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Portland, OR 97201

## AMENDED AND RESTATED DECLARATION

### OF UNIT OWNERSHIP OF

### WHEATHERSTONE, A CONDOMINIUM

Wheatherstone was created by S J DEVELOPMENT CO., an Oregon corporation (hereinafter referred to as "Declarant"), who recorded the original Preliminary and First Final Declaration of Unit Ownership, A Condominium on November 26, 1972 as Fee No. 72-11495 in the Clackamas County, Oregon, deed records ("Original Declaration"). The Declarant also recorded the Second Final Declaration of Unit Ownership of Wheatherstone, A Condominium on October 24, 1972 as Fee No. 72-32469 in the Clackamas County, Oregon, deed records. The Original Declaration was amended by instruments recorded on November 23, 1979, Fee No. 79-52039 and on October 17, 1990, Fee No. 90-51823, Clackamas County, Oregon, deed records. The Amended and Restated Declaration of Unit Ownership of Wheatherstone, A Condominium (hereinafter referred to as "Declaration") supersedes and replaces the Original Declaration, the Second Final Declaration and all amendments thereto. Provided, however, THIS INSTRUMENT SHALL NOT SUPERSEDE OR REPLACE THE PLANS ATTACHED TO THE ORIGINAL DECLARATION, PAGES 27-31. SUCH PLANS ARE INCORPORATED HEREIN BY REFERENCE.

### WITNESSETH:

WHEREAS, Declarant was the owner of real property situated in the County of Clackamas, State of Oregon, the legal description of which is attached hereto, marked Exhibit "A" and made a part hereof, and

WHEREAS, Declarant built upon such property certain condominium buildings and other improvements, and

WHEREAS, Declarant submitted such real property to provisions of the Oregon Unit Ownership Law (now known as the Oregon Condominium Act) and subjected such property to the covenants, restrictions, easements, charges and liens set forth in the Original Declaration and Second Final Declaration;

NOW, THEREFORE, the property described above is and shall be held upon and conveyed subject to the conditions, covenants, restrictions, easements, reservations, charges and liens hereinafter set forth. Such conditions, covenants, restrictions, easements, reservations, charges and liens shall run with such property and shall be binding on all parties having or acquiring any right, title or interest in such property or any part thereof, and shall inure to the benefit of each owner thereof.

## **ARTICLE I**

### **Definitions**

Except as otherwise provided or modified in this section, the terms contained herein shall have the meanings set forth in the Oregon Condominium Act.

1.1 "Association" shall mean Wheatherstone Property Owners Association.

1.2 "Board of Directors" shall mean the board of directors of the Association.

1.3 "Condominium" shall mean the entire estate in the real property owned by an owner, consisting of an undivided interest in the general common elements, ownership of a separate interest in a unit and a separate interest or undivided interest in limited common elements as set forth herein.

1.4 "Declaration" shall mean this instrument, its amendments and supplements thereto.

1.5 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any unit situated upon the Properties, but shall not mean a mortgagee.

1.6 "Properties" shall mean the real property subject to this Declaration.

1.7 "Unit" or uncapitalized "unit" shall mean a part of the Properties and elements of a condominium excluding general common elements and limited common elements, each such unit being shown on the plot plan attached to the Original Declaration as Exhibit "B", and intended for independent use with a direct exit to a public street or highway or to the common element or elements leading to a public street or highway.

## **ARTICLE II**

### **Property Subject to the Declaration**

2.1 Existing Property. Real property which is subject to this Declaration is located in Clackamas County, State of Oregon, and is more particularly described in Exhibit "A" which is attached hereto and made a part hereof.

**ARTICLE III**  
**Name and Unit Description**

3.1 Name. The name by which the Properties shall be known as WHEATHERSTONE.

3.2 General Description of Units. Each unit is of wood frame construction consisting of two stories, except that certain units identified on Exhibit "B" attached to the Original Declaration and made a part hereof also have basements. There are thirty eight (38) units, and the general location of each such unit, the unit designation, approximate area and all other data necessary for proper identification of each unit are set forth in Exhibit "B" attached to the Original Declaration.

3.3 Boundaries of Units. Each unit shall be bounded by the interior surfaces of its perimeter walls, floors, ceilings, windows and window frames, doors and door frames and trim. The units shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described, except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of the Condominium. All other portions of the exterior walls, floors or ceilings shall be a part of the common elements. In addition, each unit shall include the following:

3.3.1 All spaces, nonbearing interior partitions, windows, window frames, exterior doors, door frames, and all other fixtures and improvements within the boundaries of the unit; and

3.3.2 All utility service lines, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and waste disposal within the boundaries of the unit.

