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# HERITAGE PLACE SUBDIVISION

## DECLARATION OF

### COVENANTS, CONDITIONS & RESTRICTIONS

Return to Owner:  
Alterra Investments LLC  
505 SW Mill View Way, Suite 250  
Bend, OR 97702

**HERITAGE PLACE SUBDIVISION  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
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**DECLARATION OF  
HERITAGE PLACE SUBDIVISION  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

These Covenants, Conditions and Restrictions are made this 26th day of October, 2006 by Alterra Investments LLC, hereinafter referred to as "Declarant", as sole owner and developer of the real property in the City of Bend, Deschutes County, State of Oregon, described as follows:

**Lots 1, 2, 3, 4, 5, 6, 7, 8 of Heritage Place  
Subdivision, Deschutes County, Oregon.**

The property described above is hereby subject to these Covenants, Conditions and Restrictions and will be known as HERITAGE PLACE Subdivision, hereinafter referred to as HERITAGE PLACE Subdivision.

HERITAGE PLACE Subdivision is being developed as a residential community. Except where this Declaration for HERITAGE PLACE Subdivision conflicts with any applicable government municipal regulations, this Declaration shall be binding upon all property subject to this Declaration and its Owners and their successors in interest as set forth herein. In the event any of the development standards or use restrictions of this Declaration conflict with a more restrictive standard or requirement set by an applicable zoning ordinance of the City of Bend, the more restrictive standard or requirement of the applicable City of Bend ordinance shall apply.

## **Section 1. DEFINITIONS**

### **1.1 Architectural Review Committee (ARC).**

The term Architectural Review Committee (hereinafter ARC) shall mean the group of individuals responsible for implementing, interpreting, and enforcing the Architectural Rules and Guidelines and the Conditions, Covenants, and Restrictions (see Section 8).

### **1.2 Declarant.**

The term "Declarant" shall mean Alterra Investments LLC, or his successors in interest.

### **1.3 Declaration.**

The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for HERITAGE PLACE Subdivision.

### **1.4 Fence.**

The term "Fence" shall mean a structural barrier which separates one space from another, is used to define property boundaries, or which is constructed for ornamental purposes.

### **1.5 HERITAGE PLACE Subdivision**

The term "HERITAGE PLACE Subdivision" shall mean all of the real property now or hereinafter made subject to this Declaration

### **1.6 Homesite.**

The term "Homesite" shall mean a Lot as defined herein.

### **1.7 Improvements.**

The term "Improvements" shall include, but not be limited to any buildings, outbuildings, private roads, driveways, parking areas, walkways, Fences and barriers, retaining walls, stairs, decks, hedges, windbreaks, planting, planted trees and shrubs, Park Strip (if any), signs, storage areas and all other Structures or exterior landscaping, vegetation or ground cover of every type and every kind above the land surface.

### **1.8 Lot**

The term "Lot" shall mean each lot described on a subdivision plat or partition map or any alteration thereof as may be made by a valid lot line adjustment.

### **1.9 Owner.**

The term "Owner" shall mean and refer to either all holders of fee title to any Lot or any person entitled to possession pursuant to a contract sale.

### **1.10 Park Strip.**

The term "Park Strip" shall mean the area between the curb and the property line along Harriman and Revere and the area between the public alley and its southern fence, excluding any sidewalk.

**1.11 Streets.**

The term "Streets" shall mean any Street, highway, alley or other thoroughfare within or adjacent to HERITAGE PLACE Subdivision and shown on any recorded subdivision or partition map, or survey map of record, whether designated thereon as Street, alley, boulevard, place, drive, road, terrace, way, lane, circle or otherwise.

**1.12 Structure.**

The term "Structure" shall mean anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which requires location on the ground or is attached to something having a location on the ground, including patio coverings, excepting outdoor areas such as areas covered with pavers, asphalt, concrete, open patios, driveways, sidewalks and alleys.

