

# DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EQUITABLE SERVITUDES FOR SUNRIDGE SUBDIVISION

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## ARTICLE 1. PURPOSE AND DECLARATION

1.1 Sunridge Subdivision. Shade Tree, Inc., an Oregon corporation (hereafter "Declarant"), is the owner of certain real property, located in Lane County, Oregon, which is all that real property included within and described as the SUNRIDGE SUBDIVISION, as platted and recorded in the Lane County Oregon Plat Records on April 9, 2001, File Number 75, Slide Number 1091, Recording Number 2001-020173. Declarant has the unrestricted right to create, declare and impose the covenants, conditions, restrictions and equitable servitudes (hereafter "Restrictions") hereinafter described upon said Sunridge Subdivision.

1.2 Future Development Property. Shade Tree, Inc., together with its shareholders Mia Nelson, Roy Nelson and Richard Johnson, are the owners of other real property in the vicinity of Sunridge Subdivision, more particularly described on the attached Exhibit A (hereafter "Future Development Property"), which may be developed and sold in the future, and which could be adversely affected by unattractive and undesirable development within Sunridge Subdivision.

1.3 Purpose. Declarant desires to impose certain Restrictions on Sunridge Subdivision, prior to the sale thereof, for the purpose of preserving the value, attractiveness, livability and desirability of both Sunridge Subdivision and the Future Development Property.

1.4 Declaration. By executing and recording this document (hereafter "Declaration"), Declarant hereby declares that all of Sunridge Subdivision shall be from this day forward be held, sold and conveyed subject to and restricted by all the Restrictions contained in this Declaration.

1.5 Binding Effect. This Declaration shall run with Sunridge Subdivision, and shall bind all parties having any right, title or interest in any part thereof, and their heirs, successors and assigns. This Declaration shall inure to the benefit of, and be enforceable by, the record owner or owners, including the Declarant, of any portion of the Sunridge Subdivision and the Future Development Property, their legal representatives, heirs, successors or assigns. The effect of this Declaration upon the Future Development Property shall be solely to confer the above-described right of enforcement, and shall not bind, restrict or burden the Future Development Property in any way, under any circumstances.

1.6 Term and Amendments. This Declaration shall run with and be binding on Sunridge Subdivision until such time as an instrument signed by the record owners of property which, taken together, comprises at least two-thirds (2/3), as measured in acres (and not as measured in number of Lots or parcels), of the sum total area of the Future Development Property and Sunridge Subdivision has been recorded, agreeing to amend this Declaration in whole or in part, or to terminate this Declaration outright.

## ARTICLE 2. DEFINITIONS

2.1 "Arborist" shall mean an individual who is trained in the art and science of planting, caring for and maintaining individual trees, and who is a member of the International Society of

Arboriculture (ISA), the National Arborist Association (NAA), the American Society of Consulting Arborists (ASCA), or other comparable organization.

2.2 "Architectural Review Committee" or "ARC" shall mean the group established by the Declarant for the purpose of determining the acceptability of proposed Improvements, in accordance with Article 7: Architectural Review.

2.3 "Declarant" shall mean Shade Tree, Inc., an Oregon corporation, and any person or entity that is assigned the rights to act and function as the Declarant, which assignment must be executed in writing and duly recorded in the Lane County Real Property Records.

2.4 "Declaration" shall mean this document, and any attachments and exhibits thereto.

2.5 "Development Period" shall mean a time period beginning when the initial plat of Sunridge Subdivision, or any addition thereto, is recorded in the Lane County Plat Records and ending on the day that is three (3) years after the last Lot in such plat is sold by the Declarant. The three-year period is necessary to allow Declarant to exert control over the construction of the residential structures upon the Lots. The initial phase of Sunridge Subdivision, and each subsequent phase, shall have its own unique Development Period. Provisions of this Declaration that refer to the Development Period shall be construed in light of the particular Development Period pertaining to the Lot or Lots in question.

2.6 "Elevation Limit" shall mean that certain number, expressed as a height above mean sea level, which is established for each Lot by the Individual Lot Maps, and which is used, in conjunction with the provisions of Section 5.2.1: Height Restriction, to establish the maximum permitted height of Improvements on that Lot.

2.7 "Future Development Property" shall mean that certain real property described in Section 1.2: Future Development Property.

2.8 "Improvement" shall mean any building, structure, wall, fence, excavation, embankment, earthwork, piping, or any other man-made object or alteration, except for Landscaping, which is proposed for, or existing on, any part of any Lot.

2.9 "Individual Lot Maps" shall mean the detailed maps attached to this Declaration, and to supplementary declarations, which contain information pertaining to certain Restrictions, such as the location of Protected Trees, Elevation Limits, and required drainage structures.

2.10 "Landscaping" shall mean an arrangement of ornamental plants, such as lawns, trees, shrubs and flowers, deliberately placed and maintained so as to produce a desirable and attractive effect, and so as to eliminate weeds and other undesirable plants. "Landscaping" does not mean simply leaving an area to be occupied by whatever plants happen to grow there naturally. Most low-growing plants now on the Lots are non-native grasses, forbs and noxious weeds. On many Lots, almost all naturally-occurring plants may need to be removed, and replaced with other species, in order for an area to be considered as Landscaping.