**ARTICLE IV**  
**Common Elements**

4.1 General Common Elements. General common elements shall include the land, all exterior walls, roofs and foundations, and shall in general consist of all portions of the Properties, structures and improvements thereon which are not units or limited common elements. Each owner of a unit shall have an undivided 1/38th interest (approximately 2.63%) in such general common elements. No owner's individual interest in the general common elements shall be separated from the unit to which it appertains, and each such individual interest shall be conveyed or encumbered with such unit, though such interest is not expressly mentioned or described in the conveyance of such unit.

4.2 Limited Common Elements. Garages, patios, decks, yards and walkways are limited common elements as designated in Exhibit "B" attached to the Original Declaration and are reserved for the exclusive use of owners of particular units. Where located between units or

garages, walkways between garages and patios are likewise limited common elements, but as designated in Exhibit "B" are reserved for the use in common of adjacent units served by such walkways.

4.3 Common Elements to Remain Undivided. General common elements shall remain undivided, and no owner shall bring any action for partition or division of any part thereof while the Properties are subject to this Declaration.

## **ARTICLE V**

### **Uses and Limitations of Units and Common Elements**

5.1 Use of Units. Each unit is intended for the use as a private residence for the owner, his family and guests. An owner may rent his unit as an apartment during periods when he shall not be occupying such unit but no such rental shall be permitted for a term less than thirty days. No lease of a unit shall excuse the owner from payment of any charges and assessments to which his unit is subject pursuant to this Declaration.

5.2 Limitation on Use. The following restrictions are applicable to the use of any units:

5.2.1 No unit shall be used for any purpose other than residential purposes, except that, subject to compliance with applicable local ordinances and other restrictions of record, an owner may use his unit as a "home office".

5.2.2 No animals or fowls shall be raised, kept or permitted upon the Properties or any part thereof, excepting only domestic dogs or cats and excepting caged pet birds kept within the unit, providing such dogs, cats and pet birds are not permitted to run at large and are not kept, bred or raised for commercial purposes or in unreasonable numbers.

5.2.3 No noxious or offensive activities shall be carried on in any unit or in any part of the common elements, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as a high class residential district.

5.2.4 No trucks, campers, trailers or boats shall be parked or permitted to remain in any portion of the general common elements, except inside the garage assigned to the unit owner or in such specific parking areas as may be assigned by the Association to such recreational vehicle.

5.2.5 No owner or occupant shall remove or significantly alter any tree, shrub or any other improvement in any portion of the general common elements unless permission in writing is first granted by the Association.

5.2.6 Nothing shall be done or kept by any owner or occupant in any unit or in the common elements which will increase the rate of insurance on the common elements without written consent of the Association. No owner shall permit anything to be done or kept in his unit or in the common elements which will result in the cancellation of insurance on any unit or on any part of the common elements, or which would be in violation of any law.

5.2.7 All parts of the general common elements including walks and driveways are for the use of owners on an equal basis. It shall be the responsibility of each owner to allow maximum ease of pedestrian and vehicular ingress and egress over walks and driveways by prohibiting automobile parking in front of garages or in the alleyways and allowing no obstruction or barrier on, across or adjacent to sidewalks.

5.3 Limitation on Use of Common Elements. The Association shall have the right to promulgate reasonable rules and regulations in regard to use of the general common elements.

## **ARTICLE VI**

### **Service of Process**

The designated agent to receive service of process in the cases provided in ORS 100.550(1) shall be named in the Condominium Information Report which shall be filed with the Oregon Real Estate Agency in accordance with ORS 100.250(1).

## **ARTICLE VII**

### **Covenants for Payment of Share of**

### **Common Expenses and Special Assessments**

7.1 Creation of Lien and Personal Obligation. Each owner upon acceptance of the deed to a unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

7.1.1 His proportionate share of common expenses as evidenced by regular assessments whether annual, quarterly or monthly.

7.1.2 Special assessments for capital improvements as may be fixed, established and collected from time to time as hereinafter provided.

Such regular and special assessments, together with interest thereon and cost of collection thereof as hereinafter provided, shall be a continuing lien against the condominium of any owner to whom such assessments apply and shall also be the personal obligation of the person who is the owner of such condominium at the time when the assessment falls due. Regular assessments shall be deemed conclusively to represent the reasonable value of common expenses.