**Section 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HERITAGE PLACE SUBDIVISION.**

**2.1 General Declaration Creating HERITAGE PLACE Subdivision.**

Declarant hereby declares that all the real property located in Deschutes County, Oregon, known as HERITAGE PLACE Subdivision as recorded on October 26, 2006, shall be encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part subject to this Declaration. All of said Restrictions are declared and agreed to be established with the purpose of protecting the desirability and attractiveness of said real property and every part thereof. All of the Covenants, Conditions, and Restrictions of HERITAGE PLACE Subdivision run with all of said real property, including any addition thereto, for all purposes and shall be binding upon and inure to the benefit of Declarant and all Owners and their successors in interest set forth in this Declaration.

**2.2 Landscaping, and Use Easement.**

The north three (3) feet of each of Lots three (3) through eight (8) are encumbered by a non-exclusive landscape and use easement appurtenant to the Lot adjoining the south edge of each easement area. Landscaping of the easement area is limited to planting and maintenance of vegetation. Authorized uses of the easement area are limited to

customary residential yard use. The easement owner is prohibited from constructing Improvements or permanent play structures within the easement area. For purposes of this Section 2.2, Fences, retaining walls, and grade level installation of pavers, patio tiles, or bricks are not an Improvement.

No landscaping or use of the easement area shall unreasonably interfere with the servient Lot Owner's use of the easement area to control and dispose of storm water.

At all times prior to the recording of completion notices on all Lots, an Owner's liability for damage to landscaping on the Owner's lot but within the landscape easement area which results from construction activities on the Owner's Lot is limited to the cost of replacement of disturbed soil to its original condition and replacing damaged sod.

After recording of a completion notice for the servient Lot, an Owner who disturbs landscaping within the landscape easement area on the Owner's Lot is liable to the easement owner for replacement and reestablishment of landscaping to its original condition.

### **Section 3. ARCHITECTURAL CONTROLS.**

#### **3.1 Approval Required.**

No Improvement shall be erected, placed altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the ARC.

#### **3.2 Procedure.**

Any Owner proposing to construct any initial Improvements within the HERITAGE PLACE Subdivision shall follow the procedures and shall be subject to the approvals required by Sections 3.3 through 3.7 below. Failure to follow such procedures or obtain such approvals as required by Sections 3.3 through 3.7 below shall be deemed a breach of this Declaration. ARC written approval is required for any subsequent alteration, additions, destruction, or modification of any such Improvements unless the ARC no longer exists. If the ARC no longer exists, then the procedure described in Section 8.4 must be followed.

#### **3.3 Required Documents**

Any Owner proposing to utilize, improve and/or develop real property within the HERITAGE PLACE Subdivision shall submit the following items to the ARC for its review prior to commencement of construction:

- (a) A site plan showing the location, size, configuration, and layout of any building, Structure, or Improvement (or, where applicable,

any alteration, addition, modification, or destruction thereto), landscaping, including appurtenant facilities for parking, storage, and Fences. The scale of plans shall be 1 inch = 10 feet.

- (b) Architectural plans and drawings showing the nature, style, and dimensions of any building, Structure, Fence, wall barrier or deck (or, where applicable, any alteration, addition, modification or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be ¼ inch = 1 foot.
- (c) \$2750 fee shall be submitted to the ARC with application for new construction. Up to \$2000 is refundable 30 days after ARC final inspection of project completion. Fees are forfeited if project is not completed for occupancy (section 4.14) or no final ARC review is requested within 1 year of application approval date.
- (d) The documents required to be submitted to the ARC for review prior to construction may be supplemented by written Architectural Rules and Guidelines.

### **3.4 Review.**

No plans shall be reviewed until the architectural review fee is paid in full and ALL Section 3.3 required documents have been submitted and addressed by the applicant. The ARC shall review the plans and shall inform the Owner in writing within 30 days whether the plans conform to the development concept. If not approved, the Owner shall resubmit those non-conforming portions of the plans for review in accordance with the procedures outlined in Section 3.3 above, and this Section. No work may be performed relating to any Improvement unless and until all aspects of all plans required under Section 3.3 above have been approved by the ARC.

