Bend as well as the Association and Owners of Lots, and the City may enforce such provisions by appropriate proceedings at law or in equity, or may cause such maintenance to be performed, the costs of which shall become a lien upon the Property.

ARTICLE 9

DISPUTE RESOLUTION

9.1 Mediation

- (a) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Deschutes County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.
- (b) If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand delivered or mailed by certified mail, return receipt requested, to the address,

contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

- (c) If a qualified dispute resolution program exists within Deschutes County, Oregon, and an offer to use the program is not made as required under paragraph (a) of this section then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.
- (d) Unless a stay has been granted under paragraph (c) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.
- (e) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.
- (f) The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

- 9.2 **Arbitration.** Any claim, controversy or dispute by or among Declarant, Association or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations or the Property shall be first subject to mediation as described in Section 12.1 above, or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 12. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Bend, Oregon, pursuant to the arbitration statutes of the State of Oregon, and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of filing a notice of pending action ("lis pendens").
- 9.3 **Selection of Arbitrator.** A single arbitrator selection by mutual agreement of the parties shall conduct the arbitration. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the Presiding Judge of the Circuit Court of Deschutes County, Oregon shall designate the arbitrator.
- 9.4 **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration.

- 9.5 **Discovery.** The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Deschutes County Circuit Court. The arbitrator shall have all of the authority of the Court incidental to such discovery, including, without limitation authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including without limitation award against a party for failure to comply with any order.
- 9.6 **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence, as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where any of the parties is absent in default or has waived its right to be present.
- 9.7 **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject tot mediation or arbitration under this Article 12 (but shall be subject to the applicable provisions of Section 12.6 below); (a) action relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above), and (b) action to enforce any order, decision or award rendered by arbitration pursuant to this Article 12. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 12.
- 9.8 **Costs and Attorney's Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorney's fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws or Rules and Regulations, to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations, to rescind this Declaration or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute, as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a requires tot compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for conformation as a judgment (with respect to attorneys' fee incurred in such proceedings).

- 9.9 **Survival.** The mediation and arbitration agreement set forth in this Article shall survive the transfer by any part of its interest or involvement in the Property and any Lot therein and the termination of this Declaration.

ARTICLE 10

MORTGAGES

- 10.1 **Reimbursement of First Mortgages.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association to the extent the same was the responsibility of the Association.
- 10.2 **Right of First Mortgagees Relating to Maintenance.** At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as provided in this paragraph, shall be entitled to regular and special meetings of the members of the Association for the period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this Section shall quote this Section 13.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the owner with a copy sent by regular mail to the Association at the last known address of each.
- 10.3 **FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), if this Declaration was previously approved by such agencies: annexation of Additional Properties other than as provided in the Master Plan, mergers an consolidations, mortgaging of Common Ares, dissolution of the Association and amendment of this Declaration or the Articles of Corporation or the Bylaws of the Association.

ARTICLE 11

AMENDMENT AND REPEAL

- 11.1 **How Proposed.** Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be

reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

- 11.2 **Approval Required.** 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 or written consent of owners representing not less than seventy-five percent (75%) of the Lots, based upon one vote for each such Lot, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the Zoning Administrator of the City of Bend.
- 11.3 **Recordation.** Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so the approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.
- 11.4 **Regulatory Amendment.** Notwithstanding the provisions of Section 14.1 above, until the Turnover meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the government national Mortgage Association, the Federal Home Mortgage Loan Limited liability company, any department bureau, board, commission or agency of the United States or the State of Oregon, or any limited liability company wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 **Lessees and Other Invitees.** Lessees, employees, invitees, contractors, family members and other person entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the owners use, improvement or enjoyment of his 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 himself.

12.2 **Nonwaiver.** Failure by the Association or by any owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

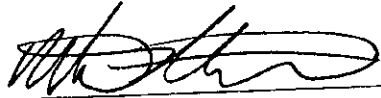
12.3 **Construction; Severability; Number; Caption.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and 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 in this declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the 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.

12.4 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, 61535 S Hwy 97, Ste 9, Bend, Oregon 97702; if to an owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

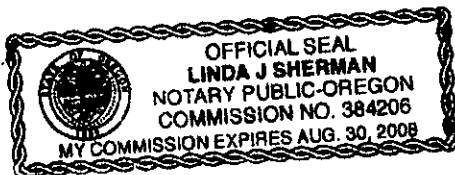
IN WITNESS WHEREOF, Declarant as owner of 100 percent of the Lots within West Dean has executed this Amended Declaration on the date set forth above.

By



STATE OF OREGON, County of Deschutes) ss:

The foregoing instrument was acknowledged before me this 7 day of November, 2006, by Nathaniel Hardenbrook on behalf of Hardenbrook Enterprises, Inc.




Notary Public for Oregon