

98-28310

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WHITEHORSE

This Declaration is made this 24 day of June, 1998 by Anderson Land and Development Corporation, an Oregon corporation ("Declarant").

RECITALS

A. Declarant has recorded the plat of Whitehorse, Phase 1, in the plat records of Deschutes County, Oregon, which plat is recorded December 23, 1997, in Plat Records, Plat Book 10, Page 42, Deschutes County, Oregon (the "Property, Phase 1").

B. Declarant ^{will} also recorded the plat of Whitehorse, Phases 2, 3, 4 and 5, in the plat records of Deschutes County, Oregon, ~~which plat is recorded~~ 199 ~~in Plat Records, Plat Book~~ -----, ~~Page~~ -----, Deschutes County, Oregon (the "Property, Phases 2 thru 5").

C. All Phases shall be referred to herein as the Real Property.

D. Declarant desires to provide for the preservation and enhancement of the property values, amenities and enjoyment of Whitehorse, Phases 1, 2, 3, 4 and 5 and is subjecting Whitehorse to the covenants, conditions and restrictions, reservations and easements set forth in this Declaration.

E. Declarant may elect to develop adjoining real estate and annex such adjoining real estate to Whitehorse as an additional Phase thereof in the manner provided in this Declaration.

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

ARTICLE I DEFINITIONS

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

1.1 "Architectural Review Committee" means the Committee appointed pursuant to Article 5 hereof.

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1.2 "City" shall mean and refer to City of Redmond.

1.3 "County" shall mean and refer to the County of Deschutes, State of Oregon.

1.4 "Declarant" shall mean and refer to Anderson Land & Development Corporation, its successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Property for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Real Property, which beneficiary has acquired any such Real Property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

1.5 "Declaration" shall mean and refer to this Declaration, recorded with the Office of the County Recorder of Deschutes County, Oregon, covering the Real Property, including such amendments thereto as may from time to time be recorded.

1.6 "Dwelling" or "Residence" shall mean a residential structure or structures, including enclosed yards, balconies, patio areas and garages constructed for single family dwelling located on a Lot.

1.7 "Improvement" means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter, or other product of construction efforts on or in respect to the Real Property.

1.8 "Lot" means a platted lot or lawfully partitioned parcel located in the Real Property.

1.9 "Mortgage" means a mortgage or trust deed; "mortgagee" means a mortgagee or beneficiary of a trust deed; and "mortgagor" means a mortgagor or a grantor of a trust deed.

1.10 "Map" means and refers to those certain Subdivision Maps filed in Office of the County Recorder of Deschutes County.

1.11 "Owner" means the person or persons including Declarant, owning any Lot in the Real Property, but does not include a tenant or a person holding only a security interest in a Lot. The term "Owner" shall include a buyer under an executory contract of sale.

1.12 "Party Fence" shall mean and refer to any wall or fence that is located on or at the Lot line between adjoining Lots, and used or intended to be used by the Owners of the adjoining Lots in the segregation of their respective Improvements on their respective Lots. For purposes of this Declaration, any walls or fences located on or at the Lot line between Lots shall be treated as Party Fences.

1.13 "Project" shall mean and refer to the development of the Real Property described in Exhibit "A" attached hereto.

1.14 "Real Property" shall mean and refer to that certain real property located in the County of Deschutes, Oregon, more particularly described in Exhibit "A" attached thereto and by this reference incorporated herein.

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 that certain real property described on Exhibit "A" attached hereto, located in Deschutes County, Oregon, and also described in those certain plats entitled "Whitehorse Phase 1" and "Whitehorse Phases 2, 3, 4 and 5" filed in the plat records of Deschutes County, Oregon; as to Phase 1 on the 23rd day of December, 1997 in Plat Book 10, Page 42; and as to Phases 2, 3, 4 and 5 on the ---- day of -----, 1998, in Plat Book ----, Page(s) ----, Deschutes County Records, State of Oregon.

2.2 ANNEXATION OF ADDITIONAL PROPERTY. Declarant may from time to time and in its sole discretion annex to this Declaration any adjacent real estate now or hereafter acquired by it. Such real estate shall be made subject to this Declaration by recording an amendment to this Declaration.