### **3.5 Architectural Guidelines.**

The development concept for the HERITAGE PLACE Subdivision shall be determined by the ARC in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published and revised from time to time by the ARC, but the ARC shall not be required to do so. All such guidelines shall be in general conformity with this Declaration. The ARC shall have the right to alter, rescind or amend any published guidelines without prior notice; provided however, that once approval has been given pursuant to Section 3.4 above, work may proceed in

accordance with the approved plans and drawings notwithstanding any changes in the development concept.

**3.6 Inspection.**

All work related to any building, Structure or Improvement or any landscaping, vegetation, ground cover or other Improvements within the HERITAGE PLACE Subdivision shall be performed in strict conformity with the plans and drawings approved under Section 3.4 above. The ARC shall have the right to stop all work if it believes that any such work is non-conforming. In the event the ARC determines that certain work is non-conforming, the ARC may issue a stop work notice without a court order. Continued work without correction of non-conforming items shall be deemed a breach of this Declaration. The Owner shall hold the Declarant and its officers, directors, employees, agents servants and the ARC harmless, and releases the same from liability for any damages, loss, delay, cost or legal expense occasioned through a stop work notice even if it is ultimately determined that such work conformed with the approved plans and drawings.

**3.7 Waiver.**

Any condition or provision of Section 3.2 through 3.6 above may be waived by the ARC in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for the HERITAGE PLACE Subdivision. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under Sections 3.2 through 3.6. The granting of a waiver as to one Owner shall not automatically entitle any other Owner the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative or the ARC and delivered to the party claiming the benefit of such waiver.

**Section 4. RESTRICTIONS.**

**4.1 Access to property**

No other private properties may be used for access without that Owner's written permission with the exception of recorded access easements.

**4.2 Antennas.**

Television antenna, radio antenna, satellite antenna or other receiving or transmission devices are subject to approval by the ARC.

**4.3 Appearance.**

All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus, heat pumps, air conditioners, solar heating



systems, and other service facilities located on the Lot shall be screened from view of front Streets and are subject to approval by the ARC. All exterior containers, heat pumps, and air conditioners shall be placed on the south side of the homes, exceptions require ARC approval. Garbage containers shall be picked up in the alley.

**4.4 Driveways and Walkways.**

Allowed materials for driveways include concrete, asphalt and masonry. All driveways shall be finished prior to occupancy. Exceptions may be allowed with ARC approval. Builders and builder/Owners are responsible for repair of all driveway cuts, concrete breakage of curbs, sidewalks or sidewalk aprons. The ARC will monitor and provide written documentation to the offending Owner. All repairs must be completed within seven (7) working days from receipt of written notification from the ARC.

**4.5 Exterior Colors and Materials.**

All exterior colors and materials including those for trim, windows and doors are subject to approval by the ARC. T1-11 or similar type of siding on the exterior walls of any home, garage or any Improvement is prohibited. Clearly indicate on submitted plans locations of all proposed exterior colors. Samples may be standard manufacture's paint chip samples. Use of muted, earth related tones such as brown, green, dark red, blue or yellow which are appropriate to the historical style of the building are encouraged. Simple color schemes are preferred.

**4.6 Exterior Lighting.**

All exterior lighting must be indirect and/or shielded. The lighting chosen must have only a single bulb using no more than 60 watts. Colored light sources may be prohibited. Indirect, low walkway and landscape lights less than 18" high are acceptable. Other decorative and landscape lighting is subject to ARC approval.

**4.7 Fences and Walls.**

All Fences within the HERITAGE PLACE Subdivision shall be four (4) feet in height. No fence shall extend out in front of the house. Height shall be measured from the finished grade.

All Fences material shall be powder-coated, welded metal fencing with horizontal pickets – exceptions shall require ARC approval. All Fence construction, colors and locations are subject to ARC approval.

All side yard Fences constructed across the property line within the landscape easement for Lots three to eight are the property of the Lot Owners to the north. It is the responsibility of Lot Owner to the north to maintain, repair or replace side Fences when needed.

**4.8 Garages.**

HERITAGE PLACE Subdivision Lots are designed to create an environment suited to people by reducing the impact of the automobile on Street – not to build homes for cars. All Garages will access off the rear alley. Carports or RV parking are prohibited.

