

**DECLARATION ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WIND SONG HEIGHTS SUBDIVISION**

This Declaration is made this _____ day of _____ 2005, by Pacific Development, L.L.C.(hereafter referred to as “Declarant”), with reference to the following facts:

RECITALS

A. The Declarant is the owner of all that real property described in Section 1.09 of the Wind Song Heights Subdivision, and

B. The Declarant proposes to develop said real property in accordance with the maps and plans approved under the zoning and subdivision ordinances and regulations of City of Yachats and the State of Oregon, and

C. The subdivision map was filed in the office of the Recorder of the County of Lincoln, State of Oregon as Plat Map Number _____.

NOW, THEREFORE, it is hereby declared that the Lots shown on the said subdivision map are held and shall be conveyed subject to the following covenants, conditions and restrictions:

**ARTICLE I.
DEFINITIONS**

1.01 “Association” shall mean Wind Song Heights Homeowners’ Association, Inc., a nonprofit corporation organized under the laws of the State of Oregon and composed of the owners of the Lots as may be annexed hereto in accordance with the provisions of this declaration.

1.02 “Building Envelope” shall refer to the designated area in each Lot shown on the subdivision map.

1.03 “Common Area” shall refer to all area, including easements, shown on the Plat herein referred to or shown on a recorded instrument as Common Area and such additional area as may be annexed hereto in accordance with the provisions of this declaration.

1.04 “Declarant” shall mean Pacific Development, L.L.C.

1.05 “Architectural Committee” shall mean the Architectural Committee established under Article IV hereof.

1.06 “Lot” shall mean the numbered Lots shown on the subdivision map, whether improved or unimproved.

1.07 “Natural Grade” shall be determined by a grading plan prepared by the Owner’s engineer establishing the existing natural grade using two foot contour intervals, prior to any site work being undertaken.

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1.08 “Owner” shall mean and refer to the record owner, including the Declarant, whether one or more persons, of the fee simple title of any of the numbered Lots above described and includes contract buyers but excludes those having such interest merely as security for the performance of an obligation.

1.09 “Plat” shall mean the Plat for Wind Song Heights Subdivision as recorded in the Office of the Recorder of County of Lincoln, Oregon.

1.10 "Property" shall mean all of the land described in Exhibit A attached hereto and any property, which may hereafter be subject to this Declaration by execution and recordation of a supplemental declaration, as hereinafter provided.

ARTICLE II USE REGULATIONS AND RESTRICTIONS

2.01 Property Construction Requirements:

(a) No use whatsoever shall be made of any LOT except its use and improvements for a single family private residence; provided however that each Owner may operate a home office. Lots owned by Declarant or its nominee may be used as construction offices or for the purpose of selling the Lots. Any home office is subject to City of Yachats restrictions.

(b) The gross square footage of the second story portion of any structure or improvement shall not exceed sixty-seven percent (67%) of the gross square footage of the first floor, excluding daylight basements. No building including any building projections, such as patios, railings, exterior staircases, and other similar projections or accessory structures, pools, spas, or tennis courts shall be constructed outside the Building Envelope for the Lot as depicted on the Plat.

(c) The overall height of any structure or improvement on any Lot shall not exceed thirty (30) feet, measured in a vertical plane from the highest point of any roof ridge to the average existing Natural Grade or as further restricted as recorded on the Plat. Some lots will have additional height restrictions for the preservation of views from the uphill lots. The four lots nearest King Street, as an example, will each have a 22 foot height restriction. In all cases, the height restriction for all vegetation will be no higher than the building height restriction for that particular Lot. At any time during or after framing, the Architectural Committee may require the architect and builder to certify in writing that the finished height of the structures or improvements will not exceed the heights as shown on the approved plan. Should any heights of the structures or improvements exceed the heights as shown on the approved plan, the Owner shall be required to rebuild such that the structures or improvements are in compliance with the approved plan. No wall shall have an unbroken height of more than 20 feet (excluding gables) or an unbroken horizontal surface of more than 25 feet (excluding daylight basements). Also no post shall extend more than 12 feet from foundation to floor.

(d) Exterior surfaces must generally be of materials that harmonize with the natural landscape as well as provide an outer skin that will withstand the climate extremes. Wood shake and rock are examples of such materials. Specifically prohibited are: metal siding, vinyl and plastics, reflective materials, and other materials whose appearance in the judgment of the Architectural Committee does not convey strength, permanence or durability.

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(e) All projections from a building including but not limited to chimney caps, vents, gutters, downspouts, utility boxes, porches, railings, and exterior stairways shall be visually integrated into the overall design and generally match the color of the surface from which they project, unless otherwise approved by the Architectural Committee. All building projections must be contained within the Building Envelope.