7.2 Purpose of Regular Assessments. The regular assessment levied by the Association shall be for the purpose of paying common expenses and shall be deemed exclusively for the purpose of promoting the recreation, health, safety and welfare of the owners, and in particular for the improvement and maintenance of property, services and facilities devoted to this purpose and related to the use and enjoyment of the common elements. Without limiting the generality of the foregoing, assessments for common expenses may be used to pay for the cost of water and garbage removal and for the payment of insurance as required by Article XIII.

7.3 Determination of Regular Assessment. The board of director's shall establish the budget for the Association annually and shall fix the total amount of the regular annual assessment. Such total annual assessment shall be allocated among the units as provided in Section 7.5 below. One-quarter (1/4) of each unit's annual assessment shall be assessed and paid in advance on or before the fifteenth day of the first month of each calendar quarter (i.e. January 15, April 15, July 15 and October 15) for that quarter.

7.4 Special Assessments For Capital Purposes. Upon vote of the Association as hereinafter set forth, the Association may levy in addition to regular assessments a special assessment for the purpose of defraying in whole or in part the cost of construction or reconstruction or expected repair or replacement of a described capital improvement upon the common elements including necessary fixtures and personal property related thereto.

7.5 Division of Assessments, Uniformity. The units are of three (3) design categories, having like square footage in each design category. Category A units have the least square footage and consist of units numbered 1 through 27 as set forth in pages 27 through 32 of the Original Declaration (i.e. street numbers 2 through 42 and 80 through 90). Category B units are the next larger in square footage and consist of units numbered 28 and 29 on pages 27 and 29 of the original Declaration (i.e. street numbers 92 and 94). Category C units have the most square footage and consist of units numbered 30 through 38 on pages 27, 29 and 30 of the Original Declaration (i.e. street numbers 60 through 76). The units within each category shall be assessed uniformly. In determining the assessments the board of directors shall divide the expenses, including reserves, for which assessments are being made into two (2) groups, one (1) group being those variable expenses which vary between the units because of size and value, such as (but not limited to) exterior painting and insurance, and the other group being those uniform expenses which benefit all units substantially equally, such as (but not limited to) landscaping and street maintenance. The board then shall allocate the variable expenses to the units on the basis of unit square footage and shall allocate the uniform expenses to all units equally. Toward the end of each year, the board shall determine such allocation and assessment for the ensuing year, and inform the unit owners thereof in writing on or before December 1. Unless a meeting of owners to approve such budget, assessment and allocation is requested within the time and in the manner provided in Section 7.6, the budget, assessment and allocation shall go into effect. In the case of a special assessment, the board of directors shall determine whether such special assessment benefits the units of each category on a uniform or variable basis, or on a partly uniform and partly variable basis and shall assess the units accordingly.

7.6 Voting and Notices For Approval of Regular Assessments and Special Assessments. If on or before December 10 of any year, or such later date set by the board of directors, the chairman or the secretary of the board of directors shall receive a written request or requests from the owners in good standing of six (6) units that approval of the budget, total annual assessment, or allocation thereof be put to a vote of the membership, the chairman shall call a meeting of the members within forty (40) days thereafter to vote on whether or not to approve such budget, total assessment and allocation. Any special assessment and the allocation must have the approval of the owners at a meeting called for such purpose. The affirmative vote of the owners in good standing of a majority of the units present in person or by proxy and who vote shall be sufficient to approve either an annual budget, total regular assessment and its allocation or a special assessment and its allocation. Notice of any such meeting shall state the purpose thereof. If at such meeting an annual budget, total annual assessment or allocation is not approved, the assessments for the year preceding that for which approval is not given shall continue until an annual budget, total annual assessment and allocation is approved. In the event of such disapproval, the board shall resubmit a new budget, total assessment and allocation with the same right in the owners in good standing of six (6) units by written request within 10 days of its submission to require owner approval as applies to the original budget.