**4.9 Improvements.**

All house plans for new construction or remodeling are subject to ARC approval.

Each Lot shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. Home building must begin within 8 months of purchase and completed within 10 months from the start of construction, exceptions need written approval from ARC.

“Complete” means obtaining certificate of final inspection from the city. Yards must be improved and landscaped not later than 90 days form occupancy; in the event that the house is completed in winter, a 60-day extension may be granted.

During construction, builders shall not disturb adjoining Lots, outside of the landscape access easement, without the adjacent Lot Owner’s permission. All Lots shall provide a front walk a minimum of 3’ in width, which accesses the front of the house from the sidewalk or Street. All front entries are required to be at least 18 inches above finish grade with a minimum of 2 risers to front porch.

The Association shall maintain the sidewalk in front of each Homesite.

**4.10 Landscaping.**

The Association shall irrigate and maintain the Park Strip landscaping (see 9.2 for the responsibility of Lot 4 and the Association assessments).

The front and side yards shall have shrub, grass, and bush plantings incorporated in the landscape plan. All planting shall be from the ARC approved plant list. All landscape design is subject to review and approval by the ARC.

Installation of underground sprinkler systems for front yards of each home is mandatory.

**4.11 Livestock, Poultry and Pets.**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for any

commercial purposes and do not constitute a nuisance. Doghouses shall be limited to two, and only allowed in the rear side yard. Owners are responsible to clean up after walking dogs.

All HERITAGE PLACE subdivision Homesites are within the City limits of Bend and resident animals are subject to the City of Bend leash laws. Animal nuisance ordinances are also in effect for barking and trash strewn dogs. If an animal is off the Owner's Homesite, it must be on a leash. Please contact the City of Bend Police Department to report violations. The City of Bend is best equipped to deal with these problems and can enforce stringent fines.

**4.12 Lot Area Width, Setback Lines.**

Lot area, width and setback lines shall be in accordance with the requirements of the applicable City of Bend Zoning and Use Regulations and as shown on the Plat. No Lot shall be further partitioned or subdivided.

**4.13 Nuisances.**

Fences, walls and hedges must be kept in good condition and repair. Lawns must be cut sufficiently and maintained year round so that they do not become eyesores and detrimental to the values of other properties. Trees and shrubs that encroach on any other Lot shall be trimmed and pruned if it is a nuisance to neighbors.

**4.14 Occupancy.**

No occupancy will be allowed before:

- (a) Final inspection and approval and compliance with all governmental regulations.
- (b) Removal of all construction waste, materials and portable toilet.
- (c) Completion of exterior painting. (exception allowed during winter months)

No Owner shall occupy, use or permit his Lot or any part thereof to be used for any purpose other than a private residence for the Owner, their family or their guests, except that each Owner shall be permitted to rent the unit when he is not in occupancy. The rental period shall not be less than one month. Home occupations will be allowed as authorized by the City of Bend Zoning Ordinance.

**4.15 Required Setbacks.**

All Improvements shall be erected, placed, altered and maintained in accordance with all applicable City of Bend setbacks, building height

limitations, solar setbacks, building codes and the ARC guidelines for HERITAGE PLACE Subdivision.

**4.16 Roofs.**

All roofs and roofing materials shall be limited to quality composition roofs (25-year or better), slate, tile, fiberglass, metal or other acceptable fire resistant materials approved by the ARC. Wood, shake-shingle or other highly combustible roof materials are prohibited. All roofs colors are subject to ARC approval. All homes shall have gutters along the upper roofs that drain into 3" downspouts. Gutter and downspouts shall be painted to match the window cladding.

**4.17 Sidewalks.**

Owners are responsible for clearing sidewalks of snow and debris unless otherwise handled by the Association.

**4.18 Sight Distance at Intersection.**

Sight distance at intersections shall conform to City of Bend street design specifications.

**4.19 Signs.**

A maximum of two signs may be installed on a Homesite during construction. Owner may display not more than one (1) "for sale" sign or one (1) "for rent" sign per Lot. Said signs shall be limited in size to not more than four (4) square feet. Temporary political signs are allowed before elections.

