

136↓

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2004-23855



\$136.00

00282340200400238550220222

04/27/2004 11:42:45 AM

D-CCR Cnt=1 Stn=1 BECKEY
\$110.00 \$11.00 \$10.00 \$5.00

COVENTANTS, CONDITIONS & RESTRICTIONS
FOR WESTERLY

Declarant: Michael Knoell and Riverview, LLC

→JM

**WESTERLY SUBDIVISION
COVENANTS, CONDITIONS AND RESTRICTIONS**

TABLE OF CONTENTS

SECTION

- 1. DEFINITIONS**
- 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WESTERLY**
- 3. ARCHITECTURAL CONTROLS**
- 4. RESTRICTIONS**
- 5. DECLARANT'S IMMUNITY**
- 6. DURATION AND AMENDMENT OF THIS DECLARATION**
- 7. ASSOCIATION**
- 8. ASSESSMENTS**
- 9. ENFORCEMENT**
- 10. ARCHITECTURAL REVIEW COMMITTEE**
- 11. EFFECT OF DECLARATION**

DECLARATION OF WESTERLY SUBDIVISION

COVENANTS, CONDITIONS AND RESTRICTIONS

These Covenants, Conditions and Restrictions are made this 26TH day of APRIL, 2004 by Michael Knoell and Riverview, LLC, hereinafter referred to as "Declarant", as sole owners and developers of the real property in the City of Bend, Deschutes County, State of Oregon, described as WESTERLY as recorded in Deschutes County Records.

The property as described above, except lot #31, is hereby subject to these Covenants, Conditions and Restrictions and will be known as WESTERLY subdivision, hereinafter referred to as WESTERLY.

WESTERLY is being developed as a residential community. Except where this Declaration for WESTERLY subdivision conflicts with any applicable government municipal regulations, this Declaration shall be binding upon all property subject to this Declaration and on its Owners and their successors in interest as set forth herein. In the event that any of the development standards or use restrictions of this Declaration should 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 Westerly Subdivision.

The term "Westerly subdivision" shall mean all of the real property now or hereinafter made subject to this Declaration, known as Westerly.

1.2 Declarant.

The term "Declarant" shall mean Michael Knoell and Riverview LLC, developers of Westerly.

1.3 Architectural Review Committee (ARC).

The term ARC shall mean the group of individuals responsible for implementing, interpreting, and enforcing the Architectural Rules and Guidelines and the Covenants, Conditions and Restrictions (see Section 10).

1.4 Association.

The Association shall be the non-profit corporation to be formed to serve as the Association of Owners as provided in Section 7 hereof, and its successors and assigns.

1.5 Alley.

Paved access to the rear of Lots 1 – 20.

1.6 Lot.

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

1.7 Declaration.

The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Westerly.

1.8 Homesite.

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

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 of sale.

1.10 Improvements.

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

1.11 Operating Account Assessments.

Assessments to cover the operating expenses of the Association.

1.12 Streets.

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

1.13 Park Strip.

The term "Park Strip" shall mean the area between the curb and the property line excluding any sidewalk.

1.14 Fence.

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

1.15 Accessory Dwellings.

An "Accessory Dwelling" is a dwelling unit with a kitchen, usually located above an attached garage on a single-family residence.

Section 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WESTERLY.

2.1 General Declaration Creating Westerly.

Declarant hereby declares that all the real property located in Deschutes County, Oregon, known as Westerly as recorded on _____, 200____, shall be encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part subject to this Declaration. All 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 for Westerly run with all of said real property, including any additions 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.

Section 3. ARCHITECTURAL CONTROLS.

3.1 Approval Required.

No improvement, as defined in Section 1.9 above, shall be erected, place 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 improvements within Westerly (including any exterior alteration, addition, destruction, or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by paragraphs 3.3 through 3.7 below. Failure to follow such procedures or obtain such approvals as required by paragraphs 3.3 through 3.7 below shall be deemed a breach of this Declaration.

3.3**Required Documents.**

Any owner proposing to utilize, construct, alter or destroy any improvement within Westerly shall submit the following items for review:

- (a) A site plan showing the location, size, configuration and layout of any building, structure or other improvement (or, where applicable, any alteration, addition, modification or destruction, thereto). The scale of plans shall be 1 inch = 10 feet.
- (b) Architectural plans and drawings showing the nature, style and dimensions of any improvement (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.

