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88-21929

COVENANTS, CONDITIONS AND RESTRICTIONS

For

WYNDEMERE - A PLANNED COMMUNITY

THIS DECLARATION made this 22nd day of September, 1988, by WYNDEMERE DEVELOPMENT COMPANY, an Oregon corporation (Declarant), is as follows:

RECITALS:

A. Declarant is owner of certain real property located in the City of Bend, County of Deschutes, more particularly described on Exhibit A attached hereto, and made a part hereof, which shall be the subdivision encumbered pursuant to the provisions of this declaration.

B. Declarant may acquire additional real property (annexable property) located adjacent. Said property may be annexed to the regime of this Declaration, and thereby become a part of the Wyndemere Planned Community.

C. Declarant is obligated to construct roadways and to provide utilities upon a portion of the Common Property, and does not choose to limit its right to add additional improvements.

D. Declarant intends and does hereby establish for its' own benefit, and for the future owners or occupants of the subdivision and any subsequently annexed lands (collectively the property) and each part thereof, certain easements and rights in, over, and upon the property, and certain mutually beneficial covenants, conditions, restrictions and obligations, with respect to the proper use, conduct, and maintenance thereof.

E. Declarant intends that any party having an interest in the property shall at all times enjoy the benefits of and shall hold, sell, and convey their interest subject to the rights, easements, covenants, conditions, restrictions, and obligations herein set forth. These covenants have been created to further a general plan to promote and protect the cooperative aspect of this development, and to enhance and protect its' value, desirability, and attractiveness.

DECLARATIONS

NOW, THEREFORE, Declarant as owner of the Subdivision, and any subsequently annexed lands, as and when annexed, and each part thereof, shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall constitute equitable servitudes on the Property, and which shall run with said Property and be binding on and inure to the benefit of all parties having any right, title or interest therein, or in any part thereof, their heirs, successors and assigns.

ARTICLE 1

DEFINITIONS

As used herein, unless otherwise specified or unless the context otherwise requires:

1.1 "Annexable Property" means any properties which may be added in future.

1.2 "Articles" means the Articles of Incorporation of Wyndemere Association, as such Articles may be amended from time to time.

1.3 "Assessable Lot" means a Homosite approved or to be approved as a building site for a single family detached unit which is subject to assessments by the Wyndemere Association and to which the right to vote has attached.

1.4 "Assessment" means collectively, the Annual Assessments, Special Assessments, Emergency Assessments, Remedial Assessments, and Property Tax Assessments, as each such term is defined in Article III of this Declaration.

1.5 "Board" means the Board of Directors of the Wyndemere Association.

1.6 "Budget" means a pro forma operating statement of the Association which sets forth its estimated annual income and expenses.

1.7 "Building" means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels and located on a lot, and forming a part of such lot.

1.8 "Bylaws" means the Bylaws of the Association as such Bylaws may be amended from time to time.

1.9 "Conceptual Plan of Development" means that conceptual plan identified in Recital C.

1.10 "Conversion Date" means the date on which Class B Membership of the Association is converted to Class A Membership as provided in Article II.

1.11 "County" means the County of Deschutes, State of Oregon.

1.12 "Declarant" means Wyndemere Development Co., and Oregon corporation, together with its successors and assigns, if any successors and assigns should acquire any portion of the Property from Declarant for the purpose of development and are designated by Declarant as an assignee for the purpose hereof by a duly recorded instrument.

1.13 "Declaration" means this instrument by which the Property is established to be a planned community, as amended from time to time.

1.14 "Director" means a member of the Board of Directors of the Wyndemere Association.

1.15 "Dwelling" means any Building or portion thereof which is used as a private residence or sleeping place of one

of more human beings, but not including clubhouses or recreational buildings intended and designed primarily for recreational use.

1.16 "Lot" means each lot or parcel of real property as shown with a distinct number or letter on a map or plat of the Property, and which is designated as a site for construction of a single family detached Dwelling Unit. The Property currently contains 75 Lots. There shall be no limitation on the number of Lots that Declarant may create or annex to the Property after the date of this Declaration.

1.17 "Association" means Wyndemere Association, an Oregon non-profit corporation.

1.18 "Common Property" means (i) the property described in the attached Exhibit B and (ii) any lot, parcel, or easement conveyed to or reserved for the benefit of the Association after the date of this Declaration that is operated and/or maintained for the benefit of the Members, and all Improvements thereon, and personal property related to the use and enjoyment thereof. There shall be no limitation on Declarant's right to annex Common Property to the Project after the date of this Declaration.

1.19 "Association Policies and Procedures" means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority of Section 2.7 herein, as such Policies and Procedures may be amended from time to time.

1.20 "Project" means the First Subdivision as well as any subsequently annexed addition, as and when annexed to this Declaration, including all Improvements erected or to be erected thereon.

1.21 "First Subdivision" means all of the real property described as such in Recital A together with all Improvements thereon.

1.22 "Fiscal Year" means the one-year period commencing on the first day of January of each year which shall be the fiscal year of the Wyndemere Association; provided, however, that the first Fiscal Year shall be the partial one-year period commencing on the Starting Date and ending on December 31, 1987; provided further, that the Fiscal year shall be subject to change by amendment to the Bylaws.

1.23 "Improvements" means buildings, garages, carports, streets, roads, driveways, walkways, parking areas, fences, wells, reservoirs, porches, elevated porches, hedges, plantings, planted trees and shrubs, pools, tennis courts, recreational amenities, and all other structures or landscaping of every kind, nature or description. Declarant does not chose to limit its right to add improvements not described in this Declaration.

1.24 "Initial Commencement Date" means the first day of the first month following recordation of the deed for the sale of the first homesite to a Non-Declarant Owner.

1.25 "Lien" means either a voluntary or involuntary

lien.

1.26 "Lot" means each lot or parcel of real property as shown with a distinct number or letter on a map or plat of the Property or any portion thereof which may be legally conveyed, including all parcels owned by the Association, whether designated as roadways, wells, restricted use areas, or otherwise.

1.27 "Majority of Owners" means (a) prior to the Conversion Date, (i) the vote or written assent of a Majority of Non-Declarant Owners and (ii) the consent of the Declarant; and (b) from and after the Conversion Date, (i) the vote or written assent of Owners entitled to vote or so assent, and who collectively are entitled to exercise more than 50% of all votes which may be exercised by such Owners, and (ii) the vote or written assent of a Majority of Non-Declarant Owners.

1.28 "Majority of Non-Declarant Owners" means the vote or written assent of Non-Declarant Owners entitled to vote or so assent and who collectively are entitled to exercise more than 50% of all votes which may be exercised by such Non-Declarant Owners.

1.29 "Manager" means that person or entity employed from time to time by the Board to manage the affairs of the Association.

1.30 "Member" means every person or entity who holds membership in the Association.

1.31 "Mortgage" means a mortgage or deed of trust.

1.32 "Mortgagee" means the beneficiary of a recorded deed of trust or the holder of a recorded mortgage.

1.33 "Non-Declarant Owners" means all Owners other than Declarant.

1.34 "Organization Meeting" means that organization meeting of the Association pursuant to Article V, Section 2 of the Bylaws.

1.35 "Owner" means the person or persons, including Declarant, whose estates or interests, individually or collectively, aggregate fee simple ownership of a Homesite, but excluding those having an interest merely as security for the performance of an obligation. Owner includes contract purchaser and lessees of a term in excess of five years, but excludes the holders of title subject to such contracts or leases.

1.36 "Property" means all of the First Subdivision and such portion of the Annexable Property as may, at any time, have been annexed hereto as provided in Article VIII.

1.37 "Reserve Expenses" means the specific capital expenditures required to be made at any time, and from time to time to provide for the repair, replacement or restoration of the Common Property, and for such other purposes as prudent business practice requires.

1.38 "Shall" is mandatory and not merely directory.

1.39 "State" means the State of Oregon.

1.40 "Starting Date" means the date on which the first deed conveying any Homesite to a Non-Declarant Owner is recorded.