**4.20 Solar.**

All homes shall have at least a single-panel, at least 40 sq. ft. (4'x10') in size, solar thermal system on the rear south side of the roofs to heat the hot water. Additional solar panels for solar thermal and solar photovoltaic may be added to the roofs keeping them to the rear of the homes and as flush with the roof as possible.

**4.21 Structures and Out Buildings.**

No house trailer, manufactured home, modular home, mobile home, tent, shack, barn or other similar outbuilding or Structure, whether permanent or temporary, shall be erected or placed on any Lot. Portable storage units, tarps and covers are prohibited.

**4.22 Utilities.**

No above ground utilities, pipes or wires shall be used to connect Improvements with supplying facilities. Electrical panels and meters shall be placed on the side or rear of the houses and screened from street side view.

**4.23 Vacant Lot.**

The Owner of a vacant Lot shall maintain the Lot year round in a groomed an attractive manner so that the Lot does not become an eyesore or fire hazard and detrimental to the values of other properties.

**4.24 Water and Sewer Supply.**

No individual water supply system or sewage disposal system shall be permitted on any Lot.

**Section 5. DECLARANT'S IMMUNITY.**

The Declarant has a non-exclusive right and power to enforce these Covenants, Conditions, and Restrictions, but the Declarant does not have the legal obligation to enforce or attempt to enforce the provisions hereof. In the event the Declarant refuses, neglects, fails or is negligent in enforcing or attempting to enforce these Covenants, Conditions and Restrictions there shall not exist or be created any cause of action or claim against Declarant, and each Owner or any person or entity claiming by, through or from said Owner hereby releases Declarant and holds Declarant harmless from and against any claim arising in connection with the development of HERITAGE PLACE or related to Declarant's acts or omissions in preparing, filing or enforcing these Covenants, Conditions and Restrictions and shall be prohibited from making or enforcing any such claim.

**Section 6. DURATION AND AMENDMENT OF THIS DECLARATION.**

**6.1 Duration.**

The Covenants, Conditions and Restrictions of HERITAGE PLACE Subdivision shall remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject thereto (subject however, to the right to amend and repeal as provided for herein) for a period of thirty (30) years from the date this Declaration is recorded. However, unless within the year prior to the date of said termination, there shall be recorded in the Deschutes County Recorder's office an instrument directing the termination of this Declaration, signed by the Owners of not less than seventy-five percent (75%) of the Lots subject to this Declaration, the Declaration, as in effect immediately prior to the expiration date, shall be continued automatically without further notice for an additional period of ten (10) years. The term of this Declaration shall thereafter be extended for successive (10) year periods unless a notice of termination is executed and recorded in the year prior to the termination as provided in the previous sentence.

**6.2 Amendment.**

This Declaration or any provision thereof, or any Covenant, Condition or Restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any part thereof with written consent of the Owners of seventy-five (75%) of the Lots subject to these Restrictions.

Any amendment, deletion or repeal of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

## **Section 7. ENFORCEMENT.**

### **7.1 Enforcement**

The Declarant, the ARC, the Association, or any Owner shall have the right, but not the obligation, to enforce all the provisions of these covenants, conditions and restrictions and/or any that may hereafter be enacted. Failure to enforce the restrictions shall not be deemed a waiver of a continuing violation or any similar violation.

### **7.2 Small Claims Court Claims.**

In lieu of mediation, arbitration or litigation in any other court of law, all claims arising directly or indirectly from the rights and obligations conferred by this Declaration or the rules or guidelines of the ARC, alleging money damages only, and within the jurisdiction of the Small Claims Division of the Deschutes County Circuit Court, shall be brought and decided there, but only if an active Small Claims Court is established and active.

