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***Declaration of Planned Community
And
Protective Covenants, Conditions and Restrictions For
Whispering Pines Subdivision***

By: Staats Lake, L.L.C., and (“Declarant”)
An Oregon Limited Liability Company

Date: _____, 1996

1. Pursuant to the provisions of ORS 94.580, Declarant hereby declares:

1.1 **Name.** The name of the planned community is Whispering Pine Subdivision.

1.2 **Location.** All of the real property in the planned community is located within the City of Keizer, County of Marion.

1.3 **Legal Description.** The legal description of the real property included in the planned community is attached here to and labeled Exhibit “A”.

1.4 **Statement.** A statement of the number of lots and units in the planned community are:

1.4.1 Number of Lots: 48

1.4.2 Number of Units 48

1.4.3 Declarant reserves the right to expand the planned community by developing existing property within the planned community.

1.5 **Common Property.** The legal description of any real property included in the planned community which is or must become a common property is attached hereto and labeled Exhibit “B”.

1.6 **Special Declarant Rights.** A description of any special declarant rights other than the rights described under subsections (3) and (4) of ORS 94.580 are:

1.6.1 Declarant reserves the right to add future lots to the subdivision in the 1.95 acre portion , more or less, designated as “Park” on attached Exhibit “A”. Such land shall neither be used as a Park nor common area for the subdivision.

1.6.2 Notwithstanding anything else contained herein, Declarant shall, for a period of 3 years from the date hereof, have the sole right to appoint the board of directors of the homeowners association. Additionally for a period of 2 years from the date of turnover, Declarant shall have the right, in its sole discretion, to approve any amendments to this Declaration or the By-Laws of the Association.

1.6.3 Declarant may assign all or any portion of its rights hereunder to any person(s) or entity(s). Such assignment shall be titled "Assignment of Declarant's Interest: and recorded in the county records.

1.7 **Allocations of Votes** Allocation of votes among the lots are as follows: Each lot owned by someone other than the Declarant shall be entitled to one vote. Each lot owned by Declarant shall be entitled to two votes.

1.8 **Common Expenses.** A method of determining the liability of each lot for common expenses and the right of each lot to any common profits of the Association is:

1.8.1 Each lot shall bear an equal proportional responsibility for common expenses;

1.8.2 Each lot shall be entitled to an equal proportional right to any common profits of the association.

1.9 **Reserve Account.** Provisions for establishing a reserve account as required by ORS 94.595 are attached hereto and labeled Exhibit "C".

1.10 **Restrictions on Alienation.** Any restrictions on the alienation of lots are contained herein. Any such restriction created by any document other than this Declaration may be incorporated by reference to the official records of Marion County.

1.11 **Statement of Use.** A statement of the use, residential or otherwise, for which each lot is intended:

1.11.1 Lots _1_ through _48_ , and any lots later developed, are intended for residential use only unless any governmental agency requires the use for another purpose.

1.11.2 Lots _ Common A and Common B are intended for common use by all the lot owners and for water storage and/or water quality issues.

1.11.3 Lot Park is reserved by Declarant for a future development of additional lots within the planned community, Declarant shall be responsible for maintenance of such lot until developed.

1.12 **Transfer of Common Property.** The association may not sell, convey or subject to a security interest any portion of the common property pursuant ORS 94.665.