3.4**Review.**

All plans and drawings identified in paragraph 3.3 above shall be submitted to the ARC for review prior to the performance of any proposed work. The ARC shall review the plans and shall inform the Owner in writing whether the plans conform to the development concept for Westerly. Failure of the ARC to respond in writing within thirty (30) days shall be deemed approval. In the event any of the plans do not conform to the Westerly development concept, the Owner shall resubmit those non-conforming portions of the plans for review in accordance with the procedures outlined in paragraph 3.3 above, and this paragraph. No work may be performed relating to any improvement unless and until all aspects of all plans required under paragraph 3.3 above have been approved by the ARC.

3.5**Architectural Guidelines.**

The development concept for Westerly shall be determined by the ARC in accordance with the 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. The ARC shall have the right to alter, rescind or amend any published guidelines without prior notice to any give party; provided however, than once approval has been given pursuant to paragraph 3.4 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be in general

conformity with this Declaration. Class B Guidelines can only be altered, rescinded or amended by a majority vote of Class A members.

3.6

Inspection.

All work related to any building, structure or other improvement, including any landscaping, vegetation or ground cover within Westerly shall be performed in strict conformity with the plans and drawings approved under paragraph 3.4 above. The ARC shall have the right to stop all work if it believes that any such work is non-conforming. A stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of this Declaration. The ARC or officer, director, employee, agent or servant of the ARC shall not be responsible for any damages, loss, delay, cost or legal expense occasioned through a stop work notice even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

3.7

Waiver.

The ARC in its exclusive discretion may waive any condition or provision of paragraph 3.2 through 3.6 above. Any waiver shall be in general conformity with the development concept and development standards for Westerly. 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 paragraphs 3.2 through 3.6. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to 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 of 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 maybe used for access without that Owner's written permission with the exception of recorded access and alley easements.

4.2

Antennas.

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

4.3

Appearance.

All garbage, trash, cutting, 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.

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 during winter months.. Builders and Builder/Owners are responsible for repair of all driveway cuts, concrete breakage of curbs, sideways or sidewalk aprons. If repairs are needed, the Developer and ARC representative will monitor and provide written documentation to the offending Owner. All repairs must be completed within seven (7) working days (weather permitting) from receipt of written notification from the Developer or ARC representative.

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. Clearly indicate on submitted plans location of all proposed exterior color. Samples may be standard manufacturer's paint chip samples.

4.6**Exterior Lighting.**

All exterior lighting must be indirect and/or shielded and must meet county ordinances. 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 lighting is subject to ARC approval.

4.7**Fences and Walls.**

All fencing and walls must be approved by the ARC as to conformity with the location, style, amount and quality of any other fencing and walls on or about the property. Wood or vinyl is the only material allowed. Each Owner shall maintain in good repair all fencing and walls on or about his/her Lot which are approved by the ARC.

4.8**Front Entrance.**

Front entrances are essential elements in creating a sense of neighborhood, as a welcoming gesture. This element to the neighborhood may be a large columnar porch, classical portal, a loggia or other architectural feature appropriate to the style of the building.

4.9**Garages.**

Lots having rear alley accesses are required to site garages and access at the rear of the Lot. Westerly Lots require ARC approval to minimize the visual impact of garages. The intent is to build an environment suited to people by reducing the impact of the automobile on the street, not to build homes for automobiles. The ARC may approve carports or RV parking if the design elements are consistent with the house style, do not adversely impact adjoining Lots, and are not visually noticeable from the street. All designs shall be subject to ARC approval. All single-family Lots must have at least a two-car garage. Any conversion of garage space must be replaced with additional garage space to meet the minimum two-car garage requirement and must be approved by the ARC.

4.10**Garbage and Recycling Pickup.**

Garbage and recycling pickup is anticipated to be curbside. However, the disposal company shall have the final right to determine where pickup shall be.