(f) Roof mounted mechanical equipment and skylights, which are not flush against the roof surface, are prohibited on any roof, unless in the judgment of the Architectural Committee it does not adversely affect views from streets, other home sites, and public spaces. When permitted, such equipment or skylights must be screened from view from streets, other home sites, or public spaces. Skylights higher than one foot above the roof plane, or placed at an angle to the roof plane, or which are visible from the street are not permitted. There shall be no antenna, satellite dish, or flagpole of any sort either installed or maintained within Wind Song Heights, except as expressly permitted by the Architectural Committee. When permitted, such equipment must be screened from view from streets, other home sites and public spaces.

(g) Site drainage and grading must be done with the goal of minimum disruption to the home site. Surface drainage shall not drain to adjoining home sites or open spaces except as established by natural drainage patterns, nor cause a condition that could unnaturally lead to off-site soil erosion on open spaces.

(h) Approval of a drainage plan by the Architectural Committee does not constitute any enforceable right or warranty in favor of any party, nor shall it make the Architectural Committee liable or responsible to the Owner or others with respect to the plan's adequacy of the engineering or design. Such approval constitutes only the Architectural Committee's opinion that the proposal meets with the intent of these Design Guidelines and with design aesthetics. Architectural Committee approval does not eliminate or reduce the obligation of the Owner to comply with all legal requirements, nor does it reduce Owner responsibility for all damages arising from changes in natural conditions.

(i) No driveway entrance shall be designed as a "drive under" using beams or arches spanning the driveway, and no driveway entrance feature shall exceed 3 feet in height. Entrance driveways shall be located so as to minimize their visual impact and to minimize disruption of the existing natural landscape. Driveways shall generally be a maximum of 16 feet wide at the property line. Only one driveway entrance will be permitted for each lot unless approved by the Architectural Committee. All driveways shall be constructed of an approved hard surface material that will not migrate onto the streets. Concrete pavers, embossed concrete, exposed aggregate concrete (utilizing integral coloring), colored concrete, flagstone, or black asphalt are all driveway-paving materials, which may be approved. Feature strips of separate materials and special aggregates in exposed aggregate concrete will be reviewed on a case-by-case basis, including grass-crete.

(j) Fences are only allowed for the containment of animals or small children, or as may be required around swimming pools. No fences shall be constructed on property lines. Any permitted fencing must comply with home site setback requirements for buildings, except as permitted below, and comply with wildlife migration standards, where applicable. Any permitted fencing must not be any closer to the street than the front plane of the residence with respect to front yards, nor closer to the street than the side plane of the residence with respect to side yards that front on any street. All fence locations, materials, and height shall be approved by the Architectural Committee regardless of whether they are constructed as part of the main residence or otherwise. Generally, galvanized fencing and fencing exceeding six feet in height will not be permitted. Recommended materials for fence construction include post and rail, or any construction materials consistent with those used in the primary residence.

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(k) Any request on the part of two Owners to acquire an adjacent home site and split it, so as to add a portion to each of their existing home sites, may only be done with the prior consent of the Architectural Committee. The newly configured home site or home sites must be also approved by the City. All actions required and expenses associated with pursuing any required governmental approvals shall be the responsibility of the Owner.

(l) Each residence shall contain parking space within the home site for at least two automobiles in an enclosed garage either attached or detached from the main structure of the residence. A minimum of two additional parking spaces should be provided on the home site to accommodate guest parking. Except for special events no on-street parking will be permitted for residents' or their guests' vehicles. Generally, the storage of all recreational vehicles should be integrated into the architectural design of the house. No exterior storage of recreational vehicles or boats will be permitted on any home site, unless expressly approved by the Architectural Committee and unless such approved storage area is completely screened from neighboring properties using existing or additional landscaping treatment approved by the Architectural Committee.

(m) Swimming pools and spas, if any must be incorporated into the landscape in a harmonious way, and constructed and fenced according to all applicable regulations. The initial or subsequent installation of either a pool or a spa shall require submission drawings and prior approval by the Architectural Committee.

(n) No basketball hoops or backboards may be installed. The installation of all such items must be approved by the Architectural Committee, and are subject to stipulations imposed by the Committee.

(o) Individual address identification devices for each approved residence may be installed by the home site Owner. Such devices must utilize the same materials and colors as the residence and must reflect its design character. No additional signage detached from the residence will be permitted, except one temporary construction sign or other signs as permitted by the Architectural Committee. The Architectural Committee may in the future require installation of uniform address identification devices for all home sites, including home sites with previously constructed identification devices for all home sites, including home sites with previously constructed identification devices. Owners should submit the design of any proposed home site identification device with the final plan submittal.