- 1.13 **Restrictions.** A statement of any restriction on the use, maintenance or occupancy of lots or units is included in the By-Laws of the homeowners association.
- 1.14 **Amendment to Declaration.** In accordance with ORS 94-590, a vote of the owners representing 75 percent of the total votes in the planned community is required to approve an amendment to this declaration.
- 1.15 **Improvements.** Declarant does not agree to build any improvements; however, Declarant reserves the right to add any improvements at its sole discretion.
- 1.16 **Turnover meeting.** At any time before 120 days after lots representing 75 percent of the votes have been conveyed, the Declarant shall call a meeting, providing the same notice as required for a meeting of the members under the By-Laws (the “By-Laws”) for the Whispering Pines Homeowners Association (the “Association”), along with a statement of the purpose of such meeting, to turn over administrative responsibility of the planned community to the Association. If the Declarant does not call a meeting under this Section within the required time, the Transitional Advisory Committee, identified in the By-Laws and ORS 94.604, or any owner may call the turnover meeting, providing the same notice as required for a meeting of the members under the By-Laws along with a statement of the purpose of such meeting. The turnover meeting shall be conducted in accordance with ORS 94.616.
- 1.17 **Common Property Deed.** A deed to the common property shall be delivered by Declarant at any time before or during the turnover meeting required by ORS 94-616
- 1.18 **Architectural Control Committee.** There shall be an architectural control committee established by Declarant or the Board of Directors of Whispering Pines Homeowners Association. No building, fence, wall or other structure shall be commenced, erected or maintained upon the subdivision, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or architectural control committee as to harmony of external design, materials, color and location in relation to surrounding structures and topography. The architectural control committee shall be composed of three (3) or more representatives appointed by the Board. Such Board or its designated committee, shall approve or disapprove with comments such design, color materials and location within forty-five (45) days after said plans and specifications have been submitted to it. If the applicant has not received either comments for change or approval within such time period, applicant shall serve notice upon the Board or committee for a determination within twenty (20) days thereof, and if such 20 day period is not met, approval will not be required and this section will be deemed to have been fully complied with.

1.19 **Future Lots.** Upon development of the future additional lots and subdivision of the “Park” parcel, such lots shall automatically become part of this Declaration, a member of the homeowners association and subject to the By-Laws thereto. Although there is no limitation on the number of additional lots and units that Declarant may create or annex into the planned community, Declarant at this time expects the addition of approximately 19 lots and 19 units. There is no limitation on the right of the Declarant to annex common property. The voting rights shall be the same as if such additional lots and units were provided in this Declaration or the same as if such additional lots were provided in the By-Laws of the homeowners association. Upon the creation or annexation of the additional lots, as of the first of the next calendar year, such lots shall be included in the pool for common area expenses and assessments and shall assume their pro-rata share of such assessments provided for herein. Every other lot shall be given notice of the lots in the planned community.

1.20 **Owner.** “Owner” shall mean the record owner (including contract sellers and purchasers), whether more than one or more persons or entities, of all or any part of the property, excluding those having such interest merely as security for performance of an obligation.

2. RESTRICTIONS ON USE OF LOTS.

The following restrictions shall apply to all lots within the subdivision.

2.1 **Plat Restrictions and Covenants.** The use of all lots are subject to all restrictions and covenants described in the plats described in the plats described above and subject to the covenants conditions and restrictions set forth in this Declaration.

2.2 **Structures Permitted.** No improvements shall be erected or permitted to remain on any Lot except improvements containing a residential dwelling and improvements normally accessory thereto including a private garage for use of the occupants of such residence. This section does not apply to any common areas.

2.3 **Residential Use.** All Lots, other than common areas, shall only be used for residential purposes. No trade, craft, business, profession, commercial or similar activity shall be conducted within the subdivision nor shall any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service or business be sold from or kept or stored on any of the property. Nothing in this paragraph shall be deemed to prohibit (b) the right of Declarant or any contractor or homebuilder to construct a residential dwelling on any Lot, to store construction, materials and equipment on such Lots in the normal course of construction, and to use any residential dwelling as a sales or rental office or model home or apartment for purposes of sales or rentals within the neighborhood, (c) The right of the Owner to maintain a professional personal library, keep personal business or professional records or accounts, handle personal business or professional

telephone calls or confer with business or professional associates, clients or customers in his or her residential dwelling, and (d) The use of any Lot or residential dwelling for adult foster care or any other special use allowed under Oregon Law in residentially zoned areas.