ARTICLE 3 CONSTRUCTION STANDARDS

3.1 FENCES & WALLS. Any fence or wall constructed in any setback area on a Lot shall be no higher than six feet. Under no circumstance shall any chain-link or barbed wire fence be erected, except for security purposes in connection with construction or reconstruction of a Dwelling. All fences shall be maintained in good condition and repair. The foregoing restriction, however, shall not apply to any fencing installed by Declarant.

3.2 REASONABLE CONSTRUCTION TIME FRAME. All construction work performed on a Lot shall be prosecuted diligently and continually from the time of commencement of construction until the same shall be fully completed, excepting therefrom causes beyond the control of the Lot Owner, such as strikes, acts of God, etc. The Owner of a

Lot where an Improvement has been damaged or destroyed by fire or other calamity shall cause such Improvement to be repaired or restored within a reasonable time, commencing within four months after the damage occurs and be completed within one year thereafter, unless prevented by causes beyond Owner's control. This obligation shall not extend to the installation of furniture or the like, but shall be for the purpose of preventing unsightliness caused by such damage or destruction and any resultant health or safety problems to other Owners or occupants within the Real Property.

3.3 CONSTRUCTION GUIDELINES. Builders, contractors and subcontractors shall adhere to these covenants and construction regulations set forth in this Declaration and as further developed by the Architectural Review Committee. Builders shall review these regulations prior to beginning construction. The Lot Owner whose contractors or subcontractors damage roadways or other amenities shall be required to repair the damages at the Lot Owner's expense. Contractors and builders shall acknowledge receipt of these regulations by signing and returning one copy to the Architectural Review Committee prior to beginning construction activity.

3.4 PLAN AND EXTERIOR COLOR APPROVAL. Complete plans or adequate sketches, specifications and exterior color selection must be submitted to the Architectural Review Committee for approval prior to the start of construction. Any change in exterior color is subject to the prior approval of the Architectural Review Committee.

3.5 NON-INTERFERENCE WITH CONSTRUCTION EFFORT. Declarant is undertaking the work of construction of Lots and Dwellings thereon and incidental improvements in the Project. The completion of that work and the sale, rental and other disposition of the Lots and the Dwellings thereon is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in the Declaration shall be understood or construed to prevent Declarant, its contractors or subcontractors:

(a) From doing in the Project whatever is reasonably necessary or advisable in connection with the completion of said work:

(b) From erecting, constructing and maintaining on any part or parts of the Project such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same in parcels by sale, lease or otherwise;

(c) From conducting on any part of the Project its business of completing said work, and or establishing a plan of Residential a plan of Lot ownership and of disposing of the Lots by sale, lease or otherwise; or

(d) From maintaining such sign or signs on any of the Lots or any portion of the Project as may be necessary

ARTICLE 4 USE RESTRICTIONS

4.1 STRUCTURES PERMITTED. No structures shall be erected or permitted to remain on any Lot except one single-family structure containing a Dwelling and structures normally accessory thereto. The foregoing provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool, tennis court, sport court, or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the applicable governmental regulations, is compatible in design and decoration with the Dwelling constructed on such Lot, and has been approved by the Architectural Review Committee.

4.2 BUSINESS OR COMMERCIAL ACTIVITY. No commercial business shall be permitted or conducted on any of the Lots. Owners may, however, without external evidence, (i) maintain their personal professional library, (ii) keep personal business or professional records, or (iii) handle his or her professional and personal business, calls or correspondence from a Lot. The foregoing notwithstanding, Declarant may use any of the Lots owned or leased by Declarant as model homes and sales offices during the period of time commencing when the Lots in the Project are first sold or offered for sale to the public and ending when all such Lots are sold and conveyed by Declarant to separate owners thereof.

4.3 LEASE OF DWELLING. Each Owner shall have the right to lease his Dwelling, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to comply with the provisions of this Declaration, and the failure to comply with the provisions of this Declaration shall be a default under the lease.

4.4 EXTERIOR LIGHTING. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to unreasonably disturb other occupants or other Lots.