7.7 Certificate of Payment. The Association shall upon demand at any time furnish to any owner liable for an assessment a certificate in writing signed by an officer of the Association setting forth whether the assessment has been paid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

7.8 Effect of Non-payment of Assessments. If an assessment is not paid on the date when due, such assessment shall become delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, continue as a lien on the condominium against which such assessment was made, and the Association shall comply with the provisions of ORS 100.450 with respect to such lien. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation and the successor in title shall be liable therefor as provided in ORS 100.475. If the assessment is not paid within thirty days after the due date, the assessment shall bear interest from the due date at the rate of ten percent (10%) per annum and the Association may bring an action at law against the owner personally obligated to pay the same, or to foreclose the lien against the property. In the event a judgment is obtained in favor of the Association, such judgment shall include interest on the assessments as above provided and a reasonable attorney's fee to be fixed by a court at either a trial or an appellate court level together with the costs and disbursements incurred. Any rentals received by the Association for the use of the unit may be applied to such assessments at the option of the board of directors.

7.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent

assessment. No amendment to this section shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment which does not join in the execution thereof.

## **ARTICLE VIII**

### **Obligation to Maintain and Repair**

8.1 Unit. Each owner shall at the owner's expense keep the interior of his unit, the windows, the mechanical parts of garage doors and the limited common elements designated for exclusive use of such unit and the equipment and appurtenances of such unit in good order, condition and repair and in a clean and sanitary condition. Each owner shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of such unit. In addition, the owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures fans, heaters, heating equipment, lighting fixtures, refrigerators, dishwashers, disposals or ranges that may be in or connected with his unit.

8.2 Common Elements. The Association has a duty to maintain, repair and replace the general common elements, which include the land, exterior walls, roofs, foundations, roadways and driveways. Maintenance, repair and replacement of decks, patios, yards, walkways, garages and balconies which are limited common elements are the responsibility of the owners to which such limited common elements pertain. Maintenance, repair and replacement of the fences are the responsibility of the owner of the unit to which the fence is adjacent. If the fence is located between two units, the owners whose units are on either side of the fence shall be equally responsible for its maintenance, repair and replacement. In the event of a dispute concerning the maintenance, repair and replacement of the fence, the other owner(s) involved may petition the board of directors for a hearing. The decision of the board of directors shall be final.

8.3 Modifications. If an owner makes modifications to the exterior walls, roof or foundation of his or her unit, that owner and any future owners of the modified unit are responsible for maintaining, repairing and replacing the modification. In the event of any owner's request for such alterations, the board of directors may condition its approval thereof by requiring such owner to agree in writing to maintain, repair and replace the modification and all common elements at the point of its intersection with the common elements at such owner's sole expense and cost. Such writing shall be recorded as an encumbrance against the unit, all at the expense of such owner as authorized by ORS 100.405(10). Nothing in this paragraph shall permit an owner to make improvements without first obtaining the approval of the board pursuant to Article IX, Section 9.1.

8.4 Pipes. Each unit owners shall be responsible for the maintenance, repair, replacement and costs associated therewith of that portion of pipe that provides water service which runs from within the confines of his unit to the point of intersection where such pipe joins the pipe coming from the main service line in the street.



Each unit owner shall be responsible for the maintenance, repair, replacement and costs associated therewith of that portion of pipe that provides sewage disposal which runs from within the confines of his unit to the point of intersection where such pipe joins that pipe going to the main sewage disposal in the street.

8.5 Limitation of Liability. The board of directors and manager shall not be responsible to the owner for loss or damage by theft or otherwise of articles which may be stored by the owner in any portion of his unit or limited common elements assigned thereto.

## **ARTICLE IX**

### **Restrictions on Maintenance, Construction and Improvement**

9.1 Permission Required on Alterations. Owners shall not without first obtaining written consent of the board of directors make, or permit to be made, any structural alterations in or to his unit. Nor shall an owner without first obtaining such consent make any alterations, improvements or additions in and to the exterior of the building in which his unit is located, or other general common elements or limited common elements. Owner shall not paint or decorate any portion of the structure in which his unit is located or the limited common element assigned to his unit without first obtaining the written consent of the board of directors.

9.2 Mailboxes. The location, color, size, design, lettering and other particulars of mail or paper-delivery boxes shall be subject to the approval of the board of directors.

9.3 Signs. No sign or other advertising device of any character shall be erected on any unit or maintained upon any part of the Properties except signs not larger than 18 inches by 24 inches advertising a unit for sale or for rent.