(p) No construction, financing, "For Sale", "For Rent" and other similar signs or advertising devices of any kind shall be placed in public view on or within any home site within Wind Song Heights, except as expressly permitted by the Architectural Committee. The only exceptions are project signage as described below, the address identification described in section 2.01 (o) above, temporary construction signs, and signs used by the Developer during the construction and marketing of the property by the Developer. Permitted project signage shall include such signs as may be used by the Developer in connection with the development and marketing of the project and informational signs. It is anticipated that each Owner will, in accordance with the Declaration, be permitted to have one "For Sale" notice in a form and location approved by the Architectural Committee.

(q) All above-ground garbage and trash containers, clotheslines, mechanical equipment, and other outdoor maintenance and service facilities must be screened from other home sites, streets, or public spaces.

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(r) Detached accessory structures should be in the same architectural style as the residence, and should be visually related to it by the walls, courtyards, or major landscape elements. Any accessory structure must comply with all zoning regulations.

(s) Solar collectors will only be approved if they are integrated into the structure or landscaping in an aesthetically pleasing manner.

(t) All retaining walls are subject to Architectural Committee approval. All foundation walls or retaining walls with more than 12" visible above grade shall have a surface treatment on the surface above finish grade, as approved by the Architectural Committee.

(u) Should delivery conditions or regulations dictate that there be free standing newspaper receptacles or mail boxes, the type of box and/or cluster arrangement shall be determined and/or approved by the Architectural Committee and rules for maintenance established by the Association. All mailboxes and standards will be of consistent design, material and coloration as specified by the Architectural Committee. To assure uniformity, they shall be located at places designated by the Architectural Committee and/or the Postal Service.

(v) New landscaping and plantings shall accommodate existing vegetation wherever possible by allowing native material to co-exist within and around new plantings. A detailed landscaping plan must be submitted and approved by the Architectural Committee prior to the start of construction of any structures. Such plan must also show all trees outside of the building envelope to be removed with a circumference of five (5) inches or greater. Such plan must also locate those areas of the lot that are to be left undisturbed in its natural state. The Architectural Committee may compile a list of environmentally compatible trees and shrubs for use in landscape design. Landscaping of the Lot shall be completed within one hundred twenty (120) days following completion of construction of the improvements or ninety (90) days following the date of occupancy, provided that an extension may be granted by the Architectural Committee due to foul weather. The Architectural Committee may also require such financial assurances as it may deem necessary to insure that the landscaping is completed on time in accordance with the approved landscape plan, including but not limited to, bonds or letters of credit. All areas disturbed by construction shall be re-vegetated. Ground cover material in those areas outside the formal landscaped area shall be restored to their natural state using native vegetation and ground cover.

(w) No more than one single family dwelling shall be erected or maintained on any one Lot together with no more than one detached outbuilding per Lot (subject to applicable zoning regulations). No Lot shall be further subdivided. Notwithstanding the foregoing, two or more adjoining Lots which are under the same ownership may be combined and developed as a single Lot. Setback lines along the common boundary line of the combined parcels may be removed, subject to appropriate county approvals, with the written consent of the Architectural Committee, if the Architectural Committee finds and determines that any improvements to be constructed within these setback lines will not cause unreasonable diminution of the view from any other Lot or otherwise adversely impact other Owners. In such cases, the Architectural Committee shall designate a new building envelope appropriate for the combined Lots. If setback lines are removed or easements changed along the common boundary lines of combined Lots, the combined Lots shall be deemed one Lot and may not thereafter be split and developed as two Lots but shall be developed as, and remain, a single Lot Notwithstanding the foregoing, combined Lots shall be calculated as the original number of Lots for the purposes of sharing common expenses and voting on Association matters. All structures must be erected within the designated Building Envelope.

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(x) No Lot shall be used or maintained as a dumping ground for rubbish, machinery, equipment or motor vehicles. Trash, garbage or other waste shall not be kept except in sanitary containers. All trash cans, garbage containers or other equipment for temporary storage and disposal of such material shall be kept in a clean and sanitary condition and shall not be exposed to public view. All Lots shall be maintained by the Owner, both prior to, and after construction

of improvements thereon, in an attractive manner, free of trash and other unsightly material. All improvements to any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the owner thereof, and no improvement shall be entitled to fall into disrepair. All landscaping shall be maintained in a neat, trim and orderly fashion.