4.11**Improvements.**

Each Lot within Westerly 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 be completed within one (1) year from the start of construction. (Complete means obtaining certificate of final inspection from the City of Bend.) Yards and park strip must be improved and landscaped, in accordance with approved plans, no later than ninety (90) days from completion, including the park strip area between the sidewalk and curb; in the event that the house is completed in winter, an extension of up to one hundred and twenty (120) days may be granted by the ARC. Builders shall not disturb adjoining Lots without permission. Each residence shall contain a minimum of 1100 square feet (not including garage or storage). No T-1-11 or similar type of siding will be allowed on the exterior walls of any home, garage or any improvement without the addition of batts. All exposed rafter tails will be a minimum of 2 x 6 inch material and barge boards a minimum of 2 x 8 inch material. ARC may require these dimensions to be larger based on size, massing and style of home, but may grant exceptions for smaller material. Installation of underground sprinkler systems for front lawns and park strip of each home is mandatory. All Lots shall provide a front walk a minimum of 4 foot in width, which accesses the front of the house from the sidewalk of the street, with exceptions approved by the ARC. While the park strip in front of each home is within the street right-of-way, it is each Homeowner's responsibility to install and maintain sprinklers, trees and grass landscaping. The landscaped park strip must be sod and have two trees per lot and five trees for corner Lots of a size and type determined by the ARC. Homes on Lots 27, 28, 29 and 30 shall be limited to single story.

4.12**Insurance.**

The Association's Board of Directors shall obtain a public liability policy covering the Association, the Board of Directors and its members for all damages or injury caused by the negligence of the Association or any of its members or agents.

In addition to the other insurance required by this Section, the Board may obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees and any other person handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment. Premiums for insurance obtained under this Section shall be a common expense of the Association. The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals the full replacement costs.

4.13 Landscaping.

All disruption of the natural landscape must be repaired within ninety (90) days of completion. During the winter, an extension of up to one hundred a twenty (120) days may be granted. On unimproved Lots, areas that have been disturbed and are highly visible or that constitute a dust problem may require corrective action as determined by the ARC.

Those Lots with electrical transformers located in the park strip shall not plant any trees in front of, or within 3' of the side and rear of the transformer.

The front and side yards shall be covered with a minimum of 50% grass (sod) and must have shrub and bush plantings incorporated in the front landscape plan. All landscape design is subject to review and approval by the ARC. Owners are responsible to provide and maintain two park strip trees per lot and five trees for corner Lots. The ARC will determine type and size. Owners will be required to replace dead trees with type and size originally planted.

4.14 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 purpose and do not constitute a nuisance. Doghouses shall be limited to two (2) per Lot and only allowed in the back yard. Owners are responsible to clean up after walking dogs.

4.15 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 residential Lot shall be further partitioned or subdivided.

4.16 Nuisances.

All improvements, including boundary fences, walls or 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.

4.17 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 (exceptions allowed during winter months).

No Owner shall occupy, use or permit his/her 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 not in occupancy. The rental period shall not be less than one (1) month. Home occupations will be allowed as under the current City of Bend Zoning Ordinance.

4.18 Parking.

No parking on any street shall be allowed of any horse trailer, travel trailer, commercial 18-wheel tractor, boat trailer, camper, incapacitated motor vehicle, boat, trailer, bus, motor home, commercial vehicle, truck larger than one (1) ton, recreational vehicle, sports equipment, or other similar vehicles. All such vehicles are not to be visible from the street, and must be stored behind Owner's fence.

No parking whatsoever shall be allowed in alleys; it is the Owner's responsibility to see that their guests, invitees, and lessees abide by this condition. No vehicles shall be parked in the street for more than twenty four (24) hours at a time.

Parking is allowed on both sides of the street except where posted, or curbs are painted yellow indicating "no parking" zones.

4.19 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 Westerly.

4.20 Roofs.

All roofs and roofing materials shall be limited to quality composition roofs (25-year or better).

4.21 Sidewalks.

Owners are responsible for cleaning sidewalks of snow and debris.

4.22 Slight Distance at Intersection.

Slight distance at intersections shall conform to the City of Bend ordinance.

4.23 Signs.

A maximum of two (2) signs may be installed on a Lot during construction. After construction is complete and home is occupied, no sign of any kind shall be displayed to public view on or from any Lot without the ARC prior written consent. Owner may, without the ARC approval, display not more than one (1) "For Sale" sign per Lot. Said signs shall be limited in size to not more than four (4) square feet.

4.24 Structures and Outbuildings.

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. No portable storage units shall be allowed.

Only earth tone (brown, gray, etc.) colored tarps and covers shall be allowed.

4.25 Model/Offices.

A model/office or temporary sales or construction trailer is allowed for any builder with multiple homes for sale with Declarant approval.