4.5 OFFENSIVE OR UNLAWFUL ACTIVITIES. No noxious or offensive activities shall be carried on any Lot, nor shall anything be done or placed upon any Lot which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

4.6 SIGNS. No signs, placards, decals or other similar objects, visible from neighboring property or streets, shall be erected, or displayed on any Lot; provided however, the following

signs shall be permitted all of which shall conform with applicable local governmental ordinances:

- (a) Such signs as may be required by legal proceedings;
- (b) One sign of customary and reasonable dimensions, not exceeding 4 square feet in area, advertising the dwelling or Lot on which such signs is located "for sale" or "for rent";
- (c) One sign, staked in the yard not to exceed twelve square inches in size, advertising or noticing the existence of a security system for the Lot on which such sign is located, and any number of security system window signs not to exceed six square inches in size, each. No such security signs shall be attached to the outside of a Dwelling or fence;
- (d) Reasonable window dressing placed in observance of national or religious holidays;
- (e) During the time of construction of any Dwelling or other Improvement, job identifications signs having a maximum face area of six square feet per sign and of the type usually employed by architects, realtors, contractors, subcontractors, tradesman and lenders; and
- (f) An exception to all sign prohibitions shall be the addresses which must be incorporated onto the entrance of each Lot in accordance with applicable codes.

Anything contained in this Declaration to the contrary notwithstanding, until all of the Lots for sale in the Project by Declarant have been sold, Declarant shall have the right to install and maintain such signs, poles and advertisements as it deems appropriate in connection with its sales, financing, or construction program for the sale to the public of the Lots.

4.7 ANTENNAS, SATELLITE DISHES, ETC. No "Citizens Band" (C.B.), "ham" radio, microwave transmission antennas or other similar electronic receiving or broadcasting devices shall be installed or maintained on a Lot unless the same are fully concealed from the view of any person on a neighboring Lot or public right of way. A single satellite dish shall be permitted on a Lot, provided, however, that it must be ground mounted, may not exceed a height of five feet nor a diameter of two feet, and shall be of black, green or other inconspicuous color. In addition, landscaping shall be planted around the perimeter of the satellite dish of such type and variety that will grow to a height so to reasonably obscure the satellite dish of view from neighboring Lots and rights of way.

4.8 PETS; ANIMALS. An Owner may keep and maintain in his Dwelling domesticated pets such as dogs, cats or other usual and ordinary household pet, provided that they are not kept, maintained or bred for any commercial purposes. No other animals, horses, livestock, or poultry of any kind shall be raised, bred, kept or permitted within a Lot. The foregoing

notwithstanding, no pets may be kept on a Lot which result in an annoyance or are obnoxious to other Owners or occupants. Declarant or any Owner may cause any unleashed dog and or any other animal found within the Project to be removed by Declarant (or any Owner) to an animal shelter under the jurisdiction of the City of Redmond, or the County of Deschutes by calling the appropriate authorities, whereupon the Owner may upon payment of all expenses connected therewith, repossess the dog or other such animal. No dog whose barking unreasonably and regularly disturbs other Owners or occupants shall be permitted to remain on the Property. Owners shall prevent their pets from soiling all portions of the City Street areas where other persons customarily walk and shall promptly clean up any mess left by their pets.

4.9 VEHICLE RESTRICTIONS. Owners and occupants may keep and maintain such vehicles on their Lots as may be permitted in accordance with the codes, ordinances and statutes of the City. No vehicles shall be permitted to remain upon any front yard area of a Lot, except for paved areas leading to a garage, or within a paved parking area other than a driveway that is located adjacent to the Dwelling for any period in excess of four days. No Owner may engage in any vehicle restoration or maintenance work beyond any continuous period of forty-eight (48) hours, unless such work is performed within an enclosed garage. The foregoing shall not be deemed to prevent the washing or polishing of motor vehicles together with those activities normally incident to such activity. Anything herein to the contrary notwithstanding, trailers or temporary structures for use incidental to the actual construction or reconstruction of a Dwelling on a Residential Lot may be erected, but no such temporary structure shall remain on any Residential Lot for a longer period of time than is customarily required to construct like or similar Dwellings. Declarant, however, may maintain trailers or temporary structures within the Project which are incidental to the completion of the Project. No such trailer shall be used as a residence by any Owner during construction of a Dwelling.

4.10 GARAGES. Garages shall be used only for the purpose of parking automobiles and other vehicles and equipment and storing an owner's household goods; provided, however, that all such uses shall be accomplished so that garage doors can be closed. Garages shall not be converted into any use (such as a recreational room or for storage) that would prevent its use as a parking space for the number of vehicles the garage was designed to contain. Except for purposes of ingress or egress and other reasonable use related to the maintenance and repair of the Dwelling or landscaping, e.g. to remove tools for yard work, all garage doors shall remain closed.