9.4 Antennas and Aerials. Except as otherwise provided by law or this section, no exterior antennas, satellite dishes, microwave, aerial, tower or other devices for the transmission or reception of television, radio or other forms of sound or electromagnetic radiation shall be erected, constructed or placed on any unit or any common elements. Only exterior satellite dishes or antennas with a surface diameter of one (1) meter or less and antennas designed to receive television broadcast signals or multi-channel multi-point distribution (wireless cable) may be placed on a limited common element or the general common element roof if it is securely mounted in such a manner that it may not become dislodged. Owners installing permitted satellite dishes or antennas in limited common element areas shall not penetrate into general common element areas. Owners wishing to install permitted satellite dishes or antennas on the general common roof must get prior written consent from the board of directors. Any damage to the common elements caused by such owner shall be repaired at owner's sole cost and expense. Such cost shall be considered as an assessment and collectible as such as elsewhere provided in the Bylaws or Declaration. The board may adopt reasonable rules and regulations governing the installation, safety, placement and screening of such antennas, satellite dishes and other transmission devices. This section and any such rules adopted hereunder shall not unreasonably

delay or increase the cost of installation, maintenance or use or preclude reception of a signal of acceptable quality.

## **ARTICLE X**

### **Easements and Encroachments**

10.1 Reservation of Easements. In the Original Declaration, the Declarant granted to the Association perpetual easements under, over and across all general common elements and limited common elements for the purpose of erecting, constructing, maintaining and operating sewers and drainage systems, and poles, pipes, wires, cables, guys, anchorages and conduits for lighting, heating, power, telephone, television transmission, and any other method of conducting and performing any public or quasi-public utility service or function beneath, upon or above the surface of such common elements. Those easements reserved by the Declarant in Article X of the Original Declaration remain in full force and effect and are not superseded by this Declaration.

10.2 Easements to Association. There is hereby granted to the Association, its agents and servants an easement in gross with respect to all of the Properties for the purpose of entry and access for landscaping and maintenance of the general common elements, for the performance of its duties of exterior maintenance, and for the execution generally of its rights and obligations as otherwise provided in this Declaration.

10.3 Easement of Ingress and Egress. There is hereby granted to owners and tenants, invitees and guests a nonexclusive easement for ingress and egress over the general common elements.

10.4 Encroachments. None of the rights and obligations of the owners created herein shall be altered in any way by encroachment through the settlement, shifting or rebuilding of structures or any other cause, provided however, that there shall be easements for the maintenance of such encroachments for so long as they shall exist. In no event, however, shall a valid easement for encroachment occur due to the willful conduct of an owner or owners.

## **ARTICLE XI**

### **Failure of Board of Directors to Insist Upon Performance**

Failure of the board of directors or manager to insist in any instance upon strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or institute any action shall not be construed as a waiver for the future of such term, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect.

**ARTICLE XII**  
**Limitation of Liability and**  
**Indemnification of Board of Directors**

12.1 Limitation of Liability. Neither the manager nor the board of directors, nor any member thereof, shall be liable for any failure of any utility service to be obtained and paid for by the board of directors hereunder, or for any injury or damage to person or property caused by the elements or by another owner or person in the Properties for damage from electricity, water, rain, snow or ice which may leak or flow from outside or from any part of any building or from any of its pipes, drains, conduits, appliances or equipment, or from any other place, unless caused by any gross negligence of the board of directors or manager as the case may be. No diminution or abatement of assessments for common expenses shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements or from any action taken to comply with any law, ordinance or orders of a governmental authority.

12.2 Indemnification of Directors. Each director shall be indemnified by the owners against all expenses and liabilities including attorney's fees reasonably incurred and imposed upon him in connection with any proceeding in which he may be a party and in which he may be involved by reason of his being or having been a member of the board of directors, or any settlement of such liability whether or not he is a member of the board of directors at the time such expenses are incurred except in cases wherein the director is adjudged guilty of willful nonfeasance, misfeasance or malfeasance in performance of his duties. In the event of a settlement, however, such indemnification shall apply only when the board of directors approve such settlement as being for the best interests of the Association.

**ARTICLE XIII**  
**Insurance**

13.1 Duty to Obtain Insurance. The manager, acting under the direction of the board of directors and as trustee for the Association, shall obtain and maintain at all times insurance for the benefit of the Association and the owners in the type, kind and amount hereinafter provided. Premiums for such insurance shall be paid as part of the common expenses of the Association:

13.1.1 Policy or policies of fire insurance with extended coverage endorsement for the full insurable replacement value of all units and common elements. Such policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each condominium, if any.

