

Division of Chief Deputy Clerk  
Lane County Deeds and Records

2006-036617

\$151.00



00809866200600366170260268

05/26/2006 03:24:02 PM

RPR-REST Cnt=1 Stn=6 CASHIER 07  
\$130.00 \$10.00 \$11.00

After recording, return to:  
Terence J. Hammons, Esq.  
115 W. 8<sup>th</sup> Ave., Suite 280  
Eugene, OR 97401

**NOTE:** Amendment to documents recorded  
December 14, 2001, Lane County Oregon  
Reception No. 2001-084522 and March 17,  
2005, Lane County Oregon Reception No.  
2005-018643

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

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

RECITALS:

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

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

C. Declarant hereby declares that all of the Properties described above, together with the improvements now existing or to be constructed thereon, shall be held, sold, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements and liens. These covenants, conditions, restrictions, easements and liens shall run with the Properties and be binding on all parties having or

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

Page 1

(WEV:Second Amended Declaration)

acquiring any right, title or interest in the Properties or any part thereof, their heirs, successors, devisees, grantees and assigns, and shall inure to the benefit of, be imposed upon and pass to the successor in interest of each and all of said Lots as a servitude in favor of and enforceable by Declarant, its successors and assigns, and the Owner or Owners of any Lot.

DECLARATIONS:

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

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

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

1.3 "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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

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

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

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

Page 2

(WEV:Second Amended Declaration)

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

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

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

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

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

## 2. PROPERTY RIGHTS:

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

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, and to limit the number of guests of members permitted to use the Common Areas;
- (b) The right of the Association to suspend the voting right and/or right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities

and, in aid thereof, to mortgage said Common Areas and facilities for such purposes, and the rights of any mortgagee in said Properties shall be subordinate to the rights of the Homeowner hereunder;

- (d) The right of the Association to promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe usage of the Common Areas by the members of the Association, without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said property, including, without being limited thereto, rules restricting persons under or over designated ages from using certain portions of such property during certain times, and reasonable regulations and restrictions respecting, but not being limited to, parking, speed and pets.
- (e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless (1) an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members of the Association has been recorded, and (2) except as to the grant of easements for utilities and similar or related purposes, all holders of first mortgage liens on any of the Lots or improvements thereto have approved such dedication or transfer.
- (f) The right of the Association to maintain the perimeter fence. Neither the Homeowner nor the Architectural Control Committee may alter the perimeter fencing without the consent of the Association.
- (g) No Owner shall be permitted to hook up to the Association irrigation/sprinkler system.

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

- (a) A Temporary Private Landscape Maintenance Easement. Is hereby declared over the easterly portion of Lots 11 thru 30, inclusive, in "West Eugene Village", and as shown on the Subdivision Plat. This easement is for the benefit of the West Eugene Village Homeowners Association. The purpose of

said easement is for maintenance of the following:

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

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

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

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

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

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

(c) Private Wall and Landscape Easement. Is hereby declared over portions of Lots 27 & 28 of "West Eugene Village", as shown on the Plat. This easement is for the benefit of the West Eugene Village Homeowners Association for

maintenance of walls and landscaping located therein.

- (d) 10' Wide Private Storm Drain Easement. Is hereby declared over the portions of Lots 10, 11 and 12 of "West Eugene Village", as shown on the Plat, for the benefit of the West Eugene Village Homeowners Association.
- (e) A 1.50 Feet Wide Private Storm Drain Easement. Is hereby declared over portions of Lots 83, 84, 121 and 122 of "West Eugene Village - 1<sup>st</sup> Addition", as shown on the Plat, for the benefit of the West Eugene Village Homeowners Association.
- (f) Private Irrigation and Fence Maintenance Easement. Is hereby declared over the rear property line of lots 30 through 35, inclusive of "West Eugene Village", for the benefit of the West Eugene Village Homeowners Association. The purpose of the said easement is for the irrigation line located south of the fence. This easement will last as to each Lot only until such time as the Lot is sold.

### 3. MEMBERSHIP AND VOTING RIGHTS.

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

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

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

Page 6

(WEV:Second Amended Declaration)

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

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

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

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.
- (b) December 13, 2016.