4.11 PARKING. Parking of vehicles, other than cars, pickup trucks and similar passenger vehicles, including, but not limited to, campers, RVs, camp trailers, boats, motor homes and other types of transportation will not be allowed on any Lot or on the public street for any period in excess of thirty (30) days and only on an occasional basis, unless kept thirty feet (30') from the front lot line of the Owner's Lot. Regardless, said vehicles shall be parked in such a way as to be inconspicuous and not offensive to other Owners. Parking for this type of recreational vehicle shall be submitted by plan which shall have been reviewed and approved by the Architectural Review Committee.

4.12 VEHICLES IN DISREPAIR. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on any street for a period in excess of seven (7) days. A vehicle shall be deemed in an "extreme state of disrepair" when the Architectural Review Committee reasonably determines that its presence offends the occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him by the Committee, the Committee may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

4.13 OWNER'S RESPONSIBILITY FOR MAINTENANCE. Each Owner shall, at an Owner's sole cost and expense, maintain and repair in good condition an Owner's Lot and any Improvements thereon. Maintenance shall, at a minimum, include irrigation of the landscaping, repair and replacement of plant materials and irrigation systems as necessary, and general cleanup of the landscaped areas including all landscaping and improvements thereon and all slope banks comprising property adjacent to any private road or drive where such adjoins each Owner's Lot, regular painting to the exterior surfaces of the Dwelling, and maintenance and replacement of the roofing. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on an Owner's Lot neatly trimmed, property cultivated, and free of trash, weeds and other unsightly material. The cost of maintenance and repair of any shared fence with another Lot shall be shared by the respective Lot Owners. "Maintenance" shall include, without limitation, the painting, weather-proofing and cleaning of the items set forth above to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Lot and Dwelling and to protect the values of the entire Property. The standards of such maintenance shall be, at a minimum, in conformance with maintenance standards for similar Dwellings in the area. No rubbish or debris of any kind shall be placed or permitted by an Owner to accumulate upon or adjacent to any Lot, or slope, so as to render a Lot or portion thereof unsanitary, unsightly, offensive or detrimental to other residents of the Real Property.

4.14 WINDOWS. No window shall ever be covered with foil. However, non-reflective solar films are permitted.

4.15 GARBAGE AND REFUSE DISPOSAL. All rubbish, trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall be kept in sanitary containers designed for such purpose. All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, trash bins or cans shall be kept screened and concealed from the view of other Lots and from the streets. Owners are encouraged to contract with the local refuse removal company for routine garbage disposal.

4.16 OFFENSIVE ACTIVITIES AND CONDITIONS. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements as may be permitted by law. No Lot or Dwelling shall be used in such manner as to obstruct or

interfere with the enjoyment or occupants of other such areas, nor shall any illegal activity be committed or permitted to occur on any Lot.

ARTICLE 5 ARCHITECTURAL REVIEW

5.1 ARCHITECTURAL REVIEW REQUIRED. No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement has been submitted to and approved in writing by the Architectural Review Committee. The Architectural Review Committee may elect to assess a reasonable fee for its review and approval of any proposed plans. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations. The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. In all cases in which the Architectural Review Committee consent is required by this Declaration, the provisions of this Article shall apply.

5.2 COMMITTEE DECISION. The Architectural Review Committee shall render its decision with respect to any construction proposal within ten (10) days after it has received all material required by it with respect to the application.

5.3 COMMITTEE DISCRETION. The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for the Real Property. Considerations such as siting, shape, size, color, design, height, solar access, impairment of the view from other Lots, or other effect on the enjoyment of other Lots, disturbance of existing terrain and vegetation and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work.

5.4 APPOINTMENT AND REMOVAL. The Architectural Review Committee shall consist of one or more persons as the Declarant may from time to time appoint. The Declarant may remove a member from office at any time and may appoint a new member at any time. The Declarant shall keep on file at its principal office the name and address of the Committee members. Declarant may at any time delegate the right to appoint or remove the Committee members to the Lot Owners. If Declarant so delegates such authority, then the Lot Owners shall conduct an annual election on the first Tuesday of January of each calendar year and elect the Architectural Review Committee, which shall consist of not less than three (3) members nor more than seven (7) members. Members shall be elected by majority vote of those Owners who participates in the election. Following Declarant's turnover, the Owners may establish such

terms of office, but not to exceed three (3) years for any member, as they may desire. A member may be elected for multiple terms.