1.41 "Supplemental Declaration" means any declaration or similar document which may have been recorded with respect to any portion of the Annexable Property annexing such property to the regime of this Declaration as permitted by Article VIII.

1.42 "Super-Majority of Owners" means (a) prior to the Conversion Date, (i) the vote or written assent of Non-Declarant Owners entitled to vote or so assent and who collectively are entitled to exercise more than 75% of votes which may be exercised by such Non-Declarant Owners and (ii) the consent of the Declarant; and (b) from and after the Conversion Date (i) the vote or written assent of Owners entitled to vote or so assent, and who collectively are entitled to exercise more than 75% of votes which may be exercised all by such Owners, and (ii) the vote or written assent of Non-Declarant Owners entitled to vote or so assent, and who collectively are entitled to exercise more than 75% of votes which may be exercised by such Non-Declarant Owners.

1.43 "Tumalo" means the Tumalo Irrigation District, an Oregon Irrigation district.

1.44 "Tumalo Agreement" means that certain Agreement entered into between Declarant and Tumalo dated September 14, 1988, pursuant to which Tumalo granted to Declarant a street easement and sewer facilities easement.

ARTICLE II

WYNDEMERE ASSOCIATION

2.1 ORGANIZATION.

The Wyndemere Association is an Oregon non-profit corporation, which corporation shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Common Property and all other property it is required or permitted to maintain pursuant to this Declaration, and shall have the duties and powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail.

2.2 MEMBERSHIP:

(A) Qualifications:

Each Owner of an Assessable Homesite, including

Declarant, but excluding persons or entities who hold an interest merely as security for the performance of an obligation, shall automatically, upon becoming an Owner, shall become a Member of the Association and shall remain a Member until such Owner ceases to own such Assessable Homesite.

(B) **Membership Rights and Duties:**

Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Association Policies and Procedures, as said documents may be amended from time to time.

(C) **Transfer of Membership:**

The Association membership of each Member (including Declarant) shall be appurtenant to the Assessable Homesite giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Assessable Homesite, and then only to the transferee of title. Any attempt to make a prohibited transfer shall be void. Any such transfer of title shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

2.3 VOTING:

(A) **Number of Votes:**

The Association shall have two classes of voting membership:

Class A. Until the conversion of the Class B membership to Class A, as provided herein, Class A Members shall be all Owners of Assessable Homesite other than Declarant, and shall be entitled to one vote for each Assessable Homesite owned. Subsequent to the conversion of Class B membership, Class A Members shall be all Owners of Assessable Homesites. When more than one person is the Owner of an Assessable Homesite, all such persons shall be Members. The vote for such Assessable Homesite shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one such Assessable Homesite.

Class B. The Class B Member shall be Declarant, who shall be entitled to three (3) votes for each Assessable Homesite owned. Class B Membership shall cease and be converted to Class A Membership on the happening of the earlier of the following events:

- (i) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership.
- (ii) Three years from most recent Subdivision approval if done in phases.
- (iii) Ten (10) years from the starting date.

(B) Joint Owner Disputes:

The vote for each Assessable Homesite must be cast as a unit, and fractional votes shall not be allowed. In the event that the joint Owners are unable to agree among themselves as to how their one vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing an Assessable Homesite, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Assessable Homesite. In the event more than one vote is cast with respect thereto, none of said votes shall be counted and said votes shall be deemed void.

(C) Approval of Actions of the Association:

Unless specifically provided herein, any action by the Association which, pursuant to this Declaration, requires the approval of the Association membership before being undertaken shall require the vote or written consent of the Members as is set forth in the Bylaws.

(D) Special Procedure for Directors:

Prior to the organization meeting as required pursuant to Article V, Section 1 of the Bylaws, and thereafter until their successors are elected, the incorporator of the Association or the first directors appointed by the incorporator shall serve as Directors of the Association. To assure Non-Declarant Owners representation on the Board, beginning at the organization meeting of the Association, at least one of the Directors on the Board shall be elected solely by the vote of a simple majority of the voting Non-Declarant Members as provided in the Bylaws. Notwithstanding any other provisions of this Declaration, a Director who has been elected to office solely by the vote of Non-Declarant Owners may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in Class A Members other than Declarant.

(E) Commencement of Voting Rights.

Except for Declarant, voting rights attributable to any Assessable Homesites shall not commence until assessments pursuant to this Declaration and have been levied with respect thereto.

2.4 DUTIES OF THE ASSOCIATION:

In addition to the powers delegated to it by its Articles, and without limiting the generality thereof, the Association shall have the obligation to perform each of the following duties through the Board:

(A) Accept Conveyances:

To accept conveyances from Declarant or its designated assignee, of real property designated by the grantor to be owned and maintained by the Association for the benefit of all the Members. Common Property within the boundaries of the First Subdivision shall be conveyed by Declarant to the Association no later than the time of recordation of the deed to the first Homesite conveyed to a Non-Declarant grantee.

(B) Maintenance and Management of Common Property:

(i) To maintain in a safe condition, manage, operate and preserve the Common Property and all Improvements presently or hereafter located thereon and thereunder, and any other property as the Members by a vote of at least a Majority of Owners elect to maintain.

(C) Insurance:

To obtain and maintain in force insurance of adequate and necessary nature. The Board shall review the insurance coverage of the Association not less than once every two years.

(D) Rule Making:

To make, establish, promulgate, amend and repeal the Association Policies and Procedures.

(E) Architectural Committee:

To appoint and remove members of the Architectural Committee, all subject to the provisions of this Declaration.

(F) Taxes and Assessments:

To pay all taxes and assessments which are or could become a lien on the Common Property.

(G) Enforcement by Association:

To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the Oregon Planned Community Act, any of the provisions of this Declaration, and the Association Policies and Procedures.

(H) Budgets and Financial Statements:

To cause financial statements for the Association to be regularly prepared, and to furnish copies of both of the foregoing to each Member as follows:

(i) A pro forma operating statement (budget) for each Fiscal Year shall be distributed not less than 45 days before the beginning of the Fiscal Year of the Association to which such budget applies. The budget shall contain at least the following information:

(a) Estimated revenue and expenses on an accrual basis;

(b) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities

land for contingencies;

(c) An itemized estimate of the remaining life of and the methods of funding to defray the costs of repair, replacement or additions to major components of the Common Property and Improvements thereon for which the Association is responsible;

(d) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves for capital improvements to the Common Property for which the Association is responsible.

(ii) An annual report for the Association consisting of the following shall be distributed within 90 days after the close of the Fiscal Year.

(a) A balance sheet as of the end of the Fiscal Year.

(b) An operating (income) statement for the Fiscal Year.

(c) A statement of the net changes in financial position for the Fiscal Year.

(I) Dissemination of Other Information.

To distribute to all Owners the following additional information:

(i) Within 60 days after the date of any meeting of the Board, minutes of such meeting;

(ii) Not less than 30 days prior to the date of the annual meeting of the Members of the Association a list of the orders of business to be considered at such meeting, including the name, address and a brief biographical sketch, if available, of each member of the Association who has announced his intention to stand for election to the Board;

(iii) Within 60 days prior to the beginning of the Fiscal Year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of any amounts due to the Association, including without limitation the recording and foreclosing of liens against Members' interest in the Property.

(J) Transitional and Turnover Duties.

To form a transitional advisory committee in order to provide for the transition from administrative responsibility by the Declarant to administrative responsibility by the Association. Such transitional advisory committee shall be formed within 60 days after Declarant has conveyed the Assessable Homesites representing 50% of the votes of the Members but not later than 30 days before the Organization Meeting. The advisory committee shall consist of three or more members, not more than one of whom shall have been selected by the Declarant. The remaining members shall be selected by the Owners. At a time which is the

earlier of the date of the Organization Meeting or 120 days after Assessable Homesites representing 75% of the votes of the Members have been conveyed by Declarant, the Association shall accept administrative responsibility for the Property. At such time, Declarant shall deed to the Association the Common Property. If Declarant has not completed development of all Lots in the Project at the time of turning over administrative responsibility to the Association, Declarant shall be entitled to continue exercising the rights reserved to it under this Declaration until such time as all Lots in the Project have been developed.