(y) No trailer, recreational vehicle or garage shall be used as a temporary or permanent residence except during construction of primary dwelling unit, with written approval of Architectural Committee. When the erection of any structure is approved, the work thereon must be prosecuted diligently, and said structure, including all landscaping pursuant to an approved landscaping plan, must be completed within eighteen (18) months, unless an extension is granted by the Architectural Committee.

(z) No cesspool, septic tank or other sewage disposal system or device shall be installed, maintained or used upon any.

(aa) Any improvements (including bridges and culverts) that traverse a drainage channel must be designed in consultation with the City of Yachats Engineer so as to minimally restrict the flow of that channel during high water. Wherever possible, drainage channels are not to be changed or culverted, and they are to be kept as clear and free flowing as possible.

(bb) No perimeter fencing shall be allowed on property lines. Fences will generally only be allowed for the containment of small children and animals, or as required around swimming pools. All fencing must be approved by the Architectural Committee.

(cc) No trailer, boat, recreational vehicle, or camper shall be kept on a Lot except within an enclosed building or screened from public view from outside the Lot. Appropriate materials for screening include evergreen type trees and shrubs, or fencing approved by the Architectural Committee. Trailers or recreational vehicle may be allowed during construction of primary dwelling (see 2.01 (y)).

(dd) No trees, hedges or shrub plantings shall be permitted within the road right of way, unless the foliage line is maintained at a sufficient height or density to prevent obstruction of sight lines.

(ee) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All Lots and improvements thereon shall be kept and maintained by the Owner thereof in a clean, safe, attractive and slightly condition and repair.

(ff) Easements for installation and maintenance of utilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

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(gg) No vehicle repairs shall be permitted on any streets or driveways, except minor emergency repairs.

(hh) No commercial or industrial trucks, trailers or vehicles shall be stored on any Lot or on any of the streets fronting on any Lot except within the garage or in conjunction with construction of any improvements on such Lot.

(ii) No horses or other farm animals or livestock may be kept on any Lot. Dogs, when outside, must be at all times in an enclosed yard, kennel, leashed, contained by invisible fencing, or under the Owner's supervision. Any household pet will be subject to expulsion from the Property upon any complaint, and upon a finding by the Board of Directors of the Association that said animal has created a nuisance.

(jj) All utilities upon any Lot for the transmission of utilities, telephone service, the reception or audio or visual signals or electricity, and all pipes for water, gas, sewer, drainage, or other utility purposes, shall be installed and maintained below the surface of the ground.

(kk) No activities shall be conducted on any Lot and no improvements constructed thereon which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot or Common Area. No open fires shall be lighted or permitted on any Lot, except while under the direct supervision, control and surveillance of the Lot owner, provided, however, burning trash, garbage and other refuse is prohibited.

2.02 Construction Requirements: In order to assure that the natural surroundings are not unduly damaged during construction, the following Construction Regulations shall be made a part of the construction contract documents for each residence or other improvements on a home site. All builders and Owners shall be bound by these Regulations, and any violation by a builder shall be deemed to be a violation by the Owner of the home site.

(a) To guarantee that the Construction Regulations are adhered to, each Owner, before beginning any construction, shall post cash deposit in the amount of \$5,000 with the Architectural Committee to remedy any violation of these Regulations, the costs of such remedy will be withdrawn from the deposit. The obligation of the Owner and/or builder to repair, correct, complete or otherwise comply with these Construction Regulations shall not be limited to the amount of such deposit. Upon completion of construction and approval of the Architectural Committee, the deposit, less any expenses to cure any violations, shall be returned to the Owner.

(b) Prior to commencing construction, the builder and the Owner must meet with the Architectural Committee to review construction procedures and to coordinate construction activities.

(c) OSHA, Oregon State, Lincoln County and City of Yachats regulations and Design Guidelines must be strictly observed at all times.

(d) Any Owner or builder who desires to bring a construction trailer, field office or the like to Wind Song Heights shall first apply for and obtain written approval from the Architectural Committee. To obtain such approval, a copy of the architect's site plan with proposed locations of the construction trailer or field office, the portable toilet, and the trash receptacle noted thereon shall be submitted. Such temporary structures shall be removed upon completion of construction.

(e) Builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be removed from each construction site frequently and not be permitted to accumulate. Lightweight materials, packaging, and other items shall be covered or weighted down to prevent their being blown off the construction site. Builders are prohibited from dumping, burying or burning trash anywhere on Wind Song Heights.

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During the construction period, each construction site shall be kept neat and clean and shall be properly policed to prevent it from becoming a public eyesore or affecting other home sites or any open space. Mud and dirt from the construction site shall not be permitted on the paved streets and shall be promptly removed and cleaned by the builder. Each builder shall be

responsible for the mud and dirt caused by its subcontractors and suppliers, and for any failures to use any construction entrance designated as such by the Architectural Committee.