### **7.3 Mediation.**

All claims arising directly or indirectly from the rights and obligations conferred by this Declaration or the ARC Rules or Guidelines not subject to resolution in the Small Claims Division of the Deschutes County Circuit Court shall be mediated prior to arbitration or litigation. The parties to such a dispute shall agree upon a mediator within ten (10) days of a written request by one of the parties delivered to the other party(ies). If they cannot agree, each party may identify a Bend, Oregon attorney who shall consult with the other party's designated attorney for the purpose of choosing a mediator. The attorneys shall identify a mediator and provide each party notice of the date and time mediation is to be conducted. The cost of mediation shall be shared equally by the parties to the dispute, unless otherwise agreed to at mediation.

### **7.4 Arbitration.**

All disputes, whether legal or equitable, arising directly or indirectly from the rights and obligations conferred by this Declaration or the ARC Rules

or Guidelines not subject to resolution in the Small Claims Division of the Deschutes County Circuit and not resolved by Mediation shall be resolved by binding arbitration. The parties to such a dispute shall agree upon an arbitration procedure and an arbitrator with ten (10) days of a request by one of the parties. In the event the parties cannot agree, then each party shall select an arbitrator and those arbitrators shall select a person to arbitrate the dispute. All arbitrators shall be Bend attorneys, experienced in real property law.

The costs of arbitration proceedings including the arbitrator's fees shall be shared equally by the parties to the dispute. If the person bringing the claim is the Declarant or the Association, the prevailing party shall recover from the other parties its reasonable attorney fees, including those incurred on appeal. The amount of attorney fees shall be decided by the arbitrator(s) and the arbitrator's decision in this regard shall also be binding upon the parties.

The arbitrators shall have all the authority vested in the Circuit Court for the State of Oregon, including the authority to issue injunctions, both permanent and temporary, to award damages and to decide procedural, evidentiary and substantive matters that come before the arbitrators during the dispute resolution process.

In the event the parties or the arbitrators cannot agree on the selection of the arbitrators or the procedure to be used in the arbitration proceeding, the terms and provisions of ORS.36.600 through 36.740, or its successor, shall apply.

If a necessary party to a dispute cannot be compelled to arbitrate, the dispute shall be tried in the Deschutes County Circuit Court.

## **Section 8. ARCHITECTURAL REVIEW COMMITTEE.**

### **8.1 Responsibility.**

There shall be an Architectural Review Committee (ARC). The committee shall be responsible for implementation, interpretation and enforcement of the Architectural Rules and Guidelines. The committee or any of its members have the right to enforce the HERITAGE PLACE Conditions, Covenants, and Restrictions. Each decision of the ARC made in conjunction with its responsibilities shall be conclusive, determinative and binding upon the Owners and their agents.

### **8.2 Liability.**

In consideration for each ARC member's consent to serve on the committee, the Owners, their successors and assigns, hereby release and forever hold harmless each member of the committee from all acts and

omissions performed in their capacity as committee members. This release includes both ministerial and discretionary acts, omissions, and decisions. No member of the ARC shall be liable at law or in equity for their individual acts or omissions or the acts, omissions or decisions of the ARC as a whole.

**8.3 Non-waiver.**

The Architectural Rules and Guidelines shall generally set forth the procedures Owners are to follow for the approval, construction and maintenance of any Improvement, landscaping and the like on any Lot within HERITAGE PLACE Subdivision.

**8.4 Membership**

The ARC shall initially consist of three members appointed by the Declarant. Those members shall be Alterra Investments LLC, Tozer Design Studio, and JT Atkins. A majority of the ARC may designate a representative to act for it. In case of death or resignation of any member, the Declarant may appoint a successor. In the event of the deaths or resignations of all members of the ARC occurs without successors having been appointed, the Declarant shall appoint the successors. If the ARC no longer exists, the affirmative written consent of four (4) Lot Owners may substitute for any ARC approval required by this Declaration. If a single Lot has more than one Owner, all Owners must consent. Fractional consents are prohibited. Any Lot Owner may consent on behalf of all Owners of the Lot. If inconsistent consents are given on behalf of a Lot, the consents shall be disregarded.

**8.5 Decisions.**

Except as otherwise provided herein, a majority of the Architectural Review Committee shall have the power to act on behalf of the committee without the necessity of a meeting and without the necessity of consulting the remaining members of the committee. The committee shall render its decisions in writing, copies of which shall be sent or delivered to the Owner involved.