13.1.2 A policy or policies insuring the Association, its board of directors, the owners and the manager against any liability to the public or the owners, their invitees or tenants, incident to owner ship or use of the Properties. Limits of liability under such policy shall be not less than three million/six million (\$3,000,000/\$6,000,000) for personal injury and three hundred thousand (\$300,000) for property damage in each occurrence with such limits and coverage to be reviewed at least annually by the board of directors. Such policy or policies shall be issued on a

comprehensive liability basis to provide cross liability endorsements wherein the rights of the named insured under the policy shall not be prejudiced as respects any right of action of any such insured against another named insured.

13.2 Quality of Insurance Policies. All insurance policies required under this article shall be written in a company licensed to do business in Oregon and holding a rating of B+/AA or better by Best's Insurance Reports or their successor.

13.3 Authority to Adjust Losses. Exclusive authority to adjust losses under policies hereafter in force pursuant to this article shall be vested in the board of directors, or its authorized representative.

13.4 Contribution. In the event of duplicate insurance coverage, the insurance policy obtained by the owners shall be deemed to be the primary coverage. In no event shall the insurance coverage obtained and maintained by the board of directors hereunder be brought into contribution with insurance purchased by individual owners or their mortgagees.

13.5 Owners' Additional Insurance. The Association shall have no responsibility to procure or assist in procuring property loss insurance for any owner or tenant for: (a) damage to a unit or limited common elements not covered by the Association's policy (because of the deductible amount or because the claim for loss or damage is one not normally covered by fire and property loss insurance policies with extended coverage endorsements); or (b) for any damage or loss to the owner's or tenants personal property. Owners shall be responsible for purchasing insurance policies insuring their units and appurtenant limited common elements for the deductible amount under the Association's policies and for insuring their own personal property for any loss or damage. Proof of such insurance coverage shall be provided to the Association's Secretary by the unit owner within thirty (30) days after purchase of such insurance. Tenants shall be responsible for insuring their own personal property for any loss or damage.

Owners and tenants of all units shall procure and maintain comprehensive liability policies having combined limits of not less than fifty thousand (\$50,000) for each occurrence. Such insurance shall provide coverage for, without limitation, the negligent acts of the owner(s) and tenants and their guests or other occupants of the unit(s) for damage to the general and limited common elements and other units and the personal property of others located therein.

No owner shall be entitled to exercise his right to maintain insurance coverage in such way as to decrease the amount which the board of directors on behalf of all of the owners may realize under any insurance policy which the board of directors may have in force on the Properties at any particular time.

The board of directors shall determine the amount of the deductible for the Association's property loss insurance policies. In determining the deductible under the policies, the board shall take into consideration, among other factors, the availability, cost, and loss experience of the Association. In this regard, as in other board responsibilities, the board members shall exercise their reasonable business judgment.

The board of directors shall notify all owners of the amount of the deductible under the Association's policies. To the extent reasonably practicable, the board of directors shall give at least thirty days notice to the owners of any increase in the deductible proposed in renewal or replacement insurance policies.

If the Association is required or elects to reconstruct any common element or unit that has been damaged or destroyed, an affected unit owner (i.e., the owner whose unit or limited common element has been damaged or destroyed) shall contribute to the Association all amounts received by such owner from property loss insurance policies to help pay for the repairs. To the extent that such insurance proceeds are unavailable or unpaid when needed, the Association shall assess each owner the amount of the Association's "deductible" under its policy to pay the cost of repairing or reconstructing such owner's unit or limited common elements. Such assessment shall be both a personal obligation of such owner and a lien against such owner's unit in the same manner as any other Association assessment.

13.6 Notification as to Improvements. Each owner must notify the board of directors in writing of any improvements to his unit the value of which improvements is in excess of five thousand (\$5,000).

13.7 Provisions of Insurance Policies. The board of directors shall make every effort to secure insurance policies that will provide:

13.7.1 A waiver of subrogation by the insurer as to any claims against the board of directors, the manager, the owners and their respective servants, agents and guests.

13.7.2 That the master policy on the Properties cannot be canceled, invalidated or suspended on account of the conduct of any one (1) or more individual owners, on account of the conduct of any officer or employee of the board of directors, or the manager, without prior demand in writing that the board of directors or manager cure the defect.

13.7.3 That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration.

13.8.4 That the insurer issue subpolicies specifying the portion of the master policy earmarked for each owner's interest, and that until the insurer furnishes written notice and a grace period to the mortgagee insured under the loss payable clause thereof, the mortgagee's coverage is neither jeopardized by the conduct of the unit mortgagor-owner or the Association or other owners nor canceled for non-payment of premiums.

