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NANCY BLANKENSHIP, COUNTY CLERK

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

Bend, Oregon

Hardenbrook Enterprises

Declarant

*Return to:*

*Sun Country Engineering  
and Surveying Inc.  
920 S.E. Armour Road  
Bend, OR 97702*

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

**THIS DECLARATION** is made this 19<sup>th</sup> day of December, 2005 by Hardenbrook Enterprises, Inc.; an Oregon Corporation ("Declarant").

**RECITALS**

- A. Declarant owns or controls certain real property within the City of Bend, Deschutes County, Oregon. Declarant proposed to develop this property as a planned development to be known as "West Dean".
- B. Declarant hopes to create in West Dean a carefully planned community, which will provide an attractive place to live.
- C. Purchasers of property within West Dean hereby consent to the Master Plan for West Dean approved by the City of Bend, as the same may subsequently be amended. By adoption of such Master Plan and this Declaration, Declarant is not committing itself to take any action for which definite provision is not made below. One who acquires property in West Dean will have the advantage of any further development of West Dean, but shall not have any legal right to insist that there be development except as provided in this instrument or in the instruments which hereafter may be recorded annexing areas to West Dean and subjecting areas to this Declaration.
- D. Declarant has recorded the plat of West Dean in the plat records of Deschutes County, Oregon. Declarant desires to subject the property described in such plat to the conditions, restrictions and charges set forth in this instrument for the benefit of such property and its present and subsequent owners, and to establish such property as a Class III planned community under the Oregon Planned Community Act, ORS 94.550 to 94.783, and shall be subject to the same.

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

## ARTICLE 1

### DEFINITIONS

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

- 1.1 **"West Dean"** means the Initial Development and any Additional Property annexed to this Declaration.
- 1.2 **"Declarant"** means Hardenbrook Enterprises, Inc., an Oregon corporation, and its successors and assignees if such successor or assignee should acquire Declarant's interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.
- 1.3 **"Improvement"** means every structure or improvement of any kind, including but not limited to a fence, wall driveway, swimming pool, storage shelter, landscaping or other product of construction efforts on or in respect to the Property.
- 1.4 **"Initial Development"** means the real property referred to in Section 2.1 below.
- 1.5 **"Living Unit"** means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, together with any permitted Accessory Dwelling Units.
- 1.6 **"Lot"** means a platted lot within the property.
- 1.7 **"Master Plan"** means the Development Plan of West Dean approved by the City of Bend, Oregon, as the same may hereafter be amended.
- 1.8 **"Mortgage"** means a mortgage or a trust deed; "mortgagee" means a mortgagee or a beneficiary of a trust deed; and "mortgagor" means a mortgagor or a grantor of a trust deed.
- 1.9 **"Owner"** means a person or person, including Declarant owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an owner from obligations incurred prior to termination.
- 1.10 **"Sold"** means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.
- 1.11 **"The Property"** means West Dean.
- 1.12 **"This Declaration"** means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

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

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

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

## ARTICLE 3

### PROPERTY RIGHTS IN LOTS

- 3.1 **Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, contained in Article 5 below, and all other provisions of this Declaration and the Provisions of any supplement or amendment to this declaration and any applicable project Declaration.
- 3.2 **Easements Reserved.** In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easement for the benefit of Declarant and all Lot Owners.
- (a) **Right of Entry.** Declarant may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such lot.
  - (b) **Blanket Easement for Utilities.** There is hereby created a blanket easement upon, across, over and under of the Lots of West Dean for ingress, egress, installation, replacing, repairing, maintaining and reading meters for all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system, if any. By virtue of this easement, it shall be permissible for the providing electrical and/or telephone company to erect and maintain the necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said dwellings. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, Common Area sprinkler lines or other utilities may be installed or relocated on said premises, except as initially programmed and approved by the major builder of said premises or as

approved by the Association's Board of Directors. This easement shall in no way affect any other recorded easements on said premises.

- (c) **Easements of Encroachment.** Each Lot shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event any structure is partially or totally destroyed and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Lots or dwellings due to construction, settling and overhangs shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Notwithstanding any provisions herein to the contrary, any encroachment permitted herein shall not exceed two feet.
- (d) **Easements on Lots.** There is hereby created a blanket easement upon, across, over and under the Lots in favor of the Declarant, its respective invitees, employees or independent contractors for the purpose of maintaining or replacing any improvements upon such Lots to the extent the Declarant have the authority under this instrument or any contract for sale, to undertake such maintenance or replacement.
- (e) **Public Utility Easement.** There shall be created a Public Utility Easement upon, across, over and under the Lots as identified on the final plat for the purpose of maintaining public utilities, including water, sewer, electric, telephone, cable television and for service vehicle and emergency vehicle access.