4.26 Utilities.

No above ground utilities, pipes or wires shall be used to connect improvements with supplying facilities.

4.27 Vacant Lot.

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

4.28 Water and Sewer Supply.

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

4.29 Sidewalks.

Sidewalks at the front yard right-of-ways shall be installed within twelve (12) months of Lot purchase or bonded for completion as is acceptable to the City of Bend.

Section 5. DECLARANT'S IMMUNITY.

5.1 Declarant's Immunity.

The Declarant and the ARC have a non-exclusive right and power to enforce these Covenants, Conditions and Restrictions, but neither the Declarant nor the ARC has the legal obligation to enforce or attempt to enforce the provisions hereof. In the event the Declarant and ARC refuse, neglect, fail or are 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 or ARC, and each Owner or any person or entity claiming by, through or from said Owner hereby releases Declarant and ARC from and against any claim arising in connection with the development of Westerly or related to Declarant or ARC acts or omissions in preparing, filing or enforcing these Covenants, Conditions and Restrictions and shall be stopped from making or enforcing any such claim.

Section 6. DURATION AND AMENDMENT OF THIS DECLARATION.

6.1 Duration.

The Covenants, Conditions and Restrictions of Westerly 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 one (1) year from the date of said termination, there shall be recorded an instrument directing the termination of this Declaration signed by the Owners of not less than seventy-five percent (75%) of the Lots then subject to this Declaration, this 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 and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of such period the Covenants, Conditions and Restrictions for Westerly are terminated as set forth above in this Section.

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 (provided all Lots and Lot owners are treated equally in such change) with written consent of seventy-five percent (75%) of the Owners 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. ASSOCIATION.

Declarant shall organize an Association of all of the Owners within Westerly. Such Association, its successors, and assigns, shall be organized under the name "Westerly Homeowner's Association" or such similar name as Declarant shall designate, and shall have such property, powers, and obligations as are set forth in this Declaration for the benefit of Westerly and all Owners of property located therein.

7.1 Organization.

Declarant shall, before the first Homesite is conveyed to an Owner, organize the Association as a non-profit mutual benefit corporation under the Oregon non-profit Corporation Act.

7.2 Membership.

Every Owner of one or more Homesites within Westerly shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Homesites within Westerly, be a member of the Association. Such membership shall commence, exist and continue simply by

virtue of such ownership, shall expire automatically upon termination of such ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

7.3

Voting Rights.

Voting rights within the Association shall be allocated as follows:

- (a) Homesites. Except as provided in Section 7.3 (b) with respect to Class B members, Homesites shall be allocated one (1) vote per Homesite.
- (b) Classes of Voting Membership. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant or Vernon C. Palmer, Inc., hereinafter referred to as Palmer Homes (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant and Palmer Homes). Class A members shall be entitled to voting right for each Homesite owned computed in accordance with Section 7.3 (a) above. When more than one (1) person holds an interest in any Homesite, all such persons shall be members. The vote for such Homesite shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Homesite.

Class B. The Class B members shall be Declarant and Palmer Homes and shall be entitled to nine (9) times the voting rights computed under Section 7.3 (a) for each Homesite owned by Declarant and Palmer Homes. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- i. When seventy-five percent (75%) of the Homesites in the final phase of Westerly, as indicated on approved Master Plan, have been sold and conveyed to Owners other than Declarant or Palmer Homes; or
- ii. At such earlier time as Declarant may elect in writing to terminate Class B membership.

7.4

Powers and Obligations.

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

- (a) Declaration. The powers, duties and obligations granted to the Association by this Declaration.

- (b) Statutory Powers. The powers, duties and obligations of mutual benefit non-profit corporation pursuant to the Oregon Non-profit Corporation Act and of a Homeowner's Association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time.
- (c) General. Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within Westerly.

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

7.5

Liability.

In consideration for each office or member of the Board of Directors consent to serve the Westerly Homeowner's Association, the Owners, their successors and assigns, hereby release and forever acquit each officer and member of the board from all acts and omissions performed in their capacity as officers and board members. This release includes both ministerial and discretionary acts, omissions, and decisions. No officer or member of the board shall be liable at law or in equity for their individual acts or omissions or the acts, omissions or decisions of the officers or board as a whole.

7.6

Interim Board and Turnover Meeting.