2.5 POWERS AND AUTHORITY OF WYNDEMERE ASSOCIATION:

The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Oregon, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, or this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association by this Declaration, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation:

(A) Assessments:

To levy assessments against Assessable Homesites and to enforce payment of such assessments, all in accordance with the provisions of Article III hereof.

(B) Right of Entry and Enforcement:

To enter onto any Lot for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with, for the purpose of enforcing by peaceful means any of the provisions of this Declaration and the Association Policies and Procedures or for the purpose of maintaining or repairing any such area as required by this Declaration. Such entrance shall be after 24 hours prior written notice to the Owner, or such greater notice as may be required by any provision hereof; provided, however, that such entrance shall be permitted without any prior notice whatsoever in the event of an emergency. The Association shall also have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and the Association Policies and Procedures and to enforce, by mandatory injunction or otherwise, all of the provisions hereof. In addition, or as an alternative method of enforcing this Declaration and the

Association Policies and Procedures, the Board may impose monetary penalties, temporary suspensions of Members or other appropriate discipline for failure to comply with the provisions of this Declaration or the Association Policies and Procedures, provided that the procedures for notice and hearing satisfying the minimum requirements of law are given to the Member before a decision to impose discipline is reached.

(C) Employment of Agents:

To employ the services of any person or corporation as managers of the Association, or to hire employees of the Association to manage, conduct, and perform the business, obligations and duties of the Association, and enter into contracts for such purpose. Such agents shall have the right to ingress and egress over such portions of the Property as is necessary for the performance of such business, duties and obligations.

(D) Employment of Professional Advisors:

To employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreation experts, architects, planners, lawyers and accountants.

(E) Borrowing of Money:

To borrow and repay monies for the purpose of maintaining and improving the Common Property and to encumber the Common Property as security for the repayment of such borrowed money.

(F) Hold Title and Make Conveyances:

To acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Property.

(G) Services:

To contract for or otherwise provide for all services necessary or convenient to the management, maintenance and operation of the Common Property.

(H) Easements and Rights-of-Way:

To grant and convey to any third party or public or quasi-public agency or body easements and rights-of-way in, on, over or under any Common Property for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder (i) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting or communication, heating, power, security system, telephone, cable television, and other purposes, (ii) public or private sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and (iii) any similar public or quasi-public improvements or facilities.

(I) Transfer, Dedication and Encumbrance of the

Common Property:

To sell, transfer or encumber all or any portion of the Common Property to a person, firm or entity, whether public or private, and to dedicate to transfer all or any portion of the Common Property to any public agency, authority, or utility for public purposes. Except with respect to the granting of easements for public utilities or other public purposes, which shall not require a vote of the Members, no such sale, transfer, encumbrance or dedication shall be effective unless an instrument signed by the Secretary of the Association and approved by a Super-Majority of Owners or such greater percentage as may be required by law has been recorded, agreeing to such sale, transfer, encumbrance or dedication, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance; provided, however, no such approval shall be required for any exchange of property with any state or federal government, board, or agency so long as the acreage received by the Association in said exchange is consistent with the development of the Planned Community and the land received is comparable (but not necessarily equal) to the acreage deeded away.

2.6 BOARD OF DIRECTORS**(A) General Powers:**

The business and affairs of the Association shall be managed by its Board; provided; however, that the Board shall not have the power to (i) amend this Declaration, (ii) terminate the Association, (iii) elect members of the Board, or (iv) determine the qualifications, powers, duties or terms of office of members of the Board.

(B) Meetings:

All meetings of the Board shall be open to all Owners and shall be called as follows:

(i) For other than emergency meetings, notice of Board meetings shall be posted at a place or places on the Property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform Owners of such meetings;

(ii) Emergency meetings may be held without notice provided that the reason for the emergency is stated in the minutes of the meeting; and

(iii) Only emergency meetings of the Board may be conducted by telephonic communication; all other Board meetings shall be held in person.

(C) Removal of Directors:

Any member of the Board, other than members appointed by Declarant, may be removed with or without

cause by a majority vote of all Owners present and entitled to vote at any meeting of the Owners at which a quorum is present; provided, however, that no removal of a Director shall be effective unless the matter of removal is an item on the agenda and stated in the notice of such Owners' meeting.

(D) **Mailing Address:**

The Board, in the name of the Association, shall maintain a current mailing address of the Association.

2.7 LIMITATIONS ON POWERS OF THE BOARD:

Notwithstanding the powers of the Association as set forth in Section 2.5, the Board shall not take any of the following actions without the prior vote or written consent of a Majority of Owners:

(A) **Contracts for Goods and Services.**

Enter into a contract with a third person or entity wherein such person or entity will furnish goods or services for the Common Property or the Association for a term longer than one year with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by law or regulation of a public or quasi-public agency or body; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(ii) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured.

(iii) A lease of furniture or equipment for the benefit of the Members.

(iv) A Management Agreement with respect to the operation of Common Properties for a term not to exceed three years; provided, however, that such agreement may be extended for additional one year periods by approval by the Board. Any agreements of the type specified in subparagraphs (i) through (iv) may be terminated without penalty if the board gives not less than 30 days written notice to the other party not later than 60 days after the turnover of administrative responsibilities by Declarant pursuant to Section 2.4 (J).

(B) **Expenditures for Improvements.**

Incur aggregate expenditures for capital improvements to the Common Property in any Fiscal Year in excess of 5% of the budgeted gross expenses of the Association for that Fiscal Year.

(C) **Compensation to Directors or Officers.**

Pay compensation to Directors or to officers of the

Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(D) **Sale of Common Property.**

Sell during any Fiscal Year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that Fiscal Year.

(E) **Vacancy on the Board.**

Fill any vacancy on the Board created by the removal or resignation of a Director, except as provided in the Bylaws.

2.8 THE WYNDEMERE ASSOCIATION POLICIES AND PROCEDURES:

By a majority vote of the Board, the Association may, from time to time, adopt, amend, and repeal such rules and regulations as it may deem reasonable.

2.9 PERSONAL LIABILITY:

No member of the Board, officer or agent of the Association, or member of the Architectural Committee, or Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Architectural Committee, the Manager or any other representative or employee of the Association or of Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.

ARTICLE III

ASSESSMENTS

3.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS:

All lots within the Planned Community shown on the conceptual plan of development shall be subject to the assessments set forth in Article III. In the event that additional lots are ultimately approved as sites for residential construction, all such lots shall be subject to the Association annual assessments.

3.2 PURPOSES OF ASSESSMENTS:

Assessments levied shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, the improvement, operation and maintenance of the Common

Property, and the performance of the duties of the Association as set forth in this Declaration.

3.3 OPERATING FUND:

There shall be an operating fund, into which the Association shall deposit all monies paid to it as:

- (A) Annual Assessments (except the portion designated as Reserves);
- (B) Special Assessments;
- (C) Emergency Assessments;
- (D) Remedial Assessments;
- (E) Miscellaneous fees;
- (F) Income attributable to the operating fund; and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

3.4 ASSESSMENT ROLL AND ASSESSMENT ALLOCATION:

(A) Record Keeping.

An assessment roll shall be accurately maintained and available in the office of the Association for inspection at all reasonable times by any Owner or his duly authorized representative. Said assessment roll shall indicate for each Assessable Homesite the name and address of the Owner thereof, all assessments levied against each Owner and his property, and the amount of said assessments paid and unpaid.

(B) Apportionment of Assessments.

The total Annual Assessment and any Special or Emergency Assessment shall be apportioned equally against the Assessable Homesites on a monthly basis as set forth in Section 3.5, beginning with the first month following the date on which a Lot becomes an Assessable Homesite.

3.5 ANNUAL ASSESSMENTS:

(A) Levy and Enforcement of Annual Assessments:

Annual Assessments shall be made, and enforced by the Board in the manner provided in this Declaration against the Owners of all Assessable Homesites, except that Declarant shall not be assessed with respect to a unit owned by it upon which no dwelling has been erected.