3.3 **Alley Easements.** Alley Easements are recorded on Lots 1 through 14 of the Initial development for the benefit of adjoining Lot Owners. The Lot Owners so benefited shall have a perpetual easement over and upon the Alley Easement Area for the purpose of ingress, egress, construction, access, maintenance, repair and reconstruction of the alley. The costs of maintenance of the alley easement area shall be the responsibility of the adjoining Lot Owners. The placement of temporary or permanent impediments to the use of the subject easement is strictly prohibited.

#### 3.4 **Side Yard Easements**

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

- 3.5 **Party Walls.** Each wall which is built as part of the original construction of the dwellings within the Property placed upon the dividing line between Lots shall constitute a "party wall," and the following provisions shall apply:
- (a) **General Rules of Law to Apply.** The general rules of the law of the State of Oregon regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply to all such party walls, to the extent such rules are not inconsistent with the provisions of this section. Each party to the party wall shall have a perpetual easement over that part of the Lot of the other Lot on which the party wall is located for party wall purposes.
  - (b) **Maintenance and Repairs.** The Owner of each Lot sharing a party wall shall pay any costs associated with maintaining the interior portions of the party wall on its respective side. All repairs or maintenance necessary to maintain the structural integrity of the party wall shall be shared equally by the Owners using the wall. The decision whether to undertake a particular repair and who shall be responsible with carrying out the repair of the party wall shall be agreed upon by the Owners, or in the case of a dispute over this matter, the questions shall be determined by arbitration as provided below.
  - (c) **Damage to Party Wall.** In the event of damage to or destruction of the party wall from any cause, other than the negligence of either party sharing the wall, then the Owners shall, at their joint expense, repair or rebuild the party wall, and each party, its successors and assigns, shall have the right to the full use of the wall so repaired or rebuilt. If either party's action or negligence causes the damage to or destruction of the wall, such negligent party shall bear the entire cost of repair or reconstruction. In the event of any dispute as to the cause of the damage or the repair or restoration of the party wall, the matter shall be determined by arbitration as provided below.
  - (d) **Drilling Through Party Wall.** Either party shall have the right to break through the party wall for the purpose of repairing or restoring sewerage, water and other utilities, subject to the obligation to restore the wall, including common foundation wall and/or roof, to its previous structural and cosmetic condition at such party's own expense and the payment to the adjoining Owner of any damages negligently caused thereby.
  - (e) **Alterations.** Neither party shall alter or change a party wall, including foundation wall and associated roof, in any manner, interior decorations excepted, and the party walls shall always remain in the same location as when first erected.
  - (f) **Downspouts.** Downspouts, if any, attached to the Unit and placed upon Lot lines shall be maintained at the joint expense of the adjoining Owners. The cleaning, repairing, painting, replacing of such downspouts and catch basins and drains shall be shared equally by the adjoining Owners.

## ARTICLE 4

### GENERAL USE RESTRICTIONS

- 4.1 **Structures Permitted.** No structure shall be erected or permitted to remain on any Lot except structures containing Living Units constructed during Initial Development or to replace such structure in case of catastrophic loss.
- 4.2 **Residential Use.** Lots shall only be used for residential purposes. No trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. Home occupations conforming to applicable governmental regulation will be permitted. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home for purposes of sales or rental in West Dean, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients, or customers, in his Living Unit.
- 4.3 **Leasing and Rental of Living Unit.** No Owner may not lease or rent his Living Unit for a period of less than thirty (30) days. All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of this and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease.
- 4.4 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to owners or occupants. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.
- 4.5 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective owners. All dogs shall be kept on a leash while outside a Lot.
- 4.6 **Maintenance of Structures and Grounds.** Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and fences on alleys and other

exterior improvements and glass surfaces, walks, lights and fences on alleys and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling must be in earthtones. In addition, each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Lot neatly trimmed, property cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