13.9 Annual Review of Insurance. At least annually the board of directors shall review all insurance carried by the Association, and such review shall include appraisal of all improvements to the Properties by a representative of the insurance carrier writing the master policy.

**ARTICLE XIV**  
**Damage and Destruction**

14.1 Application of Insurance Proceeds. In the case of fire, casualty or other insured loss, the insurance proceeds of insurance policies covering such loss, if sufficient to reconstruct the buildings damaged or destroyed, shall be applied to such reconstruction. "Reconstruction" of the damaged or destroyed buildings means restoring the buildings to substantially the same condition in which they existed prior to such loss, with each unit and the common elements having the same vertical and horizontal boundaries as before such loss. Such reconstruction shall be accomplished by the manager and the board of directors.

14.2 Procedure If Insufficient Insurance Proceeds. If the insurance proceeds are insufficient to reconstruct the damaged or destroyed buildings, the damage to or destruction of such buildings shall be promptly repaired by the manager or the board of directors using the proceeds of insurance, if any, on the buildings for that purpose, and the owners shall be liable for assessment for any deficiency. Such deficiency shall take into consideration with respect to any owner's contribution, any individual policy of insurance proceeds provided by such owner.

14.3 Owners' Rights if Substantial Destruction of Properties. However, if three-fourths (3/4ths) or more in value of all of the buildings on the Properties are destroyed or substantially damaged, and if the owners by a vote of at least three-fourths (3/4ths) thereof decide, within sixty (60) days after such destruction or damage not to make provision for repair, reconstruction or rebuilding of the damaged buildings, the Properties shall be considered to be removed from the provisions of the Oregon Condominium Act, with the legal consequences resulting therefrom as set forth in ORS 100.610. In such event, the board of directors shall file a notice of the decision of the owners within such sixty (60)-day period with the County Recorder of Clackamas County.

**ARTICLE XV**  
**Personal Property**

The board of directors or the manager may acquire and hold for the benefit of the owners, personal property of any description and may dispose of the same by sale or otherwise. Beneficial interest in such personal property shall be owned by the owners in the same proportions as their respective interests in the general common elements, and shall not be transferable by an owner except with the transfer of a unit. Transfer of a unit shall transfer ownership of the transferor's beneficial interest in such personal property to the transferee.

**ARTICLE XVI**  
**Reserves**

A reserve account shall be established for the purpose of effecting replacements of structural elements, mechanical equipment, exterior painting, and other general common elements of the Condominium which will normally require replacement in more than three (3)

years and less than thirty (30) years. Payment into this account shall be deemed a contribution to capital improvement as and when made. The reserve accounts for replacement shall be funded by assessment against the same units that are assessed for the maintenance of the items for which the reserve account is established. Accordingly, the reserve account for replacement of those general common elements and limited common elements, the maintenance of which is provided by assessment against all owners shall be created by assessment against all owners.

The board of directors of the Association annually shall conduct a reserve study, or review and update an existing study, of the general common elements to determine the reserve account requirements. A reserve account shall be established for those items of the common elements all or part of which will normally require replacement in more than three (3) and less than thirty (30) years, for exterior painting if the general common elements include exterior painted surfaces, and for the maintenance, repair or replacement of other items as may be required under the Declaration or Bylaws or that the board of directors, in its discretion, may deem appropriate. The reserve account need not include items that could reasonably be funded from operating assessments. The reserve study shall include:

- (a) Identification of all items for which reserves are to be established;
- (b) The estimated remaining useful life of each item as of the date of the reserve study;
- (c) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and
- (d) A thirty (30)-year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

Except as otherwise provided in the Oregon Condominium Act, the reserve account shall be used only for maintenance, repair, and replacement of general common elements for which reserves have been established and shall be kept separate from other accounts.

16.1 General Operating Reserve. The board of directors shall create and maintain a general operating reserve account by allocation and payment thereto monthly of an amount determined by the board of directors. This account shall be used to pay expenses which exceed budgeted amounts.

16.2 Special Reserves. Such other special reserve funds as may be set up by the Directors by special assessments of the unit owners who benefit thereby as may be required by the Declaration or otherwise determined by the Association to be appropriate.

Each reserve account shall be kept in an account with a safe and responsible depository, shall be accounted for separately and, if invested, the obligation or security shall be fully guaranteed as to principal by the United States of America or one of its agencies. Assessments paid into the reserve accounts are the property of the Association and are not refundable to

sellers of units. Provided, however, that nothing contained herein shall prevent sellers of units from treating their outstanding allocable share of reserve accounts as a separate or reimbursable item in a sales agreement. No unit owner shall have any individual rights in any of these reserves, although it is understood that the value of their respective units may increase in proportion to each unit's right to receive repair, maintenance and replacement therefrom.