(B) Amount of Assessments.

The Board shall have the right to impose an assessment against each unit owner within Wyndemere in an amount not to exceed \$ 20.00/mo. for each unit owned by each unit owner unless such amount shall be increased as provided in sec. 3.5C. The assessment shall commence on the first day of the month following recordation of deed to non-declarant owner.

(C) Increase of Annual Assessments:

The Annual Assessments for each succeeding fiscal year may be increased by the Board for the next year without a vote of the Members by an amount which shall not exceed 20% of the Annual Assessments for the fiscal year in which such budget is required to be prepared. Any increase in the Annual Assessments which exceeds 20% of the preceding year's Annual Assessments shall be made only upon the affirmative vote or written consent of a Majority of Owners. To the extent that the Association realizes a profit during any fiscal year, the Board shall allocate such profit among the existing Owners in equal proportions and apply such amount to satisfaction of each Owner's annual assessment. The surplus, if any, shall be deposited into the Wyndemere Association Capital Account (hereinafter defined) and used for the purposes and on the terms set forth in Section 3.5(D) below.

(D) Provision for Reserve Expenses:

For the purposes of creating reserves to insure payment when due of the cost of capital expenditures relating to the repair and replacement of those items of Common Property that normally require replacement in whole or in part in more than three and less than thirty years, a portion of the Annual Assessment shall constitute a capital contribution for such reserves to the Association. The specific items for which such capital contributions shall be made and the amount of such contribution in respect of each such item shall be determined by the Board, acting in its sole discretion, at the time it adopts the budget for the Annual Assessments. The Board shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of those items. All such capital contributions shall be collected monthly in equal installments, shall be accounted for separately, and shall be held in trust and used to pay for each specific capital expenditure in such manner and at such times as the Board, acting in its sole discretion, shall determine. Immediately upon receipt, all such capital contributions shall be deposited in a separate interest-bearing account or accounts, denominated Wyndemere Association Capital Account in any savings and loan association, bank or trust company, as may be determined by the Board by resolution.

3.6 SPECIAL ASSESSMENT:

In addition to the Annual Assessment authorized above, the Board may levy during any fiscal year a special assessment ("Special Assessment") applicable to that fiscal year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected

repair or replacement of a capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to 5% of the budgeted gross expenses of the Association for the fiscal year may be levied only upon affirmative vote or written consent of a Majority of Owners.

3.7 DUE DATES OF ASSESSMENTS:

The first Annual Assessment and all Special Assessments shall be adjusted according to the number of months remaining in the fiscal year. The Board shall fix the amount of the Annual Assessment against each Assessable Homesite at least 30 days in advance of each Annual Assessment period. Written notice of all assessments shall be sent to each Owner subject thereto. The Annual Assessments and Special Assessments shall be collected monthly in advance on the first day of each month, (hereinafter referred to as "Assessment Payment Date"). The Annual Assessments and Special Assessments shall be due and payable on each Assessment Payment Date commencing on the first Assessment Payment Date following the Initial Commencement Date.

3.8 EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION:

In the event of a default in payment of any assessment when due, such assessment shall be deemed to be delinquent. Each Owner vests in the Association or its assigns the right and power to bring all actions at law in equity, to establish and foreclose the liens or enforce any other remedy provided herein against the Owner for the collection of delinquent assessments. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In addition to any other remedies herein provided, the Association may enforce the obligations of the Owners to pay the assessments provided for herein, and each of them, in any manner provided by law or in equity, and without any limitation of the foregoing, by any or all of the following procedures:

(A) Suspension of Rights:

After a hearing by the Board (whether or not the delinquent Owner appears) conducted in accordance with the procedures set forth in the Bylaws, the Board may suspend the voting rights of any Owner and/or Owner's right to use the Common Property for any period during which any assessment against such Owner's Assessable Homesite remains unpaid; provided that this provision shall not operate or be construed to deny or restrict ingress or egress of any Owner to his Homesite.

(B) Enforcement of Suit:

By commencement and maintenance of a suit at law against an Owner or prior Owner to enforce said assessment obligation, such suit to be maintained in the name of the Association. Any judgement rendered in any such action shall include the amount of the delinquency, interest thereon at the maximum legal rate per annum from the date of the delinquency, and court costs and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

(C) Enforcement by Lien:

Subject to the provisions of Section 3.1, provision is hereby made for a claim of lien as may be provided by law, on each and every Assessable Homesite to secure payment to the Association of any and all assessments levied under this Declaration, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. Each default shall constitute a separate basis for claim of lien, but any number of defaults may be included within a single claim of lien. At any time after the occurrence of any default in the payment of any assessment, the Association or any authorized representative may, but shall not be required to make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. If such delinquency is not paid within 10 days after delivery of such demand, or at any time after the date of delinquency if no written demand is made, the association may elect to file and record a notice of assessment and claim of lien (with a copy to the Mortgagee of such delinquent Owner, if previously requested) on behalf of the Association against the Assessable Homesite of the defaulting Owner in the office of the recording officer of Deschutes County. Such a notice of assessment shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (1) the name of the delinquent Owner;
 - (2) the legal description of the property against which the claim of lien is made;
 - (3) the total amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees (with any proper offset allowed);
 - (4) that the notice of assessment is made by the Association pursuant to this Declaration;
 - (5) that a lien is claimed against said property in an amount equal to the amount stated; and
 - (6) any other information required by law.
- Upon such recordation of a duly executed original or copy of such a notice of assessment and the mailing thereof of a copy of said Owner at the address of the Assessable Homesite, the

lien claimed therein shall immediately attach and become effective. Unless sooner satisfied and released, or the enforcement thereof initiated as hereafter provided, such lien shall expire and be of no further force or effect three years from the date of recordation of said notice of assessment or such other time as may be provided by law. The lien(s) created pursuant to the preceding provisions may be foreclosed by appropriate action in court or in any other manner provided by law as the laws of the State of Oregon may from time to time be changed or amended. The Association shall have the power to bid in at any foreclosure sale, trustee's sale of judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Assessable Homesite. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

Subject to the rights and priorities of any Mortgagee, the proceeds of any foreclosure, trustee's or judgment sale provided for in this Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of such charges and unpaid assessments hereunder or any liens, shall be paid to the defaulting Owner. Subject to any statutory rights of redemption, any purchaser at such sale shall thereupon be entitled to conveyance of title to the property purchased and immediate possession thereof, and shall have the right to apply to a court of competent jurisdiction for such orders as may be reasonable for the purpose of acquiring and possessing the same. It shall be a condition of such sale, and the deed so made shall provide, that the purchaser shall take title to the Assessable Homesite sold subject to this Declaration.

Upon the timely curing of any default for which a notice of assessment was filed by the Association, the officers of the Association are hereby authorized to record an appropriate release of such lien in the office of the recording officer of Deschutes County.

3.9 ASSIGNMENT OF RENTS

As security for the payment of all liens arising pursuant to this Article III, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of said Owner's Assessable Homesite, reserving unto the Owner the right, prior to any default by such owner in performance of that Owner's obligation under this Declaration, or the Bylaws or the Articles to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, after 10 days written notice to such Owner, then either in person, by agent or by a receiver

to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Assessable Homesite or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. The entering upon and taking possession thereof, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Assessable Homesite, or any part thereof, to do the same or similar acts.

3.10 SUBORDINATION TO CERTAIN TRUST DEEDS:

The lien of the assessments shall be prior to all encumbrances made by the Owner or imposed by legal process upon any Assessable Homesite except taxes, bonds, assessments and other levies, which, by law, are prior thereto, whether the notice of assessment is recorded prior or subsequent to any such encumbrances, except that the lien of the assessments shall be subordinate (i) to the lien of any First Mortgage of (ii) to any other lien securing purchase money financing by Non-Declarant Owner in favor of any Mortgagee, provided such purchase money lien is made in good faith and for value and that the First Mortgage or other purchase money lien is recorded in the office of the recording officer of Deschutes County, prior to the recordation of the notice of assessment for said assessments. Sale of transfer of any Assessable Homesite shall not defeat or affect the assessment lien.