- 4.7 **Recreational and Commercial Vehicles.** Parking of boats, trailers, motorcycles, trucks, campers or other recreational or commercial vehicles or equipment, regardless of weight, and parking of any other vehicles with a gross vehicle weight in excess of 9,000 pounds shall not be allowed to remain overnight on any part of the Property or on public streets within the Property, excepting only within areas designated for such purposes or within the confines of an enclosed garage or screened area and no portion of the same may project beyond the screened area. If there is no rear fencing and the vehicle could be seen from outside the Lot other than from the Front Yard, the vehicle must also be screened from view from that direction as well. Vehicles may not be used for storage of materials for more than forty-eight (48) hours.
- 4.8 **Vehicles in Disrepair.** No Owner shall permit any vehicle, which is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot unless screened from view, on any street for a period in excess of forty-eight (48) hours.
- 4.9 **Noisy and Hazardous Vehicles.** Vehicles which pose a safety hazard or are in violation of the City of Bend Noise Ordinance are strictly prohibited.
- 4.10 **Parking.** Parking of vehicles by Owner shall be restricted to the Owner's garage or driveway. No car shall remain parked on Nathan Way or Damascus overnight for seven (7) or more consecutive nights.
- 4.11 **Signs.** No signs shall be erected or maintained on any Lot except that not more than one "For Sale", "For Lease" or "For Rent" sign placed by the owner, Declarant or by a licensed real estate agent, not exceeding sixteen (16) inches high and twenty-four (24) inches long, may be temporarily displayed on any Lot, except that two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot. The restrictions contained in this paragraph shall not prohibit the temporary placement of one "political" sign on any Lot by the Owner.
- 4.12 **Rubbish and Trash.** Trash, garbage and other waste shall be kept in sanitary containers, screened from public view. No part of the Property shall be used as a dumping ground for trash, garbage, waste, debris or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots or streets. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or occupant the notifying party may have such materials removed and charge the expense of such removal to the Owner.

- 4.13 **Landscape.** Each Owner shall be responsible for installing and maintaining the landscaping on any portion of the Lot in a neat and well-kept condition, such maintenance to include but not be limited to watering in conformance with applicable ordinances of the City of Bend. An Owner may not remove street trees. Vegetation around structures shall be maintained or modified for a minimum distance of thirty (30) feet around structures to prevent the rapid spread of fire to or from the building site. This provision shall not preclude the establishment of typical residential landscaping such as trees, shrubs, bulbs, perennials and other groundcover generally associated with residential development, but is intended to prevent the overgrowth of grasses and shrubs which exist unmaintained on a site and which could contribute to the rapid spread of fire. All landscaping (including front and side yards) shall be completed within six (6) months from the date of occupancy of the Living Unit constructed thereon. Landscaping must include at least grass and bark dust or follow accepted Xeriscape practices, and shall be maintained in harmony with surrounding landscaping. No weeds, noxious plants, or unmaintained vegetation shall be planted or allowed to grow.
- 4.14 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently, except during the period of initial construction of a dwelling on the Lot. No structure may be occupied prior to connection to power, water, and sewer and approval by the City of Bend.
- 4.15 **Fences and Hedges.** All fences or boundary hedges shall comply with the Design Guidelines adopted by the City of Bend Conditions of Approval for West Dean. Fences may not exceed four (4) feet in height. Fences must be well constructed of cedar materials and may not detract from the appearance of the adjacent structures and buildings.
- 4.16 **Service facilities.** Service Facilities (garbage cans, fuel tanks, clotheslines, clothesline poles and other outside drying of clothes, linens and such, firewood, gardening tools, and equipment, etc.) shall be screened from view from the street and neighboring properties. Appliances may not be stored outside. All heat pumps and condenser units (or other utilities and devices commonly placed out of doors) shall receive special consideration to provide visual screening and noise reduction.
- 4.17 **Outside Furniture and Hot Tubs.** Furniture left outside a Living Unit shall be limited to items commonly accepted as outdoor or patio furniture. Hot tubs must be installed out of sight of the main traffic patterns. Locking covers are required and shall remain locked when not in use.
- 4.18 **Window Coverings.** Window coverings visible from the outside of the Living Unit must be: (a) in good working order; (b) a neutral color compatible with the home/trim color; and (c) of a design and materials standard in the window dressing industry such as drapes, mini-blinds, etc. Sheets, blankets, plastic paper, foil, etc. are not allowed.
- 4.19 **Air Conditioning units.** Window or portable air conditioning units are prohibited.