#### 4. MAINTENANCE ASSESSMENTS.

4.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot or Improved Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association; (1) annual or other regular periodic assessments or charges as established by the Association from time to time, (2) special assessments for capital improvements, and (3) any other special assessments or charges as hereinafter provided. Such assessments shall be established and collected as hereinafter provided.

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

shall be a personal obligation of successors in the title, unless expressly waived by the Association.

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

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

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

4.5 Notice and Quorum for Any Action Authorized Under Section 4.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be

called subject to the same notice requirement, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.6 Reserves. At the time of initial conveyance of each Lot, each owner shall pay to the Association, in addition to such other assessments and charges as shall then be due and payable, a reserve in the amount of two-twelfths (2/12) of the then established annual assessment. The reserve, or such part thereof as required, may be held and applied by the Association as full or partial payment toward such Owner's delinquent assessments and charges. Such application of an Owner's reserve account shall not relieve the Owner or release the land of any obligation for the delinquent assessments or charges.

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

4.8 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein as the "Basic Rate" shall commence as to all Lots, except as noted in Section 4.7, on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The succeeding annual assessment for all Lots shall be for a full year. The Board of Directors shall fix the amount and send written notice of the annual assessment(s) to each Owner subject thereto. The assessment(s) shall be due on the first day of each month, unless otherwise provided as per Section 4.7, and shall be 1/12 of the total yearly assessment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

4.9 Effect of Non-payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the

property. The secretary of said Association shall file in the office of the recorder of Lane County, State of Oregon, a statement of the amount of any such charges or assessments together with interest as aforesaid which have become delinquent, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessment, together with interest, costs and expenses and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the whole residence location with respect to which it is a fixed and on any improvements thereon, from the date the notice of delinquency thereof is filed, until the same has been paid or released as herein provided. The Owner at the time such assessment is incurred, shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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

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

## 5. MAINTENANCE OF COMMON AREAS.

The Association shall reasonably maintain or provide for the reasonable maintenance of the Common Area(s), including but not limited to, trees, shrubs, grass, landscaped areas, streets, walks, paths, lights and signs. Further, the Association shall provide maintenance and repair of all buildings, drains and sewers which lie in, on, or under the Common Area. Except to the extent such damage is covered by any type of insurance with a waiver of subrogation in favor of such owner, in the event that the need for any such maintenance, repair or replacement is caused through the willful or negligent act or omission of any

Owner, his family, tenant, guests or invitees, the cost of such maintenance or repairs may, in the discretion of the Directors, be added to and become a part of the assessment to which such Lot is subject as a lien, and enforceable in the same manner. Each Owner shall be responsible for maintaining, and keeping in good order and repair, the interior and exterior of his Home and owner-erected yard and fences within lot lines. The Architectural Control Committee has the right to settle disputes concerning repair of common fence lines and their decision shall be final. The Architectural Control Committee shall have the right to require an Owner to maintain his Home.

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

6. ARCHITECTURAL CONTROL COMMITTEE.

6.1 The initial Architectural Control Committee, for the purpose of administering and enforcing these protective covenants, shall be designated by Declarant, until all Lots are sold. Thereafter, the Architectural Control Committee, consisting of three or more persons, shall be appointed by the Board of Directors. The Committee may adopt and modify rules and regulations by majority vote, which shall apply to construction and use of the Properties, including the Common Areas.

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

6.3 Notwithstanding a prior approval, if a condition exists or changes have come about which may be caused by any event, time or effect which in the opinion of the majority of the Architectural Committee must be remedied, corrected, altered, modified or eliminated, then said committee shall so notify the Owner thereof, and the Owner shall forthwith comply with said notice. If the Owner refuses or delays in so complying with said notice, then the Association shall have the right to perform said work specified in the Committee's notice to the Owner.