(f) Each builder shall be responsible for providing adequate sanitary facilities for his construction workers. Portable toilets or similar temporary toilet facilities shall be located at each site.

(g) Construction crews shall not park on or otherwise use other home sites or any open space. Private and construction vehicles and machinery shall be parked only within areas designated in the approved site plan by the Architectural Committee. All vehicles shall be parked so as not to inhibit traffic.

(h) Each builder shall be responsible for assuring that its subcontractors and suppliers obey the speed limits posted within Wind Song Heights. Fines will be imposed against the builder and/or its builder's deposit for repeated violations. Adhering to the speed limits shall be a condition included in the contract between the builder and its subcontractors/suppliers. Repeat offenders may be denied future access by the Architectural Committee.

(i) If any blasting is to occur, the Architectural Committee must be informed far enough in advance to make sure the applicant has obtained the advice of expert consultants that blasting may be accomplished safely. These consultants must so advise the Architectural Committee in writing. No blasting or impact digging causing seismic vibrations may be undertaken without the approval of the Architectural Committee based upon such advice from a qualified consultant. Applicable governmental regulations concerning blasting must be observed. The Architectural Committee's only responsibility is to require evidence of such consultant's expertise and the Architectural Committee shall have no liability for the blasting.

(j) Damage and scarring of any property, open space or other home site, including but not limited to roads, driveways, utilities, vegetation and/or other improvements, resulting from construction operations, will not be permitted. If any such damage occurs, it must be repaired and/or restored promptly and any expenses shall be borne by the builder. In the event of default by the builder in meeting these obligations, the home site Owner who has hired the builder shall be responsible.

(k) The only approved construction access during the time a residence or other improvement is under construction will be over the approved driveway for the home site unless the Architectural Committee approves an alternative access point. In no event shall more than one construction access be permitted onto any home site.

(l) The builder shall be responsible for controlling dust, mud and noise, including, without limitation, music from the construction site.

(m) Except for posting requirements required of a builder under Oregon state law, temporary construction signs shall conform to the following standards, be limited to one sign per home site, and their design and location shall be subject to the review and approval of the Architectural Committee.

(n) Daily working hours for each construction site shall be from 7 am to 7 pm (no earlier than 9 am on weekends), unless the Architectural Committee designates other hours in writing.

3.01 The title and fee to all Common Area shall be transferred to the Association upon recording of the final Plat and creation of the Association.

3.02 All operational, maintenance and improvement expenses and real property taxes connected with the Common Area and the Water System shall be paid by the Association.

3.03 The Association may create reasonable rules and regulations relating to the use of the Common Area by Owners and the public.

3.04 Trails in common area will remain a public right-of-way.

ARTICLE IV ARCHITECTURAL COMMITTEE

4.01 The Architectural Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (collectively referred to as the "Design Guidelines") copies of which shall be a part of the Association's records and shall be available to all Owners. The Design Guidelines are incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners and their agents, excluding Declarants. The Architectural Committee may, in its sole discretion amend, repeal, or augment certain provisions of the Design Guidelines, provided however that as long as Declarant owns any Lot, any change to the Design Guidelines must be approved in writing by Declarant. The Design Guidelines shall not apply to Declarant and nothing contained herein shall be construed to prevent or impair in any way, any development, operation, construction or improvements by the Declarant or its agents.

4.03 No changes in the existing state of any Lot shall be made or permitted without the prior written approval of the Architectural Committee. Changes in the existing state of the Lot shall include without limitation, fences, the construction of any building, structure or other improvement, including without limitation, change of grade, stream bed, ground level or drainage pattern, the clearing, marring, defacing or damaging of significant trees, shrubs, or other growing things, the landscaping texture or exterior appearance of any previously approved change in the existing state of the Lot. Notwithstanding the foregoing, approval of the Architectural Committee shall not relieve an Owner of its obligation to obtain appropriate approvals from local, state and/or federal agencies with respect to the proposed change if required.

4.04 The Architectural Committee shall have complete discretion to approve or disapprove any change in the existing state of the Lot and shall exercise such discretion to carry out the general purposes expressed in the Design Guidelines and to prevent violation of this Declaration. Decisions of the Architectural Committee shall be submitted to each applicant in writing within thirty (30) days after receipt of a complete application. The Architectural Committee may condition its approval of the Application upon such changes, as it deems appropriate.