- 4.20 **Firearms and Fireworks.** Firearms shall not be discharged within West Dean at any time. Firearms are to be unloaded at all times while in West Dean. Weapons including "BB" guns, pellet guns, dart guns, paint-ball guns and any other weapon capable of firing a projectile are considered firearms. Oregon statutory law prohibits the use of certain types of fireworks. Only fireworks considered legal and which are both silent and handheld will be allowed. Owners and their guest must clean up any fireworks discharged in West Dean.
- 4.21 **Nonbiodegradable Substances.** No motor oil, paint or other caustic or nonbiodegradable substance may be deposited in any street drain, sewer system or on the grounds within West Dean. Any fine and/or costs associated with the cleanup of any nonbiodegradable substance that is caused by any Owner or their guests shall be the responsibility of the offending Owner.
- 4.22 **Antennas and Satellite Dishes.** Exterior antennas, satellite receiver and transmission dishes and other communication devices greater than one meter in diameter shall not be permitted to be placed upon any Lot.
- 4.23 **Exterior Lighting or Noisemaking Devices.** All exterior lighting and noisemaking devices shall comply with applicable municipal ordinances.
- 4.24 **Pest Control.** No Owner shall permit any thing or condition to exist upon any portion of the Property, which shall induced, breed or harbor infectious plant or animal diseases or noxious insects or vermin.
- 4.25 **Grades, Slopes and Drainage.** Each Owner of a lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot. No structure, plantings or other material shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratio, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.
- 4.26 **Additional Restrictions.** Each Owner of a Lot, and such Owner's family, tenants, employees, guests and invitees, shall also comply with any additional use restrictions contained in any supplemental declaration annexing such Lot to West Dean and in any Project Declaration applicable to such Lot.
- 4.27 **Building Materials.** All building materials to be incorporated into and visible as a part of the external structure of any building or other structure may be regulated. No exterior Improvement shall be commenced, erected, placed or altered on any Lot. All paints shall be of a color commonly accepted as an earthtone.
- 4.28 **Completion of Improvements.** All structures (including flat work and landscaping) constructed within the Property shall be erected and completed within one year after the commencement of construction. All remodeling, reconstruction or enhancement of structures shall be completed within one year of the commencement of construction. Commencement of construction shall be deemed to be the date upon which a building

permit was first issued for the construction, or, if no building permit was obtained, the date on which lot clearing, demolition or remodeling commenced.

## ARTICLE 5

### ENFORCEMENT

- 5.1 **Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or shall violate any provisions of this Declaration any Lot Owner shall notify the Owner in writing of any such specific violations. If the Owner is unable, unwilling or refuses to comply within fifteen (15) days of written notice to the Owner, then Owners which collectively own at least three Lots shall have the right to do any or all of the following:
- (a) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the enforcing Lot Owner(s) may assess such Owner for the entire cost of the work done, provided that no construction shall be altered or demolished in the absence of judicial proceedings;
  - (b) Cause any vehicle parked in violation of this Declaration or the rules and regulations to be towed and impounded at the Owners' expense;
  - (c) Bring suit or action against the Owner on behalf of other Owners to enforce this Declaration.
- 5.2 **Costs and Attorneys' Fees.** In the event an Owner(s) shall bring any suit or action to enforce this Declaration or the Rules and Regulations or to collect any money due hereunder, the Owner-defendant shall pay to the prosecuting Owner(s) all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.
- 5.3 **Nonexclusiveness and Accumulation of Remedies.** An election by an Owner(s) to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law. In addition, any aggrieved Owner may bring an action against another Owner to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.
- 5.4 **Enforcement by City of Bend.** The provisions of this Declaration relating to preservation and maintenance of Common Areas shall be deemed to be for the benefit of the City of Bend as well as the Owners of Lots, and the City may enforce such

provisions by appropriate proceedings at law or in equity, or may cause such maintenance to be performed, the costs of which shall become a lien upon the Property.

## ARTICLE 6

### DISPUTE RESOLUTION

#### 6.1 Mediation

- (a) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding under this Declaration in which Owners have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Deschutes County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested to the address listed by the Deschutes County Assessor for the other party.
- (b) If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand delivered or mailed by certified mail, return receipt requested, to the address, address listed by the Deschutes County Assessor, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.
- (c) If a qualified dispute resolution program exists within Deschutes County, Oregon, and an offer to use the program is not made as required under paragraph (a) of this section then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the non-initiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.
- (d) Unless a stay has been granted under paragraph (c) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.
- (e) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.
- (f) The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay.