## **ARTICLE XVII**

### **General Provisions**

17.1 Enforcement. The Association or any owner shall have the right to enforce by any proceeding at law or equity all restrictions, conditions, covenants and reservations imposed by this Declaration, and a similar right shall exist with respect to recovery of damages for any such violation. Whether or not suit or action is commenced, unit owners shall be obliged to pay reasonable fees and costs, including, but not limited to, attorney's fees (whether or not suit or action is commenced) incurred in connection with efforts to collect delinquent and unpaid assessments, fines and enforcement of the Declaration, Bylaws or rules and regulations of the Association. In addition to the assessment for operating expenses and the funding of reserves, such assessments may include fees, late charges, fines and interest imposed pursuant to ORS 100.405(4)(j)(k)(L).

In the event suit or action is commenced by the Directors for the collection of any amounts due pursuant to these Bylaws or for the enforcement of any provisions of the Bylaws or of the Oregon Condominium Act, the owner or owners, jointly and severally, will in addition to all other obligations, pay the costs of such suit or action, including reasonable attorneys' fees to be fixed by the trial court and, in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees in the appellate court to be fixed by such court.

17.2 Obligations to Maintain Common Elements. It is understood that the Association shall have the obligation to maintain the general common elements to such standards as may be lawfully required by the City of Lake Oswego under the authority of its ordinances, including but not limited to the ordinance approving the final development plan of the Planned Unit Development of which the Properties are a part. Assessments, regular or special, shall be made in a sufficient amount to assure the maintenance of general common elements to such standards. It is further understood that such obligation for maintenance of general common elements shall continue as an obligation upon the Properties and the owners thereof even though the Association should be dissolved or the Properties withdrawn from unit ownership.

17.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose in creating a uniform plan for the development and operation of a condominium project.

17.4 Amendment. Except as otherwise provided herein this Declaration may be amended by an instrument in writing signed and acknowledged by the owners in good standing holding seventy-five percent (75%) of the voting rights hereunder, which amendment shall be effective on recordation in the office of the Recording Officer of Clackamas County Oregon.



17.5 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not effect the validity or enforceability of any other provision hereof.

17.6 Effective Date. This Declaration shall take effect upon recording.

The Chairman and Secretary hereby certify that the foregoing Amended and Restated Declaration was approved by seventy-five (75%) of the owners as required by the Declaration and the Oregon Condominium Act.

WHEATHERSTONE PROPERTY OWNERS  
ASSOCIATION

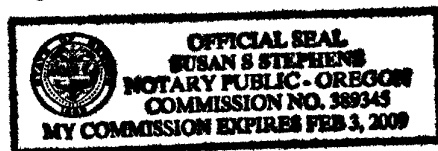
By: Robert L. Sweeney  
Chairman

By: Daniel J. Blatman  
Secretary

STATE OF OREGON )  
County of Clarkamas ) ss.

August 22, 2005

Personally appeared before me the above-named Robert Sweeney  
and Daniel Blatman who, being duly sworn, did say that they are the  
Chairman and Secretary of the Wheatherstone Property Owners Association and that said  
instrument was signed in behalf of said Association by authority of its board of directors; and  
they acknowledged said instrument to be its voluntary act and deed.



Susan S. Stephens  
Notary Public for Oregon

The foregoing Amendment to Declaration is approved pursuant to ORS 100.110 this  
20th day of September, 2005 and, in accordance with ORS 100.110(7), this  
approval shall automatically expire if these amendments are not recorded within two (2) years  
from this date.

SCOTT W. TAYLOR  
Real Estate Commissioner

By: [Signature]

The foregoing Amendment to Declaration is approved pursuant to ORS 100.110 this 5  
day of October, 2005.

COUNTY ASSESSOR

*Ray Erland*

By: *Craig Fourn*

Job No. 0149-0020  
2/22/72 JSM

EXHIBIT "A"  
WHEATHERSTONE

That tract of land situate in the Northeast quarter of Section 5, Township 2 South, Range 1 East, Willamette Meridian, City of Lake Oswego, Clackamas County, Oregon, described as follows:

All of Block 5, of Mountain Park No. 8, a plat of record in Clackamas County, Oregon.