3.11 INCOME TAX ELECTIONS:

The Board shall have the right, exercisable in its sole discretion, to elect to report the receipts, expenses, deductions and credits, if any, of the Association for income tax purposes pursuant to Section 528 of the Internal Revenue Code of 1954, as amended, or any comparable State or Federal statute or amendment thereto presently in effect or hereinafter enacted.

ARTICLE IV

LIABILITY TO TUMALO

4.1 ASSOCIATION'S LIABILITY:

The Association shall be considered to be an individual water user of the Tumalo and, as such, shall be liable for Tumalo's (i) standard water charge of a minimum of one acre, (ii) standard maintenance fee, and (iii) standard fee for the Association's proportionate share of the Bureau of Reclamation Repayment in accordance with Tumalo's bylaws.

Furthermore, the Association shall be liable to Tumalo for all costs incurred by Tumalo in excavating or repairing their buried pipes in the area of the road easement granted by the Tumalo agreement provided that such costs are directly attributable to the existence of the paved road included within the easement.

4.2 OWNER'S LIABILITY:

Each Owner shall be considered to be an individual water user of Tumalo and, as such, be liable for Tumalo's (i) standard water charge of a minimum of one acre, (ii) standard maintenance fee, and (iii) standard fee for such Owner's proportionate share of the Bureau of Reclamation Repayment in accordance with Tumalo's bylaws.

4.3 DECLARANT'S LIABILITY:

Declarant's liability as of the date of this Declaration for the assessment imposed by Tumalo shall be decreased by one-tenth upon the sale of the first Lot and by an additional one-tenth upon the sale of each subsequent Lot until such time as ten Lots have been sold, at which time Declarant's liability to Tumalo shall cease.

ARTICLE V

COVENANTS AND USE RESTRICTIONS

5.1 RESIDENTIAL USE LIMITATIONS:

(A) Dwelling Purposes Only. No part of any Homestead shall be used for other than private dwelling purposes and reasonably related uses. The foregoing restrictions as to use shall not, however, be construed in such manner as to prohibit an Owner from (a) maintaining his personal professional library therein, (b) keeping his personal business or professional records or accounts therein, (c) handling his personal

business or professional calls or correspondence therefrom, or (d) undertaking any other activity thereon not otherwise prohibited by this Declaration when such activity has been expressly approved in advance by the Association.

(B) **Time-sharing or Interest Ownership Prohibited.** Interval ownership, wherein exclusive use periods are sold, shall not be permitted on any lot. However, this shall not be interpreted to prevent joint ownership of lots.

5.2 COMMON PROPERTY:

(A) **No Partition.** The Common Property shall remain undivided and no Owner shall bring any action for partition, except as otherwise hereinafter provided.

(B) **Alterations.** Any proposals for alterations, additions or other improvements of Common Property shall be submitted in writing by the Member proposing such alteration, addition or improvement to the Board, which shall review such proposals to determine whether (i) such proposals would be compatible with the design, construction and standards of quality of the Property, and (ii) such proposed improvements would interfere with or disturb any other Owner's use or enjoyment of his property. Unless otherwise agreed at a meeting of the Members called for such purposes, the cost of an alteration or addition to Common Property approved by the Board shall be paid by the Members in accordance with the formula established herein for Special Assessments.

(C) **Prohibition.** No Member shall remove, alter, or injure in any way any portion of the Common Property, including, without limitation, the Improvements thereon.

(D) **Cost of Correction.** Any Member who violates this Section shall reimburse the Association for all expenses incurred by it in remedying the damage caused by said Members' violation. Such expense shall be assessed to the Member as a Remedial Assessment, enforceable in the manner provided in Article III hereof.

5.3 MAINTENANCE BY OWNER:

(A) Each Owner shall be responsible for the maintenance of his Homesite, in a clean, sanitary and attractive condition, and shall keep the same free from rubbish and litter and maintain in good condition and repair and adequately stain or otherwise finish all improvements located thereupon.

5.4 SIGNS:

(A) **General Prohibiting; Exemptions.** No sign or billboard of any kind shall be made visible to the

public from any Homesite or from the Common Property except that: (i) the Association may erect such signs within the interior Common Property as may reasonably be required by the Board in connection with its operation thereof; and (ii) Declarant and any assignee of Declarant may display from the Homesites owned by them and from the Common Property any lawful sign which advertises the sale of Homesites and/or completed dwelling units.

5.5 NO OBNOXIOUS AND OFFENSIVE ACTIVITIES:

No obnoxious or offensive activity shall be carried on, in or upon any Homesite, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Homesite or which shall in any way increase the premium rate of insurance.

5.6 LIMITATION ON ANIMALS

No animals of any kind shall be raised, bred or kept in or upon any Homesite, except dogs, cats, or such other household pets as may be approved by the Association, and then only provided they are not kept, bred, or maintained for any commercial purposes or in unreasonable numbers. Household pets shall be leashed, caged, or under other positive control of the Owner at all times, and shall be confined within the boundaries of the Owner's Homesite. Notwithstanding the foregoing, no pets or other animals may be kept in or upon any lot which result in any annoyance or are obnoxious to residents in the vicinity. Each owner of an animal shall be liable to each and all other Owners, their families, guests, and invitees, and to the Association, for any and all damage to person or property caused by such animal. Each Owner shall comply with such Association Policies and Procedures governing the keeping of pets, which may be adopted by the Association from time to time.

5.7 TEMPORARY STRUCTURES PROHIBITED:

Unless approved in writing by the Architectural Committee, no structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

5.8 VEHICLES AND PARKING:

(A) Type Restriction. No mobile home, recreational vehicle (including campers) exceeding 1,500 pounds in gross weight, trailer of any kind, truck with a rated load capacity greater than 3/4 ton, or boat shall be kept, placed, maintained or parked for more than 6 hours or such other period as may be permitted

pursuant to the Association Policies and Procedures on any portion of the Property except in enclosed garages, areas designated by the Board, or screened from view in a manner approved by the Architectural Committee. No motor vehicle of any type may be constructed, reconstructed or repaired in such a manner as will be visible from neighboring property. No stripped down, partially wrecked, inoperative or junk motor vehicle, or sizeable part thereof, shall be permitted to be parked on any portion of the Property.

(B) **Parking and Street Obstructions.** No parking of vehicles of any type whatsoever on any portion of the streets within the Property shall be permitted. No Owner shall do anything which will in any manner prevent the streets within the Property from at all times being free and clear of all obstructions and in a safe condition for vehicular use.

5.9 OUTSIDE STORAGE:

Woodpiles, storage areas, machinery and equipment shall be prohibited upon any Homesite, unless obscured from view of neighboring property and streets by a fence or appropriate screen approved by the Architectural Committee: trash cans and other movable rubbish containers shall be allowed to be visible from any street or adjacent lot within the Property only during the days on which rubbish is collected and after nine (9) P.M. of the preceding evening.

5.10 LIMITATIONS ON OPEN FIRES:

No incinerators or other open fires (except outdoor cooking facilities such as propane grills or portable barbecue units) shall be kept or maintained on any Homesite.

5.11 PEST CONTROL:

No Owner shall permit any thing or condition to exist upon any portion of the Property which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin.

5.12 ANTENNAE AND EXTERIOR APPLIANCES:

(A) **Radio, Television.** No towers, antennae, aerials, dishes, reflectors or other facilities for the reception or transmission of radio or television broadcasts or other means of communication shall be erected and maintained or permitted to be erected and maintained on the Property except as permitted by the Board.

(B) **Exterior Wiring.** No wiring for electrical or telephone installations, television antennae, security systems, machines or air conditioning units, or appliances shall be permitted on the exterior of any building or that protrude through the walls or roof of

any building except as permitted by the Board.

5.13 COMPLIANCE WITH LAWS:

Each Owner shall promptly comply with all laws, statutes, ordinances, and regulations of Federal, State or municipal governments or authorities applicable to the Property.