2.11 "Lot" shall mean those particular parcels of land created by and included in the plat maps of Sunridge Subdivision, as recorded in the Lane County Plat Records. To the greatest extent permitted by the City of Lowell, it shall also mean the portion of the street right-of-way between the Lot boundary and the sidewalk or curb of the adjacent street.

2.12 "Owner" shall mean a record owner, whether one or more persons or entities, of a fee simple interest in any Lot within Sunridge Subdivision, including contract purchasers, but

excluding those having such interest merely as a security for performance of an obligation, also excluding contract sellers.

2.13 "Pesticide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any unwanted or undesirable animal, mold, fungi, or plant.

2.14 "Protected Tree" shall mean any tree either specifically identified on the Individual Lot Maps recorded as part of this Declaration, or designated by the Declarant and an Owner in accordance with Section 8.1.

2.15 "Restriction" shall mean any and all requirements, conditions, covenants, restrictions, equitable servitudes, regulations, and any other terms or provisions of this Declaration, which affect, burden, bind or limit the use of real property.

2.16 "Sunridge Subdivision" shall mean that certain real property described in the above Section 1.1: Sunridge Subdivision, and shall also include any subsequent additions thereto made pursuant to Article 10: Additions to Sunridge Subdivision.

2.17 "Synthetic" shall mean a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

2.18 "Temporary Exemption" shall mean a temporary relaxation of a Restriction affecting one or more Lots, granted pursuant to Section 8.3: Temporary Exemptions for Declarant and Section 8.4: Temporary Exemptions for Others.

2.19 "Variance" shall mean a permanent removal or modification of a Restriction affecting one or more Lots, granted pursuant to Section 8.1: Variances During the Development Period, and Section 8.2: Variances After the Development Period.

### ARTICLE 3. GENERAL CONSTRUCTION RESTRICTIONS

3.1 Construction Timetables. Vacant Lots must be mowed and maintained prior to construction, to present a neat appearance and to reduce the risk of fire. Grass height shall be kept under eight inches (8") at all times. Within eighteen months (18 months) of the initial sale of any Lot by the Declarant, the Owner of that Lot must secure a building permit for a new home meeting the requirements of this Declaration. The exterior of any construction, addition or alteration must be completed within one (1) year of issuance of the building permit, so as to present a finished appearance when viewed from any angle. Landscaping between the street and the front wall most distant from the street must be completed within one (1) year of the initial occupancy of the dwelling, but not to exceed three (3) years from issuance of the building permit. Landscaping on the remainder of the Lot must be completed within two (2) years of the initial occupancy of the dwelling, but not to exceed four (4) years from issuance of the building permit.

3.2 Required Contractor's Registration. Construction of the residential structure and all underground utilities shall be done by a general contractor registered with the Oregon Construction Contractors Board. Provided, however, that the general contractor may allow subcontractors or the Owner to do some or all of the work, and the above requirements shall not apply to those parties, so long as the general contractor remains legally responsible and liable for their activities. On all Lots other than the initial phase of Sunridge Subdivision (Lots 1-16) only those general contractors approved in writing by the Declarant may work on the Lots during the Development

Period. The Owner must obtain such approval prior to beginning construction on a Lot. Declarant's approval of a given general contractor for one Lot shall not constitute approval for any other Lot; a separate approval must be obtained for each and every Lot. Declarant shall have the right, in its absolute and sole discretion, to deny approval to any general contractor, Declarant's approval of that contractor for an earlier project notwithstanding.

3.3 Protection of City Facilities. Every Owner is responsible for ensuring that persons working on behalf of said Owner within the City of Lowell's rights-of-way are informed of the need to locate and protect public facilities, including water, sanitary and storm sewer, electric, telephone and television lines, streets, curbs and sidewalks, and shall ensure that any damage such persons may cause is promptly repaired to the full satisfaction of the Declarant and the City of Lowell, at said Owner's sole expense.

3.4 Storage and Cleanup During Construction. During construction, the Owner shall ensure that the Lot and all adjacent streets and sidewalks are kept in a neat and clean condition, and shall not allow any dangerous conditions left unattended. Mud, dirt, gravel and other debris shall be promptly removed from streets and sidewalks. All materials, dump boxes, equipment, trailers and construction facilities shall be kept off the streets during construction, except during normal working hours, to allow efficient cleaning and maintenance.

3.5 Concrete Washout. During construction, the Owner shall ensure that concrete trucks use the washout area designated by the Declarant.

3.6 Underground Utilities. All utilities serving each Lot shall be maintained underground or in conduits attached to a building. No overhead utilities are permitted, except temporary electrical service during construction of the residential structure.