Declarant shall have the right, but not the obligation, to appoint an interim Board of three (3) directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarant or their successors have been elected by the Owners at the turnover meeting described in this Section. Declarant shall call a meeting by giving notice to each Owner as provided in the Bylaws of the Association for the purpose of turning over administrative responsibility for Westerly to the Association not later than one hundred eighty (180) days after the Homesites representing seventy-five percent (75%) of the votes in all phases of Westerly, as indicated on the approved Master Plan, and computed in accordance with Section 7.3 (a) above have been sold and conveyed to Owners other than Declarant or Palmer Homes. If Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 7.7 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim Directors shall resign and the Owners shall elect their successors and Declarant as provided in this Declaration and the Bylaws of the Association.

7.7**Transitional Advisory Committee.**

The Declarant will form a Transitional Advisory Committee to provide for the transition from administrative responsibility by Declarant of Westerly to administrative responsibility by the Association. Not later than ninetieth (90th) day after the Declarant has conveyed to Owners other than Declarant or Palmer Homes Homesites representing seventy-five percent (75%) of the votes of all phases in Westerly, as indicated on the approved Master Plan. Declarant may call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three (3) or more members. The Owners, other than Declarant, shall select two (2) or more members. Declarant may select no more than one (1) member, which may be the Declarant. The Transitional Advisory Committee shall have reasonable access to all information and documents, which Declarant is required to turn over to the Association under ORS 94.616.

- (a) Declarant Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.
- (b) Owner's Failure to Select Members. Notwithstanding for foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.
- (c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 7.6 above has been held.

7.8**Declarant Control After Turnover.**

After the turnover meeting described in Section 7.6 above, Declarant and Palmer Homes shall continue to have the voting rights described in Section 7.3 (a) above. In addition, Declarant and Palmer Homes, as Class B members, shall elect a majority of the Board of Directors of the Association with the balance of the Board of Directors elected by the Class A members. After termination of Class B membership, all Directors shall be elected by the Class A members.

7.9**Sub-associations.**

Nothing in this Declaration shall be construed as prohibiting the formation of sub-associations with Westerly

7.10**Association Rules and Regulations.**

The Association from time to time may adopt, modify or revoke such rules and regulations governing the conduct of persons and the operation and use of Homesites, as it may deem necessary for appropriate behavior in order to assure the peaceful and orderly use and enjoyment of the property within Westerly. A copy of the rules and regulations, upon adoption, and a copy of each amendment,

modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Homesites upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

Section 8. ASSESSMENTS.

8.1 Annual Budgets.

The Association Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs and future needs of the Association, and previous over assessment and any common profits of the Association. The budget shall provide for such contingency funds as the Board deems necessary or desirable or as may be required by law. The method of adoption of the budget shall be as provided in the Bylaws.

8.2 Operating Assessments.

All Homesites shall be assessed equally for operation costs. An annual reserve study will be completed as per the Planned Community Law. The amount of the assessment per Homesite shall be determined by dividing the annual budget by the total number of Homesites. Assessments exceeding ten percent (10%) increases annually require majority vote of members. The first annual assessment will be for the year 2004. Annual assessments will be due April 30 of each year. The initial annual assessment will be \$100.00. The first annual assessment for each Lot in Westerly shall be paid when each completed home is sold for the first time. If such sale occurs between March 1 and April 29, such initial payment shall be considered as payment for the following April 30 due date.

8.3 Payment of Assessments.

The Association shall, not less than annually, provide notice to the Owner of each Homesite of the amount of the assessment for such Homesite. Assessment shall be due and payable on or before a date set forth in the notice, which shall be not less than thirty (30) days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice.

8.4 Creation of Lien and Personal Obligation of Assessments.

Declarant, for each Homesite owned by it within Westerly, hereby covenant, and each Owner of any Homesite by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charge as may be fixed established, and collected from time to time in the manner provided in this Declaration of the Association Bylaws. Such assessments and charges, together with any interest, expense or attorney fees imposed pursuant to Section 10.6 and Section 10.7, shall be a charge on the land and a continuing lien upon the Homesite against which each assessment of charge is made. Such assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such

Homesite at the time when the assessment of charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 10 below.

Section 9. ENFORCEMENT.