#### 7. ENCROACHMENTS.

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

#### 8. EASEMENTS.

All conveyances of land situated in the Properties, made by the Declarant and by all persons claiming by, through, or under the Declarant, shall be subject to the foregoing restrictions, conditions and covenants, whether or not the same be expressed in the instruments of conveyance, and each and every such instrument of conveyance shall likewise be deemed to grant and reserve, whether or not the same be declared therein, mutual and reciprocal easements over and across all of the Common Areas of said Property for the purposes of traveling by foot or resting or otherwise being therein, and over, under and across all portions of said property (except those portions thereof actually intended to be occupied as living space in any building now or hereafter located upon said property), for the purpose of building, constructing and maintaining underground or concealed electric and telephone lines, gas, water, sewer, storm drainage lines, radio and television antennae and cables, and other utilities and services now or thereafter commonly supplied by public utilities or municipal corporations and upon all Common Areas for constructing and maintaining thereon streets, private improvements controlled by the Association, community and recreational facilities, ornaments and statues, swimming pools, lawns, landscaping and

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

Page 12

planted areas thereon. In the event there is a failure, or a need to adjust, relocate, or alter any underground system, the Owner or any subsequent Owner will be responsible for any and all costs. The property shall be permanently subject to these restrictions. All of said easements shall be for the benefit of all present and future Owners of property subject to the jurisdiction of the Association by recorded covenants and restrictions, recorded as hereinabove provided, and their tenants, contract purchasers and guests. Said easements and rights of use, however, shall not be unrestricted but shall be subject to reasonable rules and regulations governing said right of use, as promulgated from time to time by the Directors of the Association in the interest of securing maximum safe usage of said easements without unduly infringing upon the privacy of the Owner or occupant of any part of said property. An easement over, upon and across all parts of the Properties is granted and reserved to the Association, its successors and assigns to the extent reasonably required to perform maintenance reasonably necessary or advisable to protect or preserve the value of the Properties and the Homes thereon.

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

#### 9. USE RESTRICTIONS.

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

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

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

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

Page 13

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

9.4 No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said property, except a maximum of two (2) household pets, such as dogs, cats or other tame, domestic household pets, provided such household pets are not permitted to run loose and are not kept, bred or maintained for any commercial purpose, and do not create objectionable odor or noise. Dogs must be leashed at all times when on the Common Area or not inside fenced areas.

9.5 No part of the Properties shall be used or maintained as a dumping ground for rubbish, trash, garbage or any other waste. No garbage, trash or other waste shall be kept or maintained on any part of the Properties except in a sanitary container. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean, odorless and sanitary condition. All garbage containers shall be placed so as not to be visible from any street.

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

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

9.8 Parking of boats, trailers, motorcycles, motor vehicles not operated in regular family use, trucks, truck-campers and like equipment shall not be allowed on any part of the Properties, nor on public or private ways adjacent thereto, excepting only within the confines of an enclosed garage, and no portion of same may project beyond the enclosed area except under permit approved by the Board of Directors. All other parking of equipment as above described shall be prohibited except in such areas as may be prescribed by the Directors, for which the Directors may assess a parking fee and limit the use and duration thereof. The authority of this Section shall not be construed as a requirement that the Directors provide such parking areas.

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

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

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

9.12 Owners are expressly prohibited from painting or changing the exterior of any building, including but not limited to, garage, roof, fence, patio, doors or walls without written permission of the Architectural Control Committee.

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

9.14 Association Directors will have jurisdiction over activities permitted in the Common Areas. All disputes, complaints or matters of change in existing or future use restrictions will be submitted to the Association Directors for binding determination.

9.15 No party wall shall be altered so as to diminish the fire resistance, sound transmission or structural capabilities of said wall.

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

9.17 Other than the Common Areas, no Lot shall be used except for single-family residential purposes and no building shall be erected thereon except dwellings, garages and storage units.

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

9.19 Vehicular traffic on the Properties will be limited to fifteen (15) miles per hour as a safety precaution. This speed shall apply to all motor vehicles, including but not limited to motor scooters, motorcycles, automobiles and trucks.

9.20 Sections 9.2, 9.3, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.16 and 9.17, shall not be applicable to Declarant, the original builders, or the original sales

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

Page 16

(WEV:Second Amended Declaration)

agents during the construction and sales period, or their successors and assigns whom acquire Lots for the purpose of development.

9.21 No Lot may be subdivided or combined with other Lots, unless approved by the Architectural Control Committee.

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

#### 10. INSURANCE, DAMAGE, CONDEMNATION.

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

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

such Home Owner has the exclusive use or occupancy. Limits of liability under such insurance shall not be less than \$500,000.00 for one person, \$1,000,000.00 for any one accident and \$300,000.00 for property damage.