5.14 USE OF IMPROVEMENTS DURING CONSTRUCTION; DILIGENCE IN CONSTRUCTION:

No Improvement upon any Homesite shall be occupied until the same is completed and made to comply with the restrictions, covenants and conditions contained in this Declaration. Any Improvement which is partially or totally destroyed, or damaged, by fire, earthquake or otherwise, shall be removed, repaired or replaced within a reasonable time after such destruction of damage occurs and subjects to the requirements of this Declaration, by the then Owner or Owners of that portion of the Homesite or Homesites upon which the destroyed or damaged Improvement was or is located. All work of construction, removal or repair of any Improvement upon any Homesite shall be prosecuted diligently and continuously from the time of commencement thereof until the same shall be fully completed, which completion shall occur not later than nine months after commencement of such work, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of God or similar causes.

5.15 LANDSCAPING, APPROVAL AND INSTALLATION:

Landscaping plans shall be submitted to the Architectural Committee by the owner of each Homesite improved with a dwelling at the same time structural improvement plans are submitted with respect to such Homesite. All plans shall be in compliance with sod and planting limitations, and tree preservation guidelines, as established by said Committee or the Association from time to time. Landscaping pursuant to and conforming with such approved landscaping plans shall be installed on such lot within one year after the issuance of a certificate of occupancy or other permission as may be required for use of such Improvement for human habitation.

5.16 MINIMUM DWELLING SIZE:

No dwelling intended or used as the primary dwelling on a Homesite may be constructed or maintained unless the interior floor area of such dwelling (excluding garage) contains at least 1,200 square feet. The maximum permissible interior floor area shall be limited only by constraints of the building site area and other reasonable limitations as may be established by the Architectural Committee.

5.17 GRADES, SLOPES AND DRAINAGE:

Each Owner of a Homesite shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes, and courses related thereto over any lot. No structure, planting, or other material shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

5.18 EXTERIOR LIGHTING

All exterior lighting of a Homesite shall be subject to approval of the Architectural Committee:

5.19 ROOFING MATERIALS:

All roofing materials on all Buildings on the Property shall be Class A fire retardant materials. No other roofing materials shall be permitted

5.20 ENFORCEMENT; RIGHT TO NOTICE; HEARING:

In the event an Owner shall fail to comply with the provisions of this Article V, the Association shall notify such Owner in writing of such specific lack of compliance, which notice shall state that such Owner has a right to a hearing before the Board with regard to the matters of noncompliance set forth in such notice and, which notice may state that from and after a specified date (which date shall be subsequent to the date of the hearing provided for herein) the Board or its authorized agents may enter upon the Owner's lot for the purpose of remedying such lack of compliance. If such Owner fails to remedy such lack of compliance within 5 days after receipt of such notice (or within such greater time period as may be specified in such notice), or, in the alternative, fails to deliver written notice to the Board within 5 days from receipt of such notice requesting a hearing before the Board with regard to the matters of noncompliance set forth in such notice, the Association or its authorized agents shall have the right to enter upon such Owner's lot for the purpose of remedying the matters set forth in the notice, and shall not be liable for trespass in connection with such entry. If the Owner timely requests a hearing before the Board, the Board shall schedule a hearing and shall provide the Owner with at least 7 days written notice as to the date, time and place thereof. At the hearing the Owner will have an opportunity to discuss with the Board the merits of the claims set forth in the Association's original notice of noncompliance, and the Board will determine what action, if any, need be taken by the owner and the time within which it must be accomplished. The decision of a majority of the members of the Board present at

the hearing will be binding upon the Association and the Owner. In the event it is determined the owner has not complied, the Board shall establish a time period within which the Owner shall so comply. If the Owner fails so to comply within the designated time period, the Association or its authorized agents shall then have the right to enter into the Owners's Unit to perform the required acts and shall not be liable for trespass in connection therewith. The cost to the Association of remedying such Owner's failure to comply with the provisions of this Section shall be assessed to the Owner as a Remedial Assessment, enforceable in the manner provided in Article III of this Declaration.

ARTICLE VI

ARCHITECTURAL CONTROL AND APPROVAL OF PLANS

6.1 ARCHITECTURAL COMMITTEE:

(A) **Priority.** The scope and authority of the Architectural Committee ("Committee") shall be subject to the exemption of Section 10.10, but otherwise said Architectural Committee shall govern the Project with respect to the matters of this Article V.

(B) **Establishment of Committee.** Architectural control and approval of plans shall be vested in the Declarant, its successors in interest, or its assigns until the creation of an Architectural Committee, which shall be established by the Association, and shall be comprised of no less than three (3) nor more than five (5) members some or all of whom may be members of the Board concurrently; provided, however, that Declarant reserves the power to appoint a majority of the members of the Committee, the remaining members to be appointed by the Board, until ninety percent (90%) of the Homesites in the fully-annexed Project shall have been sold. Thereafter, all members of the Committee shall be appointed by the Board. Members appointed to the Committee by Declarant need not be Members of the Association, but members appointed by the Board shall be from the membership of the Association.

6.2 COMMITTEE APPROVAL:

(A) **Scope.** Before commencing any building, remodeling, or renovation operations or activities, or installation of landscaping or trimming or removal of trees, or further subdivision of any Homesite or the Common Property, written approval must be obtained from the Committee covering all aspects of such proposed activity, including building and plot plans for all structures erected, altered, renovated, remodeled,

placed, assembled, or permitted to remain on any Homesite, including garages and fences; except, however, that approval of the Committee shall not be required for building operations conducted by Declarant or its designated successors or assigns. The approval of said Committee shall include style, design, appearance, harmony of external design (including color scheme) with Declarant's general scheme, location of the proposed structure with respect to Declarant's designated building site location on said Homesite, topography and finish grade location, and as to the corner lots, the street frontage thereof.

(B) **Limitation on Authority.** Approval by the Committee shall not be construed as modifying, altering, or waiving any of the provisions herein set out or established by law. Any decision or approval by the Committee shall not relieve an applicant or Owner from complying with any requirement of a public authority having jurisdiction, and shall not constitute any representation or guaranty by the Committee or member thereof of compliance of the submitted matter with any statute, ordinance, or regulation pertaining thereto.

6.3 NO LIABILITY OF COMMITTEE:

Neither Declarant, the Association, nor the Committee, nor any member thereof, shall be held responsible, or liable in any manner whatsoever, to any Owner of a Homesite for any loss or damage due to design concepts, aesthetics, errors or defects, patent or latent, shown or omitted, on any plans or specifications upon which it may pass, or any buildings or structures erected therefrom.

6.4 COMMITTEE ACTION FINAL:

The decision of a majority of the Committee, or of a representative appointed by the majority thereof, acting in good faith in its sole discretion, upon any matters submitted or referred to it, shall be final; provided, however, that such decision may not violate any of the provisions set out in this Declaration. It is further provided that if no rejection shall have been sent by the Committee to an applicant within thirty (30) days ("Decision Period") from the date of receipt of a submittal such inaction shall be deemed approval.

6.5 VARIANCE MAY BE ALLOWED:

The Committee may allow reasonable variances and adjustments of the provisions of this Declaration in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein; provided, however, that this must be done in conformity with the intent and purposes hereof, and also provided that such variance or adjustment may not be

materially detrimental or injurious to other property or improvements in the neighborhood.

6.6 CONFLICTING GOVERNMENTAL ACTION:

In the event there shall be any law or governmental action of any kind or nature which conflicts with or prevents works of construction or improvement in the manner described by these provisions, such circumstances shall be deemed to constitute practical difficulties within the meaning of the preceding paragraph.

ARTICLE VII

ANNEXATION

7.1 POLICY FOR ANNEXATION.

It may be desirable for the benefit of all parties to annex certain adjoining properties. The effect of such annexation shall be to subject such annexed properties to the provisions of this declaration.

7.2 ANNEXATION BY APPROVAL

Upon affirmative vote or written approval of Majority of Owners, the owner of any property who desires to add it to the regime of this Declaration and to subject it to the jurisdiction of the Association may file of record a Notice of Annexation with respect to the real property to be annexed; provided, however, that no such annexation may take place more than seven (7) years from the date of recordation of this Declaration.