**8.6 Approvals.**

The ARC shall approve or disapprove plans within a reasonable time after the same have been submitted to it in writing. The ARC will not commence reviews of an applicant's submittal until all items noted on the Plan Review Checklist have been submitted and addressed by the applicant. There shall be no construction or disturbance of any vegetation on any Lot before approval is obtained by an Owner.

Approval by the ARC of any matter proposed to it shall not be deemed a waiver or a precedent impairing the ARC's right to withhold approval as to any similar matter thereafter submitted to it.



**8.7 Termination of the ARC.**

The ARC shall terminate upon the earlier of the ARC's delivery of written notice of termination mailed by regular US Mail to all members or July 1, 2008. The Declarant reserves special Declarant rights to extend the time for termination of the ARC by recording an Amendment to these CCRs in the Deschutes County Recorder's Office extending the termination date to a date certain.

**Section 9. ROAD AND LANDSCAPE MAINTENANCE.**

**9.1 Association.**

There shall be a Road and Landscape Maintenance Association (Association) for the maintenance of the private alley, private drywell, benches, sidewalk pavers, for irrigation of Park Strip, for landscape maintenance of Park Strip, for mowing the front yard of each Lot within Heritage Place Subdivision, and for plowing the snow from the alley. The Association members shall initially be the Declarant. After ninety (90) percent of the Lots have been sold, the Declarant shall call a turnover meeting by delivering to the Lot Owners a notice of a turnover meeting. The date of the turnover meeting shall be not less than 20 nor more than 45 days after the date notice is mailed to the Lot Owners. At the time of the turnover meeting the Lot Owners shall become the Association Members and the Declarant shall turn over control of all Association funds and all maintenance contracts. Declarant's responsibility for management of the Association shall terminate at the time of the turnover meeting. The members may, but shall not be required to, incorporate as an Oregon non-profit corporation. The Declarant may, but is not required to, adopt initial bylaws for governance of the Association. The Association shall adopt by majority vote of the Lot Owners final bylaws for the governance of the Association.

- 9.2 Assessments.** The Association shall collect periodic assessments from all Lot Owners. Assessments shall initially be set by the Declarant. By accepting title, Lot Owners agree and covenant to pay assessments as initially set by Declarant, and thereafter as set by the Association. Assessments shall be used to form two funds.

The first fund shall be for normal maintenance activities to initially include maintenance of the private alley, private drywell, benches, sidewalk pavers, for irrigation of Park Strip, for landscape maintenance of Park Strip, for mowing the front yard of each Lot within Heritage Place Subdivision, and for plowing the snow from the alley. The Association can adjust the scope as desired. This first fund shall be known as the maintenance fund. This fund shall be used to pay expenses which can be reasonably forecasted for maintenance, repair, and upkeep of Heritage

Place Subdivision private alley, drywell and front yard landscaping over a three year forecast period. These amounts shall include costs of drywell maintenance, irrigation equipment maintenance and operating expenses, and lawn, garden and landscaping maintenance.

Parking strip irrigation water will be supplied from Lot 4's domestic water supply line. A separate meter will be installed on Lot 4 to measure the parking strip irrigation water consumption. During any season that the parking strip is irrigated, the Lot 4 Owner shall submit to the Association, on a monthly basis, statements of parking strip irrigation water consumption, and the costs thereof. The association shall reimburse the Lot 4 Owner for parking strip irrigation costs from the maintenance fund.

The second fund shall be for long term capital improvements and replacement and shall be known as the reserve fund. Reserve fund assessments may be collected for long term costs such as (without limitation) capital improvements or replacement of the private alley, long term drywell maintenance or replacement, and irrigation system replacement within Heritage Place which may be anticipated over a forecast period of thirty (30) years.