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4.05 Prior to expenditures of any substantial time or funds in the planning of any proposed change in the existing state of the Lot, the Owner of a Lot shall read and become familiar with the Design Guidelines and follow the procedures set forth therein with regard to submitting applications to the Architectural Committee. Each application shall require payment

of a standard fee, which shall be used to defray the costs and expenses of the Architectural Committee.

4.06 After receipt of an approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed (the “Approved Application”), each Owner will be responsible for completing all improvements in accordance with the Approved Application and adhering to all provisions of this Declaration and the Design Guidelines regarding construction procedures. Upon completion of construction, the Owner shall give written notice of completion to the Architectural Committee, which shall inspect the improvements within sixty (60) days. If the Architectural Committee fails to notify the Owner of any violation within one hundred eighty (180) days after receipt of notice of completion from the Owner, the improvements shall be deemed to be completed in accordance with the approved Application. If the Architectural Committee finds that (a) the Owner is not complying with the provisions of this Declaration and the Design Guidelines regarding construction or (b) the improvements have not been completed in accordance with the Approved Application, the Architectural Committee shall notify the Owner in writing of the violation(s) and shall require the Owner to remedy the violation(s). If the Owner fails to remedy the violation(s) within thirty (30) days (or such longer time as may be determined by the Architectural Committee), the Architectural Committee shall notify the Board of Directors of the violation.

4.07 Upon receiving a notice of violation from the Architectural Committee, the Board shall have the authority, in its sole discretion to determine whether there is a violation and shall notify the Owner of its decision within thirty (30) days. If the Board affirms that there is a violation, the Owner shall be responsible for remedying the violation as set forth in the notice from the Architectural Committee. If the Owner fails to remedy the violation, the association may remedy the violation and the Owner will be obligated to reimburse the Association for all costs and expenses incurred and the Association shall also have the authority to levy a Limited Assessment against such Owner, as set forth in Article 7. Such reimbursable costs shall include all actual or estimated costs of remedying such noncompliance, if applicable, reasonable attorney’s fees incurred or to be incurred, reimbursement for time spent by members of the Architectural Committee and/or Board incurred in connection with any review or consideration of such noncompliance and all other out of pocket expenses. The Association may pursue collection of such Limited Assessment as against such Owner and such Owner’s Building Lot pursuant to this Declaration.

4.08 Neither the Architectural Committee nor any member thereof shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural committee, unless due to the willful misconduct or bad faith of the Architectural Committee or such member.

4.09 The Architectural Committee may authorize variances from compliance with the terms of this Declaration and the Design Guidelines. Such variances must be evidenced in writing and signed by a majority of the Architectural Committee and shall become effective upon recordation in the office of the Recorder of County of Lincoln, Oregon. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration except as to the specific terms contained in the variance.

5.01 The Wind Song Heights Homeowners' Association, Inc., shall be incorporated as an Oregon non-profit corporation. The purposes and powers of the Association and the rights and obligations inherent in membership are set forth in its Articles of Incorporation and By-Laws, and the provisions of this Declaration with respect thereto are for general descriptive purposes only. The Association is and shall be obligated (a) to accept title to and maintain Common Areas, and (b) to assure the functions and obligations imposed on it or contemplated for it under this Declaration and any similar functions and obligations under any supplemental declaration with respect to property now or hereafter subject to the Declaration.

5.02 The Association shall be governed by a Board of Directors, who shall be elected in accordance with the provisions set forth in the By-Laws.

5.03 A regular meeting of the Association will be held annually at the time and in the place prescribed by the By-Laws.

5.04 Each Owner of each Lot is subject to assessment by the Association as set forth in Article VIII and shall be a Member of the Association. Said membership shall be appurtenant to and shall not be severed from the Lot.

5.05 The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the occurrence of the sooner of any of the following events.

- (a) The total votes outstanding in the Class A membership in the Association equal or Exceed the total votes outstanding in the Class B membership in the Association.
- (b) The fifteen anniversary of the recording of this Declaration
- (c) The Declarant voluntarily terminates its Class B membership by written notice to the Board.

5.06 Written notice of any meeting of the members of the Association shall be sent to all members at their address shown in the books of the Association, by regular mail, not less than ten (10) days nor more than thirty (30) days in advance of the meeting and shall describe the nature of the business to be conducted. The presence at any meeting of the Class B Member, in person or by proxy, where there is such a Member and of the Class A Members in person or by proxy representing Class A Members entitled to cast twenty percent (20%_ pf a;; pf the vptes pf the Class A Members shall constitute a quorum. If the required quorum is not present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented. Such adjournment shall be for not less than five (5) days and not more than thirty (30) days from the original meeting date. In the absence of a quorum, no other business may be conducted at any such meeting.