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

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

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

10.3 Damage, Destruction and Replacement. In the event of substantial damage to or destruction of a building or one or more Homes, all available insurance proceeds shall be used to repair, reinstate, rebuild, or replace the building (hereinafter called the "work") in accordance with the original plans and specifications, or if the work according to the original plans and specifications is not permissible under the applicable laws and regulations, then in accordance with other plans and specifications approved by the Board. In the event of any deficiency between said insurance proceeds and the cost of the work, each affected Owner shall pay said deficiency. The Owner must repair or restore damage to any improvement on Owner's Lot. If the Owner fails to take action as required hereunder, the Association may take such action and all expenses incurred therewith shall be a charge upon the subject Lot and the Owner, and be enforceable according to Article 4.1 and 4.9 hereof.

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

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

Page 18

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

#### GENERAL PROVISIONS.

11.1 Enforcement. All restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions contained in this Declaration shall bind

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

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

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

11.4 Amendments.

- (a) How Proposed. Amendments to this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights. A proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment.

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

Page 20

- (b) Approval Required. Except as may otherwise be provided in this Declaration, any of the covenants and restrictions of this Declaration, except for the easements granted above, may be amended if such amendment is approved by seventy-five percent (75%) of the members of the Association. Any amendment which would limit or diminish any special Declarant rights established in this Declaration, including the right of the Declarant to annex additional phases, shall require the written consent of the Declarant.
- (c) Recordation. All amendments shall become effective when reduced to writing, executed by the appropriate Association officers and recorded in the Lane County Deed Records.

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

13. Wetlands Protection.

RECITALS:

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

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

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

Page 21

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

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

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

1. The wetlands area shall be perpetually maintained in a natural condition, in order to promote conditions on the Property for a wetland environment with streams, ponds, water control structures, native shrubs and trees, and open areas. If necessary to achieve the stated purpose of this Declaration, the owner shall comply with the requirements of DSL Det. 92-0074
2. Domestic livestock shall not be allowed on the wetlands area.
3. No agricultural activity shall be permitted upon the wetlands area except as needed to encourage establishment of the wetland community and to control incursion of noxious or non-native plant species.
4. The owner shall take reasonable care to prevent any petroleum products, chemicals, or other deleterious materials from entering any water on the wetlands area. The owner shall also take reasonable care to minimize turbidity increases in any water on the wetlands area so as to protect water quality and reduce damage to aquatic life.
5. No part of this Declaration may be terminated, amended, modified or revoked without the written approval of the Oregon Division of State Lands. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the laws of the State of

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

Page 22

Oregon. If one or more of these covenants or restrictions becomes illegal, null or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.

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

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

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

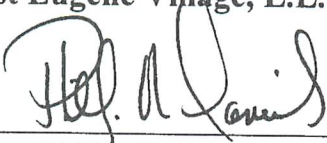
Page 23

(WEV:Second Amended Declaration)

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 23 day of May, 2006.

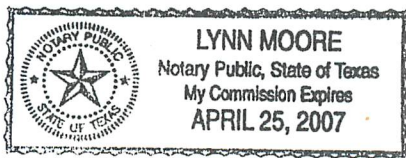
**DECLARANT:**

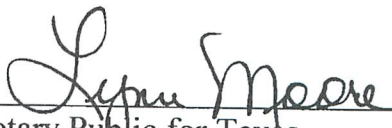
**West Eugene Village, L.L.C.**

By   
Phillip R. Daniels, Sole Member

STATE OF TEXAS            )  
  ) ss.  
County of Tarrant         )

On this 23 day of May, 2006, personally appeared before me the above-named Phillip R. Daniels of West Eugene Village, L.L.C., and acknowledged the foregoing Second Amended Declaration of Conditions, Covenants and Restrictions of West Eugene Village, West Eugene Village - 1<sup>st</sup> Addition, and West Eugene Village - 2<sup>nd</sup> Addition, to be his voluntary act and deed.



  
Notary Public for Texas  
My Commission Expires: 4-25-07

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