- 2.4 **Leasing and Rental Restriction** Any dwelling that is leased or rented may only be leased or rented on terms requiring that the tenants be bound by the terms of this Declaration. Every lease on every dwelling in the community is subject to the following rules and regulations, regardless of whether in the lease: (a) The lease must be in writing; (b) The lease must be for the entire dwelling; (c) The dwelling cannot be used as a motel or hotel or otherwise for transient tenants; (d) If any Owner (landlord) or tenant is in violation of any of the provisions of this Declaration, all other owners shall have the right to have the tenant evicted or to recover damages, or both; and (e) the Owner and tenant shall jointly be liable for all assessments. If the court finds that the tenant is or has violated any of the provisions of this Declaration, the court may find the tenant guilty of forcible detainer despite the facts that the Owner is not a party to the action and/or that the tenant is not otherwise in violation of tenants lease or other rental agreements with the Owner . For purposes of granting forcible detainer against the tenant, the court may consider the Owner a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (the offended Owner). The remedy provided in this paragraph is not exclusive and is addition to any other remedies available to the owners in the subdivision. The owner bringing the suit may recover all of its costs, including, but not limited to, court costs and reasonable attorney fees, and these costs shall be a continuing lien on the Lot that shall bind the Lot Owner and that Lot Owners' successors and assigns. By becoming a tenant, each tenant agrees to be bound by this declaration and recognizes and accepts the right and the power of the owners within the subdivision to evict the tenant for any violation by the tenant of this Declaration. This paragraph shall not apply to a first mortgage that has title to a lot through (a) Foreclosure on its mortgage. Any other mortgage or subsequent purchaser from such mortgagee is subject to all of the provisions of this paragraph.
- 2.5 **Other Parties.** Invitees contractors, family members and other persons entering the subdivision under rights derived from an owner shall comply with all provisions of this Declaration. The owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliances by such persons in the same manner and to the same extent as if the failure had been committed by the owner.
- 2.6 **Offensive or Unlawful activities.** No noxious or offensive activities shall be carried on in any part of the subdivision. Nor shall anything be done or placed in the subdivision that interferes with or jeopardizes the enjoyment of any Lots or any common areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.

- 2.7 **Animals.** Other than a maximum of two (2) household pets, no animals, livestock, fowl, or Poultry of any kind shall be raised, bred or kept or permitted in the subdivision. Pets shall be reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof. Pets shall not be permitted to roam the subdivision unattended, shall be kept on a leash while outside the Lot of their owners and shall be controlled as provided by any applicable local ordinance.
- 2.8 **Maintenance of Structures and Grounds.** Each owner shall maintain such owners Lot and improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters downspouts, exterior building surfaces, walks, and other exterior improvements and glass surfaces. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on such owner's Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each owner and shall be repaired within a reasonable period of time. If such maintenance or repair is not timely made, the Board of the homeowner's association may give 10 day written notice to such owner specifying what work needs to be completed to comply with this paragraph. If such work is not completed within 10 days, or the work to complete each item identified has not started and continued diligently until finished, the association may cause such items to be completed and such owner shall be specially assessed for the cost of such work. If the association is required to have work completed on two or more occasions within a 12 month period, the association may, at its option, take over responsibility for ongoing maintenance at its option for any length it deems proper.
- 2.9 **Parking.** Parking of any vehicle or equipment, including, without limitation, boats, trailers, motorcycles, trucks, truck campers, mobile homes or other recreational vehicles, shall not be allowed on any part of the subdivision nor on public streets within the subdivision or adjacent thereto, except only within the confines of an enclosed garage or screened area, the plans of which shall comply with applicable Marion County ordinances and approved by the Board or architectural control committee. No portion of such vehicle or equipment shall project beyond the screened area.
- 2.10 **Vehicle in Disrepair.** No owner shall permit any vehicle that is in an extreme state of disrepair (as determined by three (3) or more owners) to be abandoned or to remain parked anywhere in the subdivision for a period in excess of 48 hours.
- 2.11 **Signs.** No signs shall be erected or maintained on any Lot except for signs 3 inches by 24 inches (or less) displaying the occupant s name and address, temporary signs not larger than 18 inches by 30 inches advertising the property for sale or rent, and temporary seasonal or community decorations. Such signs must be removed upon the

sale of the lot or the rental of the dwelling on the lot, or the conclusion of the seasonal or community project (as applicable). The restrictions contained in this paragraph shall not apply to (a) the temporary placement of political signs by the owner or (b) the placement of one or more signs identifying the location of a sales office or model home.

2.12 **Rubbish and Trash.** No Lot or part of any common area shall be used as a dumping ground for trash or waste of any kind. All waste shall be kept in appropriate sanitary containers for proper disposal, and such containers shall be placed out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped into streets, or any common areas, or any lots. All unimproved Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

2.13 **Temporary Structures.** No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently.

2.14 **Setback, Maximum Height, and Minimum Yard Requirements.** Each Lot shall be subject to the setback maximum height, and minimum side, front and rear yard requirements established by the recorded plat restrictions referred to above and any applicable local ordinance.