5.5 LIABILITY. The Architectural Review Committee shall not be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee, provided only that the Committee has, in accordance with the actual knowledge possessed by it, acted in good faith.

5.6 NONWAIVER. Consent by the Architectural Review Committee to any matter proposed to the Committee or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing the Committee's right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent

5.7 APPEAL. After Declarant has delegated appointment of the Architectural Review Committee, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Declarant so long as Declarant owns a Lot. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Declarant within fifteen (15) working days after receipt of such notification. After Declarant no longer owns a Lot in the Real Property or any other real estate annexed and made subject to this Declaration, the Owners may elect to establish a procedure for any appeal, or the Owners may determine that all decisions of the Architectural Review Committee are final and binding.

5.8 EFFECTIVE PERIOD OF CONSENT. The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Committee.

5.9 ESTOPPEL CERTIFICATE. Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee, unless waived by the Committee, of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, and all Owners, and such purchaser or mortgagee.

5.10 EXEMPTION. Any actions of Declarant shall be exempt from the provisions of this Article 5 in connection with Declarant's development of the Project or the construction of any

Dwellings or fences on any Lots. The planting of any shrubs, flowers or other plants (excepting trees) by any Owner within an enclosed courtyard or fenced area on such Owner's Lot shall also be exempt from review by Architectural Review Committee as required under this Article 5.

ARTICLE 6 COMMON FENCES

6.1 GENERAL. Each of the adjoining Owners of a Common Fence shall assume the burdens and be entitled to the benefits of this Declaration. To the extent not inconsistent with this Article, the general rules of law regarding Common Fences and liability for property damage due to negligence or willful acts or omissions shall be applied thereto.

6.2 DAMAGE BY ONE OWNER. In the event any such Common Fence is damaged or destroyed through the act of one adjoining Owner or any of his agents, guests, invitees, tenants or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive any person of the full use and enjoyment of such Common Fence, then such Owner shall forthwith proceed to rebuild and repair the same to as good a condition as formerly existed, without cost to the other adjoining Owner. The Common Fence to be replaced shall be similar to the one originally installed by Declarant.

6.3 SHARING OF MAINTENANCE. The cost of reasonable maintenance of a Common Fence shall be shared by the Owners who make use of the Common Fence in proportion to such use.

6.4 DAMAGE BY OTHER CAUSE. In the event any Common Fence is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining Owners, his tenants, guests or family, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed, at their joint expense.

6.5 ALTERATIONS. In addition to meeting the other requirements of this Declaration and of any building code or similar regulation or ordinance, any Owners proposing to modify, make additions to or rebuild his Dwelling in any manner which requires the extension or other alteration of any Common Fence shall first obtain the written consent of the adjoining Owner. In addition, so long as the Declarant owns any Lot within the Project, the Owner shall first obtain Declarant's written approval of the proposed alteration. The Owner shall provide the Declarant with three copies of a drawing showing the proposed alteration to the Dwelling and the Common Fence. Declarant shall have thirty days within which to provide written notification of approval or disapproval of the alteration. If written notification is not provided within that time frame, the Owner shall be free to construct the alteration as proposed.

6.6 WEATHERPROOFING. Any other provisions of this Article 6 notwithstanding, any Owner, who by his negligent or willful act causes the Common Fence to be unusually exposed to the elements shall bear the whole cost of replacement of that portion so exposed.

6.7 ARBITRATION. In the event of a dispute between Owners with respect to the Common Fence, or under the provisions of this Article, the matter shall be submitted to arbitration under the rules of the Arbitration Services of Portland, Inc., or the arbitration rules of the Circuit Court in Deschutes County, whichever organization is selected by the party initiating the arbitration.