7.3 EFFECT OF ANNEXATION.

Membership in the Association shall be expanded at the effective date of annexation to include Owners within annexed properties and all Members shall thereafter have all rights and obligations herein established. Upon compliance with Section 10.1 or 10.2, as applicable, and recordation of a Notice of Annexation in the form prescribed below, the annexed land shall become part of the Project and these Covenants shall, from the date of Recordation of the Notice of Annexation, apply to the annexed land in the same manner as if such annexed land had originally been subject to this Declaration and had originally constituted a portion of the Property; and thereafter the rights, privileges, duties and liabilities of the Members and the burdens and benefits to the land shall be the same as though the annexed land had originally been subject to this Declaration.

7.4 NOTICE OF ANNEXATION.

The Notice of Annexation, which may be included in any Supplemental Declaration, shall contain at least the following provisions:

- (i) A reference to this Declaration, which shall include the date of recordation hereof and the book and page numbers where this Declaration is recorded;
- (ii) A statement that the provisions hereof shall apply to the annexed portion of the Annexable Property as set forth herein;
- (iii) An exact description of the annexed portion of the Annexable Property.

ARTICLE VIII

EASEMENTS

8.1 COVENANTS RUNNING WITH THE LAND:

Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of all the property encumbered thereby, and superior to all other encumbrances applied against or in favor of any portion of the Property.

8.2 USE OF THE COMMON PROPERTY:

(A) **Reservations in favor of Owners.** Declarant hereby reserves for itself, and for the benefit of each Owner a non-exclusive easement for ingress, egress, use and enjoyment over and through all of the Common Property.

8.3 EASEMENT FOR PERFORMANCE OF OBLIGATIONS:

There is hereby reserved by Declarant in favor of the Association such easements over all or any portion of the Project as are necessary to perform the duties and obligations of the Association and Architectural Committee as are set forth in this Declaration, the Bylaws, the Articles, or the Association Policies and Procedures, including, but not limited to, the right of access at all reasonable hours to any part of the Project (excluding the interior of any Dwelling), and to any Improvements being built thereon.

8.4 UTILITY EASEMENTS:

The Association, and any public utility company (collectively, the "Supplier") providing utility services to the Property including, without limitation, the City of Bend, Mitchell Water System, Pacific Power and Light, Bend TV Cable Co., and any other public utility co. or its' successor.

(A) **In Favor of Supplier.** Whenever sanitary sewer house connections, electricity, water, telephone, cable

television or other utility lines are installed within the Project, which connections or any portion thereof lie in or upon lots owned by others than the Owners of the lot served by the connections described in the preceding subsection, the Supplier shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon lots in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary.

(P) **In Favor of Owner.** Whenever sanitary sewer house connections, electricity, water, telephone, cable television or other utility lines are installed within the Project, which connections serve more than one lot, the Owner of each lot served by said connections shall be entitled to full use and enjoyment of such portions of said connections to serve his lot.

(C) **Repair of Common Connections; Expenses.** In the event of a dispute between Owners with respect to the repair or rebuilding of the connections described in the preceding subsection, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board who shall decide the dispute and make a Remedial Assessment, or, in appropriate circumstances, a Special Assessment, against any or all of the Owners involved.

8.5 USE BY DECLARANT:

Declarant is undertaking the work of construction of residential dwellings, community amenities, and incidental Improvements upon portions of the Property, Common Property as well as upon neighboring lands of the Planned Community. The completion of that work, and the sale, rental and other disposal of said property and Improvements is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, Declarant reserves non-exclusive easements in gross as may be necessary to complete said work and offer for sale, and to sell, the Homesites and any Improvements constructed thereon, and/or any lot parcel, or Improvement included or to be included in the Planned Community. In amplifications of the foregoing, nothing in this Declaration shall be understood or construed to:

(A) **Reasonable Activity.** Prevent Declarant, its contractors, or subcontractors from doing whatever is reasonably necessary or advisable in connection with the Project, including the Common Property, or any Homesite, or

(B) **Conduct of Business.** Prevent Declarant or its

representatives 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 the Planned Community and disposing of all or a portion of the Planned Community in lots, parcels, Homesites, or complete (or partially completed) residential or commercial structures by sale, lease, or otherwise; or

(C) Signs. Prevent Declarant from maintaining such sign or signs on any of the Homesites as may be necessary for the sale, lease, or disposition of all or a portion of the Planned Community; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Homesite or the Common Property.

(D) Construction; Sales. Subject to a concomitant obligation to restore, Declarant and its sales agents, until completion of original sale in the last phase to the Project, shall have:

(i) Non-exclusive easements over the Common Property and the Homesites for construction and common driveway purposes including access, ingress, and egress, as well as for drainage, encroachment, and reasonable use related to construction activities on any portion of the Planned Community, and for construction and/or repairs to the Common Property, or the Improvements constructed thereon;

(ii) The right to the non-exclusive use of the Common Property for the purpose of maintaining model homes, sales offices, and signs reasonably necessary to market the Homesites, or any other portion of the Planned Community; provided, however, the use of the Common Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Owners.

(iii) Easements over the Property together with the right to grant and transfer the same for the installation and maintenance of electric, telephone, water and sanitary sewer lines and facilities as may hereafter be required or needed to service the Planned Community, and for the construction of all Improvements to the Property and the Planned Community.

This Section 8.5 may not be modified, terminated, or otherwise amended or altered without written approval by Declarant. Any act attempting or purporting to effect such change, or to adversely affect the rights granted to or reserved by Declarant hereunder, shall be void and of no force or effect.

(E) Withdrawal of Lots:

Prevent Declarant from withdrawing Lots from the Project at any time in Declarant's sole discretion;

provided, however, that Declarant shall not have the right to withdraw Lots in which Declarant does not hold a fee ownership interest. Declarant's exercise of such right shall not be subject to any time limitation.

Declarant shall notify the Board in writing of such election not less than sixty (60) days prior to recording an amendment (the "Amendment") to this Declaration setting forth the Lots to be withdrawn from the Project. Upon recordation of the Amendment, all rights to membership and voting by reason of ownership of the Lots withdrawn shall immediately terminate; provided, however that the Owners of the Lots withdrawn shall remain liable for any unpaid assessments levied pursuant to this Declaration prior to the withdrawal of such Lots.

ARTICLE IX

ENFORCEMENT

In the event of any default by any Owner under the Provisions of this Declaration, the Articles, Bylaws, or the Association Policies and Procedures, and upon any failure of any Owner to comply with any provision set forth in this Declaration, the Association and its successors and assigns, and the Board and its agents, or any of them, shall have all the rights and remedies which may be provided for in this Declaration, the Bylaws, the Articles, the Association Policies and Procedures, or which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or other persons for enforcement of any lien and the appointment of a receiver for the Homesite and ownership interest of such Owner, or for damages or injunction or specific performance, or for judgement of payment of money and collection thereof, or the right to take possession of the Homesite and to sell the same as herein above provided, or for any combination of remedies, or for any other relief. The Association and the Board, and the agents of each, shall have the authority to correct such default and to do whatever may be necessary for such purpose. All expenses of the Association in connection with such actions or proceedings, including court costs and attorneys' fees, and all damages, together with interest thereon at the maximum legal rate until paid, shall be charged to such defaulting or non-complying Owner, and shall be a lien on such Owner's Homesite, and upon all of such Owner's additions and improvements to his Homesite, which lien shall be enforceable in the manner set forth in Article III hereof. Any and all such remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association. Should any Member institute suit against the Association, and should the Association be successful or

sustained in its position in such suit, then such Member shall be required to reimburse the Association for its legal expenses incurred, including but not limited to attorneys' fees, fees of experts, court costs, and other expenses reasonably incurred by the Association and the amount to which the Association is entitled shall be a lien against his Homesite and enforceable pursuant to the provisions of Article III hereof.