9.1 Provisions Violations.

In the event any Owner, agent, tenant or the invitee of any Owner shall violate any provision of their Declaration the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Homesites, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice, do any or all of the following: (a) suspend the Owner's voting rights for the violations that remain unabated, or from any period not to exceed sixty (60) days for any infraction of its rules and regulations; (b) bring suit or action against such Owner to enforce this Declaration; (c) impose fines as provided in Section 10, or; (d) any other action authorized by law.

9.2 No Qualifying Improvements and Violation of General Protective Covenants.

In the event any Owner constructs or permits to be constructed on such Owner's Homesite and Improvement contrary to the provisions of this Declaration, or cause or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Homesite, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violation of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Homesite, the Improvements thereon and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directive or remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after written notice to the Owner, then the Association acting through its Board of Directors, shall have, in addition to any other rights or remedies provided in this Declaration, at law or inequity, the right to do any or all of the following:

- (a) Remove Cause of Violation. Enter onto the offending Homesite, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation, or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which the Association may assess such Owner for the entire cost of the work done.
- (b) Suit or Action. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.
- (c) Fines. Impose one or more fines as provided in Section 10.5.

9.3

Default in Payment of Assessments; Enforcement of Liens.

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

- (a) Suspend of Rights; Acceleration. The Association may suspend such Owner's voting rights until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable.
- (b) Lien. The Association shall have a lien against each Homesite and improvement thereon for an assessment levied on any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Homesite from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation, duration and foreclosure of liens established on real property under ORS 94-709 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under such statutes. The Association or its duly authorized agents, may bid on the Homesite at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Homesite. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.
- (c) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in paragraph 10.3 (b) above. Recovery of any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- (d) Other Remedies. The Association shall have any other remedy available to it by law or in equity.

9.4

Interest, Expenses and Attorney Fees.

Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at the rate of twelve percent (12%) per annum. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed ten percent (10%) of each assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder

or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

9.5 Fines.

The Board of Directors may establish a schedule of fines applicable to violations of this Declaration or rules and regulations established pursuant to this Declaration. The Board of Directors may impose fines after giving the alleged violator notice of the proposed fine and an opportunity to be heard. Fines shall be payable within ten (10) days after receipt of written notice of the imposition of the fine. All fines shall be deposited in the Association's operating account.

9.6 No exclusiveness and Accumulation of Remedies.

No election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in the Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner of the Association to recover damage or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

9.7 Severability.

Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 10. ARCHITECTURAL REVIEW COMMITTEE.

10.1 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 Westerly Covenants, Conditions 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.

The ARC may enforce the Architectural Rules and Guidelines in the same manner and are subject to the same requirements, restrictions and effect as set forth in Section 10 hereof.

10.2

Liability.

In consideration for each committee member's consent to serve on the committee, the Owners, their successors and assigns, hereby release and forever acquit each member of the committee from all acts and omissions performed in their capacity as committee members. This release includes both ministerial and discretionary act, omissions, and decisions. No member of the committee shall be liable at law or in equity for their individual acts or omissions or the act, omissions or decisions of the committee as a whole.

10.3

Non-waiver.

The 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 Westerly.

10.4

Membership.

The ARC shall initially consist of two (2) members appointed by the Declarant. 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. Neither the members of the ARC nor its designated representative shall be entitled to any compensation for services performed by said members. 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. The initial architectural review of construction plans for Lots #27, #29 and #30 shall be done by Declarant.

10.5

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 decision in writing, copies of which shall be sent or delivered to the Owner involved.

10.6

Approvals.

The ARC shall approve or disapprove plans within a reasonable time after the same has been submitted to the committee 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 an Owner obtains approval.

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

Section 11. EFFECT OF DECLARATION.

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

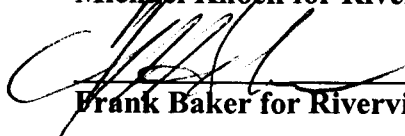
IN WITNESS WHEREOF, the Declarant has executed this Declaration this 26TH day of APRIL, 2004.



Michael Knoell



Michael Knoell for Riverview, LLC



Frank Baker for Riverview, LLC

STATE OF OREGON, County of Deschutes, ss.

The above named MICHAEL KNOELL and FRANK BAKER, personally appeared before me and acknowledged the foregoing instrument as their voluntary act.

Before me:



NOTARY PUBLIC OF OREGON

My commission expires:

1/4/08