3. ENFORCEMENT.

3.1 **Violation of Permitted Uses.** In the event any owner shall violate any Provision of this Declaration other than failure to pay assessments and another remedy is provided below, then Declarant, or any three (3) owners acting together, may notify the owner responsible for the violation in writing that the violations exist and that such owner is responsible for them, and (5) days after giving such notice at its or their option, shall have full power and authority to bring suit or action against such owner to enforce this Declaration and pursue any available remedy at law or equity including without limitation a claim for breach of contract and damages and/or injunctive relieve and/or specific performance. Failure by the Declarant or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. An election to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. Waiver of one violation shall not constitute waiver of any other violation.

4. ASSESSMENTS.

4.1 **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the subdivision, hereby covenants and each owner of any Lot by a

acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Whispering Pines Homeowners Association: (1) monthly or annual assessments for maintenance;(2) monthly or annual assessments for a reserve account; and (3) special assessments to be established and collected as hereinafter provided. All assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

- 4.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of any Common Areas. The maintenance assessment, reserve assessment and any special assessments shall be kept as separate accounts. The assessments shall also be controlled by ORS 94.595, 94.704, 94.709 and 94.716.
- 4.3 **Amount of Assessments.** The board of directors may set the amount of the assessment, provided however, that any assessments shall not be more than 10% above the maximum assessment for the previous year without the affirmative vote of 75% of the members voting at the annual members' meeting.
- 4.4 **Special Assessments.** In addition any other assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, extraordinary costs or expenses incurred by the Association. Such assessments shall only be levied if approved by 2/3 vote at special meeting of the members with notice mailed to each member at least 30 days before such meeting and no more than 60 days, and such notice specifying the anticipated amount of the special assessment and its purpose.
- 4.5 **Uniform Rate of Assessment.** All assessments, other than provided herein, in the By-Laws of the Association or as otherwise provided under OR 94.709, shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis.
- 4.6 **Date of Commencement of Assessments: Due Dates.** All assessments shall Commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the assessments against each Lot at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every Owner subject thereto. Only one notice per year is required unless the amount of the assessments changes. The due dates shall be established

by the Board, The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot has been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of issuance.

- 4.8 **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or any other item required to be subordinated pursuant to Oregon law. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments provided for thereafter becoming due or from the lien thereof.

5. **MISCELLANEOUS PROVISIONS.**

- 5.1 **Amendment and Repeal.** This declaration may be amended or repealed by the vote or written consent of owners then owning not less than seventy-five percent (75%) of the lots. In no event shall an amendment under this paragraph create, limit or diminish special rights created hereunder without all the owners written consent, or increase the number of lots, or change the boundaries of any lot unless the owners of the affected lots unanimously consent to the amendments. No oral modification may be made to this Declaration, and any amendments must be recorded in the Marion County records to be enforceable.

- 5.2 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in the subdivision and the owners thereof for an initial period of ten (10) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever provided, however that this Declaration may be terminated at the end of the initial or any additional period by the vote or consent of the owners as provided in Section 1. Such termination shall not have the effect of denying any owner's access to such owner's lot unless such owner and any mortgagee of such lot have consented in writing to the termination.

- 5.3 **Joint Ownership.** In any case in which two or more persons share the ownership of any lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility.

- 5.4 **Severability.** Invalidation of any one of the provisions hereof shall not invalidate any other provision, which shall remain in full force and effect.
- 5.5 **Counterparts.** This Declaration may be executed in several counterparts, each which shall be an original, but all of which shall constitute but one and the same Declaration.
- 5.6 **Attorneys Fees.** In the event Declarant or any owners shall bring any suit or action to enforce any provision of this Declaration, or Declarant or any owners need to institute collection procedures for unpaid assessments, the owner-defendant shall pay to the Declarant or owners-complainants all costs and expenses incurred by it or them in connection with such suit, action or collection, including a title report, the Declarant or owners shall be entitled to reasonable attorney's fees. If such claim is n litigation, the prevailing party may recover such amount as the court may determine to be reasonable as attorney's fees and costs at trial and upon any appeal or petition for review thereof. This provision shall include prevailing fees in any adversary proceeding in bankruptcy, including motions for relief from stay.

IN WITNESS, WHEREOF, the undersigned, being the Declarant herein, has hereunto set its
hand
and seal this ____ day of _____, 1996

STAATS LAKE, L.L.C., Declarant

By: _____

Its: _____

STATE OF OREGON

County of Marion