5.07 Any vote may be cast by a member in person, by proxy, or by written consent. All proxies shall be in writing, dated and signed by the members and filed with the Board of
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Directors before commencement of any meeting. No proxy shall extend beyond the specific meeting for which it was executed, and every proxy shall automatically cease upon sale by the

Owners of his or their Lot or upon death or incapacity of the member executing the proxy statement.

ARTICLE VI PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

6.01 Each Member of the Association shall have the right of enjoyment of the Common including the easements and the facilities located thereon which are appurtenant to the Lot, subject to the following conditions:

(a) The right of the Association, as provided in its By-Laws to suspend the rights and privileges, including voting rights of any member for any period during which an assessment (to which his interest is subject) remains unpaid and for a period not to exceed thirty (30) days for each infraction of its published rules and regulations and for the right to impose monetary penalties for violation of such rules and regulations after hearing by the Board of Directors of the Association. Any Owner shall be given ten (10) days notice of any such hearing by mail to his address as it appears on the books of the Association.

(b) The right of the Association to charge reasonable fees for the use of any facility, belonging to the Association.

(c) The right of the Association, in accordance with its Articles and By-Laws to borrow money for the purpose of improving the Common Area and facilities.

6.02 The Association shall have the obligation at its expense to maintain in a clean and orderly manner and in a good state of repair, the Common Area and the Water System and all improvements located thereon and to operate in a competent and efficient manner, all facilities located in its Common Area; and in the event of damage or destruction to the improvements, to repair and restore promptly after such damage or destruction occurs, all improvements thereon.

6.03 Any member may delegate his rights of enjoyment in the Common Area and in the privileges of the Association to the members of his family who reside upon a Lot, to any of his tenants who reside thereon under a leasehold interest for a term of one month or more, and to his guests; subject, however, to the By-Laws, rules, regulation and limitations of the Association. Such member shall notify the Secretary in writing of the name of such person and of the relationship of the member to such person. The rights and privileges of such person are subject to suspension the same as members of the Association, as provided in paragraph (a) of Section 1 of this Article.

6.04 Any member may petition the Architectural board for the removal or topping of trees not on their property, including common area, for the preservation of views.

ARTICLE VII ASSESSMENTS AND LIENS

7.01 The Declarant, for each Lot owned within the Property hereby covenants, and each Owner of any Lot by 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 respective Association:

(a) Regular Assessments: The Board shall establish the "Annual Budget" which shall be an estimate of the expenses to be incurred by the Association in performing its functions under this. Regular Assessments for each Lot shall be determined by dividing the Annual Budget by sixteen (16), which is the number of Lots within the Subdivision.

(b) Special Assessments: The Board shall have the right to charge a Special Assessment for capital improvements which shall be computed in the same manner as the Regular Assessments. No Special Assessment shall be levied which exceeds twenty percent (20%) of the Annual Assessment without the vote or written assent of a majority of the votes of the Association.

(c) Limited Assessments: The Board may levy Limited Assessments against an Owner, other than Declarant, as a remedy to compensate the Association and other Owners and reimburse the Association for costs incurred in enforcing the provisions of this Declaration.

(i) Architectural Committee Violations: As provided in Section 4.07, the Association may impose an assessment in the amount of \$20.00 per day from the date of the Architectural Committee's determination of violations continuing through the date corrections are completed, as a compensatory charge to the Association and other Members for such violation, which may be assessed and imposed separately for each distinct violation. From time to time, the Board shall have the right, in its discretion to periodically increase the \$20.00 per day amount described in the preceding sentence in order to reflect the impact of inflation.

(ii) Other Violations: Notwithstanding any additional remedies available to the Association, any Owner, who receives a third letter from the Association detailing violations of provisions of this Declaration, will be assessed a \$500 fee to reimburse the Association for costs and time incurred. Thereafter, any Owner, who receives further violation letters will be assessed a \$100 fee per letter.

(d) Transfer Assessments. Upon transfer of title or sale of any Building Lot from an existing Owner, excluding Declarants, to a new Owner, the new Owner shall pay a Transfer Assessment equal to \$100 to the Association to mitigate the costs associated with such transfer of title, such as establishing new accounting records, etc.

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 and shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Owners shall not be entitled to take offsets from assessment amounts for any reason.

7.02 Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and for the improvement and maintenance of the Common Area owned by the Association and including, but not limited to, the payment of taxes and insurance for the common properties, maintenance and repair, replacement and additions to the trails, roads and other assets of the Association and for the cost of labor, equipment, materials, management and supervision of the Common Area and Water System.