- 9.3 Payment.** Assessments for the maintenance and reserve funds will be paid by the Lot Owner or Owners in advance in monthly, quarterly or annual installments, as determined by the Association, commencing on the initial sale of each Lot. Assessments shall be uniform for all lots. The rate at which Lots will be assessed will be determined by the Association at least thirty (30) days in advance of each assessment period. Notice of assessments shall be delivered to each Lot Owner and shall identify the portion of the assessment used to fund the maintenance account and the portion of the assessment used to fund the reserve account.
- 9.4 Ownership of Assessment Account.** All assessments and accounts are the property of the Association and no portion of the assessments shall be returned to any Lot Owner.
- 9.5 Emergency Assessments.** The Association may call for an emergency assessment in the event of emergency circumstances. As used in the foregoing sentence, "emergency" shall mean a situation or occurrence that is likely to result in a material negative impact on services to Lot Owners and/or pose a health or safety risk.
- 9.6 Subordination of Lien to Secure Payment.** To secure payment of the maintenance and reserve fund assessments and all other assessments (including fines) established hereby and to be levied on individual Lots as provided in this Section 9 and all other obligations of a Lot Owner under

these CCRs, there is hereby reserved a lien in favor of the Association for the benefit of all other Lot Owners, on each Lot, said lien to be enforceable through appropriate proceedings at law or in equity by the Association, provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the Lot Owner to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage lien holder by prepaid U.S. certified mail, to contain the statement of the delinquent charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 94.709 (and its successor provisions) shall apply to the Association's lien. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments that became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, nor shall it relieve the Lot Owner from the personal obligation for payment of the assessments. The Association shall have the right to file notices of liens in favor of the Association in the real property records of Deschutes County, Oregon.

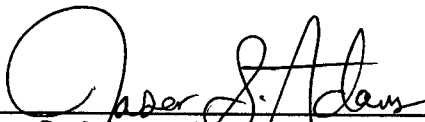
- 9.7 Additional Assessments.** In addition to the periodic assessments described in this Section 9, the Association shall have the authority to assess on a Lot Owner's Lot(s) costs and expenses incurred by the Association for corrective action, including without limitation court proceedings, that is required as a result of the willful or negligent actions or omissions of such Lot Owner or such Lot Owner's family members, tenants, guests, contractors or invitees. Each such additional assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, a continuing lien upon the Lot, and the personal obligation of the Lot Owner in the manner described in this Section 9.
- 9.8 Delinquent Assessments.** Any unpaid or overdue assessment shall be collectable upon ten day's written notice to the Owner. If the overdue

assessment is not paid, then the Association may sue the Owner in the appropriate court of law. All costs of collection, including but not limited to attorney fees at trial and on appeal, shall be added to the assessment. As an alternative to the procedure set forth herein, the Association may lien the property as provided by ORS chapter 94. The Owner shall remain personally liable for all assessments, though a judgment or lien may attach to the Lot or any other real or personal property of the Owner. Delinquent assessments shall incur interest at the rate of 9% per annum.

#### **Section 10. EFFECT OF DECLARATION.**

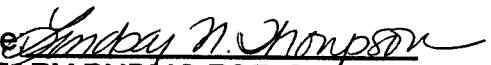
The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in HERITAGE PLACE Subdivision and shall bind, benefit and burden each Lot in HERITAGE PLACE Subdivision, including any additions thereto. The terms of this Declaration shall inure to the benefit of the Owners of any Lot in HERITAGE PLACE Subdivision, their successors, assigns, heirs, administrators, executors, mortgagees, invitees, or any other party claiming or deriving any right, title or interest or use in or to any real property in HERITAGE PLACE Subdivision. The restrictions set forth herein shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as HERITAGE PLACE Subdivision and their successors in interest including any person who holds such interest as security for the payment of any obligation including any mortgagee or other security holder in actual possession of any Lot by foreclosure or otherwise and any other person taking title from such security holder.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 26th day of October, 2006

By   
Jason S. Adams, Member of Alterra Investments LLC

STATE OF OREGON, County of Deschutes, ss.

The above named JASON S. ADAMS personally appeared before me as member of ALTERRA INVESTMENTS LLC and acknowledged the forgoing instrument as his voluntary act.

Before me   
NOTARY PUBLIC FOR OREGON  
My commission expires: May 25, 2009