ARTICLE 7 EASEMENTS

7.1 DECLARANT'S EASEMENTS. Easements over and under the Project for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, cable or master television antenna lines, drainage facilities, walkways, roads, curbs, gutters and such other facilities as may be shown on the map, and as may be hereafter required or needed to service, improve and construct the Project, are hereby reserved by Declarant and its successors and assigns, together with the right to grant and transfer the same, as the Declarant, at any time, may determine in Declarant's sole and absolute discretion. The foregoing notwithstanding, there is hereby reserved to Declarant, or its duly authorized agents and representative, such easements as are necessary to perform the rights, duties and obligations of Declarant as set forth in the Declaration.

7.2 DRAINAGE & SLOPES; LANDSCAPED AREAS. There shall be no interference with or obstruction of the established surface drainage pattern over any Lot within the Project, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Declarant and the Engineering Department of the City. Any alteration of the established drainage patterns must at all times comply with all applicable government ordinances, regulations and statutes. Each Owner shall maintain, repair, replace, and keep free from debris or obstructions at all times the drainage system, if any, located on an Owner's Lot. Water from any Lot may drain into an adjacent street but shall not drain onto adjacent Lots unless an easement for such purposes is granted either by (i) this Declaration; (ii) by the subdivision map for the Real Property, or (iii) by other grant of easement in a separate written instrument. Declarant hereby reserves for itself and its successive owners, over all areas of the Project, easements for drainage from slope areas and drainage ways constructed by Declarant.

7.3 UTILITY EASEMENTS. Each Owner agrees, by acceptance of a deed to a Lot, that the Owner's Lot is subject to an easement for utility installations, maintenance and repairs. Whenever utility facilities installed within the Project, or any portion thereof, lie in or upon a Lot owned by other than the Owner of a Lot served by said utility facilities, the Owners or any Lots served by such utility facilities shall have the right of reasonable access for themselves or for the

utility companies, the City, or the County of Deschutes County to repair, replace and generally maintain the utility facilities as and when the same may be necessary.

ARTICLE 8 ENFORCEMENT

8.1 NONQUALIFYING IMPROVEMENTS AND 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 causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated, then the Architectural Review Committee shall notify the Owner in writing of any specific violations of this Declaration and shall require the Owner to remedy or abate the same. If the Owner is unable, unwilling or refuses to comply with the Committee's specific directives for remedy or abatement, or the Owner and the Committee cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Committee 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 Committee may assess such Owner for the entire cost of the work done, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings, or

(b) Bring suit or action against the Owner on behalf of the Committee and other Owners to enforce this Declaration.

8.2 NONEXCLUSIVENESS AND ACCUMULATION OF REMEDIES. An election by the Committee 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 this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Committee. In addition, any aggrieved Owner may bring an action against another Owner or the Committee to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

ARTICLE 9 GENERAL PROVISIONS

9.1 GOVERNING LAW. This Declaration shall be governed by and construed under the laws of the City of Redmond, State of Oregon and the County of Deschutes.

9.2 AMENDMENT AND REPEAL. This Declaration, or any provision hereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed as to all or any portion of the Real Property by the vote or written consent of Owners in Whitehorse, Phases 1 through 5, who comprise 75% of the ownership of the Lots of the duly recorded plats of both Phases and any subsequent parcels of real estate that are made subject to this Declaration by Declarant. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the Declarant or his assigns setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration.

The Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Real Property and sale of Lots. No such amendment shall require notice to or approval by any other Owner.

9.3 DURATION. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property include within the Real Property and any annexations and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of 75% of Owners in the Real Property. Any such termination shall become effective only if a certificate of the Declarant or its assigns, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed of Records of Deschutes County, Oregon, not less than four (4) months prior to the intended termination date.

9.4 BINDING ARBITRATION OF DISPUTES AGAINST DECLARANT. Except as expressly provided herein or by law, any dispute, controversy or claim by any owner(s), (collectively "Claim") against Declarant, its successors, assigns, agents or brokers, and/or any contractor, subcontractor, architect, materialman, or other person or entity involved in the planning, development or construction of the Project or any component part thereof, shall be handled as follows:

(a) The Owner or Owners, as the case may be, shall deliver written notice of the nature of such Claim to Declarant and any other involved person or entity within one (1) year of becoming aware of the existence of such Claim, or the facts giving rise to such Claim.

(b) If Declarant or another involved party requests, within one hundred twenty (120) days of the date of receipt of such written notice of a Claim, it shall be provided with access to the Property and a reasonable opportunity and time period to cure or otherwise resolve such Claim.