7.03 Any assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at the maximum rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclosure the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non use of the Common Area or abandonment of his Lot. Each of the Owners do hereby grant and appoint sale, and the authority and power to sell the Lot of such defaulting Owner, or any part thereof, to satisfy said lien, for lawful money of the United States to the highest bidder. Such lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the Owner and the Board of Directors may have to enforce the provisions hereof.

7.04 The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not any assessment lien. However, the sale of any Lot pursuant to a mortgage or deed of trust foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

7.05 In addition to the remedies stated above, the Association upon violation or breach of any covenant, restriction or condition contained in this declaration, may enter upon any Lot where such violation or breach exists and may abate or remove the thing or condition causing the violation or breach or may be otherwise cure the violation or breach. The costs incurred shall be Billed to and paid by the Owner of the Lot. If the Owner of any Lot fails, after demand, to pay such costs then the Association shall have a lien, from and after the time a notice of such failure to pay is recorded in the records of Lincoln County, Oregon, against the Lot of such Owner or Owners for the amount due and not paid, plus interest from the date of demand for payment at the statutory rate, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees.

ARTICLE VIII DAMAGE OR DESTRUCTION OF COMMON AREA IMPROVEMENTS

In the event of damage to or destruction of the property of the Association, or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association may make a special assessment in accordance with the provisions of this declaration, to cover the additional cost of the repair or replacement not covered by the insurance proceeds. Such special assessment is not in addition to any other regular assessments made against Owners and is subject to the rules herein relating to Special Assessments. If any damage or destruction is caused by a casualty not insured against, then the repair or reconstruction shall be accomplished in the manner provided by a written agreement approved by the Owners representing more than fifty percent (50) of all the Lots after the plans for any repairs or reconstruction have been approved by the Association.

ARTICLE IX ANNEXATION

9.01 Declarant shall have the right to annex to the real property initially encumbered by this Declaration and thereby bring within the scheme of this Declaration and subject to the jurisdiction of the Association additional portions of property. Annexation of additional portions of property may be accomplished in stages.

9.02 Any annexation shall be made by recordation of a supplemental declaration covering the real property to be annexed. The supplemental declaration shall describe the real property to be annexed and state that annexation is being made pursuant to this declaration for the purpose of extending the jurisdiction of the Association to cover the phase of the project being annexed. The supplemental declaration may contain such complimentary additions and modifications to the terms of this declaration as may be necessary or desirable to reflect the different character, if any, of the phase being annexed and as are not inconsistent with the general scheme of this declaration. Annexation shall be effective upon recordation of the supplemental declaration and thereupon the real property described therein shall be subject to all of the provisions of this declaration, to the extent made applicable by the supplemental declaration and to the jurisdiction of the Association pursuant to the terms of this declaration, the Articles and Bylaws.

9.03 Each owner of a lot in an annexed phase automatically shall be a member of the Association and such owners and annexed real property shall be subject to assessment by the Association for the benefit of the project or any part thereof. The Association shall have the duties, responsibilities and powers set forth in this declaration, the articles and bylaws with respect to annexed real property. Except as may otherwise be expressly provided in this declaration or any supplemental declaration, the project shall be managed and governed by the Association as an entirety. Assessments collected from owners in the project may be expended by the Association anywhere in the project without regard to the particular phase, area or subdivision from which such assessments came. All owners shall have ingress and egress to and from all the common area throughout the project and any phase thereof and shall have use and enjoyment of any recreational facilities and other amenities contained within the common area throughout the project, provided that any such use shall be subject to the provisions of this declaration, any supplemental declaration, the bylaws and the rules and regulations.

**ARTICLE X
MISCELLANEOUS PROVISIONS**

10.01 The provisions hereof may be amended by a vote or the written consent of fifty percent (50%) of the Owners. Irrespective of the provisions of this Article, the percentage of voting power to amend a specific clause herein shall prevail with relation to that specific Article.

10.02 In the event of any inconsistency between applicable law and any of these covenants or restrictions the applicable law shall govern. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no ways affect any other provisions which shall remain in full force and effect.

10.03 The developer shall enter into an agreement with the City not to remonstrate against the future formation of a local improvement district (LID), or of their objective to widen King Street.

DATED this _____ day of _____, 2005.

PACIFIC DEVELOPMENT, L.L.C.

By:

Its:

- * * * *
- * * * *

STATE OF OREGON)
)ss.
County of Oregon)

The foregoing instrument was acknowledged before me on
_____, 2005,
by _____ who signed the same as his voluntary act and deed in
his capacity as _____ of Pacific Development, L.L.C.

Notary Public for Oregon
My commission expires; _____