- 6.2 **Arbitration.** Any claim, controversy or dispute by or among Declarant or one or more Owners, or any of them, arising out of or related to this Declaration, the Rules

and Regulations or the Property shall be first subject to mediation as described in Section 12.1 above, or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article. The decisions and award of the arbitrator shall be final, binding and non-appealable. The arbitration shall be conducted in Bend, Oregon, pursuant to the arbitration statutes of the State of Oregon, and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of filing a notice of pending action ("lis pendens").

- 6.3 **Selection of Arbitrator.** A single arbitrator selection by mutual agreement of the parties shall conduct the arbitration. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the Presiding Judge of the Circuit Court of Deschutes County, Oregon shall designate the arbitrator.
- 6.4 **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration.
- 6.5 **Discovery.** The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Deschutes County Circuit Court. The arbitrator shall have all of the authority of the Court incidental to such discovery, including, without limitation authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including without limitation award against a party for failure to comply with any order.
- 6.6 **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence, as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where any of the parties is absent in default or has waived its right to be present.
- 6.7 **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this (but shall be subject to the applicable provisions of Section 11.8); action to enforce any order, decision or award rendered by arbitration pursuant to this Article. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article.
- 6.8 **Costs and Attorney's Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorney's fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the non-prevailing party or parties; if

none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration or Rules and Regulations, to obtain a judicial construction of any provision of this Declaration or the Rules and Regulations, to rescind this Declaration or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute, as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a requires tot compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for conformation as a judgment (with respect to attorneys' fee incurred in such proceedings).

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

## ARTICLE 7

### AMENDMENT AND REPEAL

- 7.1 **How Proposed.** Amendments to or repeal of this Declaration shall be proposed by Owners holding 5 or more lots. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.
- 7.2 **Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of owners representing not less than seventy-five percent (75%) of the Lots, based upon on vote for each such Lot. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment.
- 7.3 **Recordation.** Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment(s) or repeal so the approved and certifying that such amendment, amendments or repeal have

been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

- 7.4 **Regulatory Amendment.** Owners of eight or more Lots must approve of any amendment to this Declaration in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Limited liability company, any department bureau, board, commission or agency of the United States or the State of Oregon, or any limited liability company wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

## ARTICLE 8

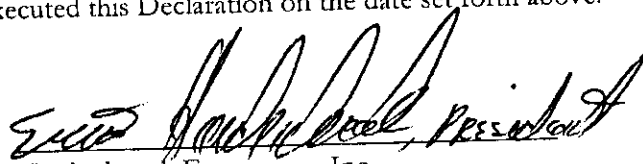
### MISCELLANEOUS PROVISIONS

- 8.1 **Lessees and Other Invitees.** Lessees, employees, invitees, contractors, family members and other person entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the owners use, improvement or enjoyment of his Lot and other areas within the Property. The owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself.
- 8.2 **Nonwaiver.** Failure by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.
- 8.3 **Construction; Severability; Number; Caption.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used in this declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

- 8.4 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant, 61535 S Hwy 97, Ste 9, Bend, Oregon 97702; if to an owner, at the mailing address listed by the Deschutes County Assessor.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date set forth above.

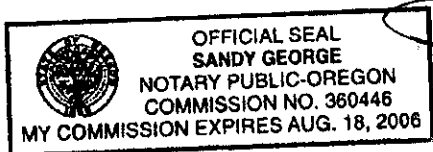


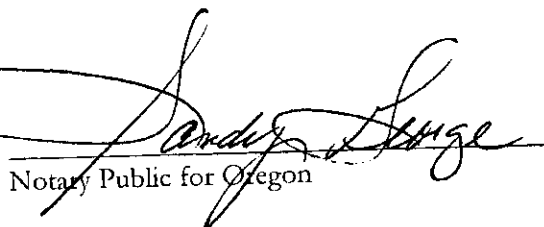
Hardenbrook Enterprises, Inc.  
By Eric Hardenbrook, President

STATE OF OREGON           )  
  ) ss.  
County of Deschutes       )

Personally appeared before me the above named Eric Hardenbrook as President of Hardenbrook Enterprises, Inc., an Oregon corporation, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 19<sup>th</sup> day of December, 2005.



  
Notary Public for Oregon