ARTICLE X

GENERAL PROVISIONS

10.1 COMPLIANCE WITH OREGON PLANNED COMMUNITY DEVELOPMENT ACT

(A) Notwithstanding any provision of this declaration to the contrary, all activity relating to the Project including, but not limited to, management and operation of the Association shall be conducted in accordance with the Oregon Planned Community Development Act.

10.2 AMENDMENTS:

(A) **Voting Power.** This Declaration may be amended from time to time by vote or written approval of a Super-Majority of Owners; provided, however, (i) the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes required for action to be taken under such clause or provision; and (ii) no amendment which would defeat the obligations of the Association to keep the Common Property in a safe and attractive condition and good state of repair, or which would defeat the assessment procedures which assure the collection of funds for such maintenance shall be made unless approved by Declarant, by seventy-five percent (75%) of the Non-Declarant Owners, and by seventy-five percent (75%) of the Mortgagees of record; provided, however, that in no event shall an amendment under this Section (i) limit or diminish any "Special declarant rights" as defined in ORS 94.550(12), (ii) increase the number of Lots, (iii) change the boundaries of any Lot, or (iv) change the uses to which any Lot is restricted, unless the Owners of the affected Lots unanimously consent to such amendment.

(B) **Declarant's Right to Amend.** Notwithstanding any other provision herein, Declarant reserves the right, for a period of three (3) years after initial recordation of this Declaration, and without the vote or approval of the Members of the Association, to amend

this Declaration in any manner required to conform with the requirements of the Oregon Real Estate Commissioner, or of the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration, Federal Housing Administration, or any similar governmental or quasi-governmental state or federal body or agency having jurisdiction, so as to meet the requirements of such body or agency for their approval of this Declaration and the Planned Community, whether or not the Property or any portion thereof has then been conveyed by Declarant to a Non-Declarant grantee.

(C) Provisions of Law Shall Control. Notwithstanding the provisions of the foregoing subsection (A) and (B), if, by law, any different consent or agreement is required in order to effect the amendment of this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration shall be effective only if authorized and executed as required by law. No provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of any law.

(D) Recordation. The recordation of a certificate of the Secretary of the Association setting forth in full the amendment so approved, and certifying that said amendment has been approved by the Members as required by this Section shall be conclusive as to the validity thereof.

10.3 NOTICES

Notices provided for in this Declaration shall be in writing and shall be addressed to the person intended to receive the same, at the following address:

Association:

Wyndemere Association
1824 NE Division, Suite F
Bend, OR 97701

Declarant:

Wyndemere Development Co.
1824 NE Division, Suite F
Bend, OR 97701

Owner:

At the address of the Homesite owned.

Notice so mailed shall be deemed to have been given 48 hours after the deposit of same in any United States mailbox in the state the Notice is addressed, or 72 hours after deposit in any such mailbox other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Declarant and the Association may designate a

different address or addresses for notices by giving written notice of such change of address to all Members of the Association. Any Owner may designate a different address or addresses for notices to him by giving written notice of such change of address to the Association. Upon written request, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose property is subject to such recorded mortgage or deed of trust.

10.4 SEVERABILITY:

If any provision of this Declaration, the Articles, the Bylaws, or any Section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration, the Articles and Bylaws, and of the application of any such Section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

10.5 SUCCESSORS OF DECLARANT:

Each and every right and obligation of Declarant under this Declaration shall inure to the benefit of and be binding as the successors of Declarant which are designated as a Successor Declarant by an instrument duly recorded in the office of the recording officer of Deschutes County.

10.6 INAPPLICABILITY TO PROPERTY OF PUBLIC ENTITY:

The provisions hereof shall be inapplicable to any property now owned or hereafter acquired by the State of Oregon or a political subdivision thereof.

10.7 VIOLATION AND NUISANCE:

Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners.

10.8 VIOLATION OF LAW:

Any violation of any state, municipal or local law, ordinance or regulations, pertaining to the ownership, occupancy or use of any of the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

10.9 BREACH:

No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall

be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

10.10 APPLICABLE LAW:

This Declaration shall be construed in accordance with the laws of the State of Oregon.

10.11 EXEMPTIONS TO ARTICLES V AND VI:

The restrictions set forth in Article V and VI shall not and do not apply to any of the following:

(A) Public Land.

Any part of the Property which is owned by any public or quasi-public agency, district, or other body.

(B) Acts by Government Body.

Any act done or proposed to be done upon the Property, or any condition created thereon, by any governmental agency or entity, or the agents or employees of any governmental entity acting in the scope of their authority as such agents or employees.

(C) Acts by Utility Supplier.

Any act done or proposed to be done upon the Property, or any condition created thereon, by any utility supplier (including other companies furnishing electric, water, telephone, cable television and/or sewer service to all parts of the Property), or the agents or employees of any such supplier, which act could be done by such supplier were this Declaration not made;

(D) Acts by Declarant.

Any act done or proposed to be done upon the Property, or any condition created thereon, by Declarant, or its successors, assigns agents, employees or contractors, in connection with the exercise of any easement, license or other right reserved to Declarant in this Declaration; provided, however, that any such acts, proposed acts or conditions created upon the Property shall not unreasonably restrict the Owners in their use and enjoyment of the Common Property or the facilities thereon;

(E) Acts by Wyndemere Association or Its Agents.

Any act done or proposed to be done upon the Property, or any condition created thereon by the Association acting through (i) its Board, (ii) its Officers, or (iii) its agents; and

(F) Court Order.

Any act done or proposed to be done upon the Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory

requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

10.12 TERMS:

This Declaration and the covenants, conditions and restrictions contained herein, as amended from time to time, shall be and remain in full force and effect for a term of 50 years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of 10 years, unless a certificate of the Secretary of the Association has been recorded in the office of the recording officer of Deschutes County, certifying that a Super Majority of Owners has, by vote or written consent, agreed to terminate said Declaration.

10.13 PLURALS; GENDER:

Whenever the context so requires, the use of the singular shall include and be construed as including the plural, and the masculine shall include the feminine.

10.14 HEADINGS:


Section headings are inserted for convenience only and are not intended to be a part of this document or, in any way, to define, limit, or describe the scope or intent of the particular section to which they refer.

10.15 LEASES OF UNITS:

Any Owner who shall lease or rent his Homesite to any person or entity shall be responsible for assuring compliance by any such person or entity with all of the covenants, conditions, restrictions, easements, reservations, liens and charges of this Declaration, as amended and supplemented. Any lease between an Owner and lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, and the Association Policies and Procedures and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first herein above written.

"DECLARANT"
WYNDEMERE DEVELOPMENT CO.,
an Oregon corporation


Robert C. Crum, Vice-President

9/26/88

Page 39 Date

STATE OF OREGON,

County of DESCHUTES

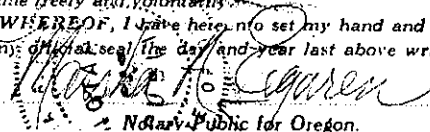
ss.

FORM NO. 23 - ACKNOWLEDGMENT

BE IT REMEMBERED That on this 26th day of SEPTEMBER, 1988, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named ROBERT C. CRUM

known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.


Notary Public for Oregon.

171 - 0423

EXHIBIT A
LEGAL DESCRIPTION

That portion of the NE 1/4 NE 1/4 SEC 19 R 17 12 EWM laying southerly of the DCMI Canal and that portion laying SE of the Deschutes River Rim and that portion of SW 1/4 SW 1/4 SEC 17 R 17 12 EWM laying south of the Deschutes River and west of the Westerly Boundary of Rimrock West and that portion of NW 1/4 NW 1/4 SEC 20 R 17 12 EWM laying west of the Westerly Boundary of the DCMI Canal and the N 1/2 of SW 1/4 NW 1/4 SEC 20 R 17 12 EWM and the N 1/2 of the SE 1/4 NE 1/4 SEC 19 R 17 12 EWM.

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:

88 SEP 27 AM 8:51

MARY SUE PENHOLLOW
COUNTY CLERK

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BY: D. Behberg DEPUTY
NO. 88-21929 FEE 2.00
DESCHUTES COUNTY OFFICIAL RECORDS