(c) Any such Claim, if not otherwise resolved, shall be submitted to and settled by binding arbitration in accordance with the rules of the Arbitration Service of Portland, Inc., or the circuit court for Deschutes County, whichever organization is first selected. Such arbitration shall constitute the sole and exclusive remedy for the resolution of any such Claim.

9.5 ARBITRATION PROCEDURES AND RULES. Any arbitration instituted pursuant to this Declaration shall be conducted in accordance with one of the two organizations specified in Section 9.4, and judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The decision of the arbitrator, including the determination of the amount of any damages suffered, if any, shall be conclusive, final and binding upon all the parties, their heirs, executors, administrators, successors, assigns, officers, directors and shareholders, as applicable. On the demand of the arbitrator or any party to an arbitration initiated as provided herein, and after reasonable opportunity to join in and become a party to such arbitration, all of the parties to such arbitration and such concerned parties shall be bound by such arbitration proceeding. If any party refuses or neglects to appear at or participate in such arbitration proceeding, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented by the party or parties who do participate. The arbitrator is authorized to award any party or parties such sums as it considers proper for the time, expense and trouble of arbitration, including arbitrator fees and attorney's fees. An arbitrator may also grant injunctive relief to enforce the terms and conditions of this Declaration.

Notwithstanding anything contained in this Declaration to the contrary, for a period of five years from the date of conveyance by Declarant of the last Lot in the Project to a purchaser, amendment of the Section of this Declaration entitled "Binding Arbitration," shall require the written approval of the Declarant.

9.6 EXCEPTIONS TO ARBITRATION. Notwithstanding anything contained in this Article to the contrary, the filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction or other provisional remedies shall not constitute a waiver of the right to arbitrate under this Article.

9.7 OWNER CLAIMS. In any arbitration of a dispute, controversy or claim by an owner or owners against Declarant, its successors and assigns, and/or any contractor, subcontractor, architect, materialman, consultant, or other person or entity involved in the planning,

development or construction of the Project or any component part thereof, pertaining to the planning, development or construction of the Project or any component part thereof, not less than ninety percent (90%) of the amount actually awarded, if any, as a result of such arbitration must be utilized by the owner or Owners, solely and exclusively, for the construction, reconstruction, repair or replacement of such owner or Owners' property. In such proceeding, there shall be no award in excess of the total costs of such repair, improvement or replacement, save the prevailing party's attorneys fees and costs of suit.

9.8 JOINT OWNERS. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Declarant or his assigns, and the vote or right of consent involved, shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

9.9 NONWAIVER/ENFORCEMENT OF ATTORNEY FEES. Other than a claim against Declarant, the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by any Owner (including Declarant) or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court.

9.10 CONSTRUCTION; SEVERABILITY; NUMBER; CAPTIONS. 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 herein, 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.

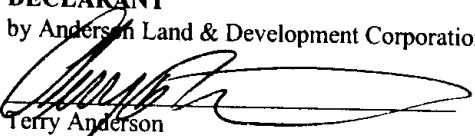
9.11 NOTICE AND OTHER DOCUMENTS. Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail

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: Anderson Land and Development Corporation, 19300 Stafford Road, Lake Oswego, Oregon 97034-7679; if to an Owner at the address given by him at the time of his purchase of a Lot, or at his Lot. The address of a party may be changed by him at any time by notice in writing delivered as provided herein.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on June 24, 1998.

DECLARANT

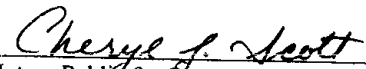
by Anderson Land & Development Corporation


Terry Anderson
President

STATE OF OREGON)
) ss.
County of Deschutes)

On this 24 day of June, 1998, personally appeared Terry Anderson, as President of Anderson Land & Development Corporation.




Notary Public for Oregon
My Commission Expires: 6-9-2001

694\001\whitehor.ccr(dt)


STATE OF OREGON)
COUNTY OF DESCHUTES) ss.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND
RECORDER OF CONVEYANCES, IN AND FOR SAID
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN
INSTRUMENT WAS RECORDED THIS DAY:

98 JUN 30 PM 2:51

MARY SUE PENHOLLOW
COUNTY CLERK

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BY:  DEPUTY
NO. 98-28310 FEE 85
DESCHUTES COUNTY OFFICIAL RECORDS