3.7 Erosion Control. Bare soil shall not be left exposed for more than ten (10) days from October 15 through June 15. Dirt stockpiles shall be covered with plastic or other waterproof material secured to the ground by stakes or weights. Exposed ground shall be mulched with at least two inches (2") of straw, hay, bark, sawdust, compost or other appropriate material. Runoff water must be controlled so that soil or other materials are not washed off the Lot, and so that damage to adjacent Lots and/or city facilities does not occur.

3.8 Falling Object Control. Owners are cautioned that rocks, logs and other debris encountered during construction activities could be dislodged and roll off the Lot, endangering persons and property below. Owners shall at all times be responsible for controlling the motion of all objects on the Lot. Owners shall ensure that protective measures, including, but not limited to, conscientious control of all materials during excavation, fences and berms to stop dislodged materials, and tethering of felled trees, shall be utilized whenever required to mitigate the hazards of falling objects. During construction, the Owner shall also ensure that all persons at work on the Lot are aware of the risk of falling objects and the need for protective measures, and shall be fully responsible for any failure on the part of said persons to control falling objects.

## ARTICLE 4. ENVIRONMENTAL RESTRICTIONS

4.1 Minimum Dwelling Size. This Declaration does not require a minimum dwelling size, and the ARC may not require that a proposed dwelling be made larger as a condition of approval under Section 7: Architectural Review. Owners are encouraged to build the smallest residence that will suit their needs, and to spend the savings on improvements to quality. Large homes require more natural and human resources, money and time to build, maintain, heat, cool and clean. Large homes also take up more ground area, reducing the outdoor quality of life for the residents, and increasing the area that is impervious to rainwater.

4.2 Natural Heating and Cooling Encouraged. Solar-friendly design of residences is encouraged. Heating costs may be substantially reduced when homes are designed to capture wintertime sun. Sunridge Subdivision has southern exposure and experiences fewer foggy days than the Eugene-Springfield area. Owners are encouraged to make use of these qualities. Air conditioners use large amounts of electricity and so are discouraged, but not prohibited. The prevailing southwesterly summertime winds can provide natural cooling for homes that are designed with the winds in mind.

4.3 Storm Drain Dumping. Dumping or discharge into the public storm drain system or any open waterway of oil, gasoline, fuel, grease, paint, antifreeze, soap, cleaners, or any other chemical is expressly prohibited. Owners are responsible and liable for the behavior of persons working on the Lot, such as upholstery cleaners and painters, and shall ensure that such persons dispose of all substances used or produced on the Lot in accordance with this section.

4.4 Clotheslines. Clotheslines are allowed and encouraged in order to conserve electricity. Clothesline use shall not be deemed a nuisance under this Declaration, so long as clotheslines are located in the rear half of the Lot, and so long as the laundry is promptly removed after it is dry, and the clothesline retracted into a case, wound on a spool or otherwise removed from view.

4.5 Outdoor Use of Certain Pesticides. Many common Synthetic home, lawn and garden Pesticides have been proven to cause cancer, birth defects, infertility, miscarriage, immune disorders and nerve and organ damage. Outdoor use of these Pesticides by an Owner could expose neighboring Owners and their families to toxic chemicals without their knowledge or consent, as the chemicals often drift several hundred feet, even when used according to directions on the label. These Pesticides could also leave the property in runoff water and enter Dexter Lake, the source of the City of Lowell's drinking water. Synthetic Pesticides cause significant environmental damage, and have been implicated in the decline of salmon runs and other aquatic species. Consequently, the outdoor use of Synthetic Pesticides is prohibited. In addition, Pesticides containing arsenic, cadmium, mercury, chromium or lead are prohibited, even if said Pesticides are not Synthetic. Notwithstanding the foregoing, the following Synthetic Pesticides are allowed:

4.5.1 Ethanol and isopropanol.

4.5.2 Calcium hypochlorite, chlorine dioxide and sodium hypochlorite.

4.5.3 Hydrogen peroxide.

4.5.4 Potassium bicarbonate.

4.5.5 Ammonium carbonate.

4.5.6 Boric acid.

4.5.7 Hydrated lime, elemental sulfur, lime sulfur, calcium polysulfide and sulfur dioxide.

4.5.8 Fixed copper, copper hydroxide, copper oxide, copper oxychloride and copper sulfate.

4.5.9 Sulfates, carbonates, oxides or silicates of zinc, copper, iron, manganese, molybdenum, selenium and cobalt.

4.5.10 Soap products.

4.5.11 Horticultural oils such as dormant, suffocating, and summer oils.

4.5.12 Sticky traps and pheromones.

4.5.13 Any substance approved for use in organic food production on the "National List", as that term is defined in 7 USC 6502(12), or its successor.

4.5.14 Glyphosate, or N-[phosphonomethyl]glycine, also known by the proprietary names "Roundup", "Rodeo" and "Accord".

4.6 Chemically Treated Wood in Perimeter Fences. Many common treated wood products contain heavy metals and other chemicals which are proven carcinogens, which can leach from the wood into the surrounding soil, and which can be ingested by children and pets. If one Owner uses wood treated with these chemicals for perimeter fencing, the adjoining Owners and their families will also be exposed to the chemicals. Acceptable substitutes for these toxic wood treatments exist, such as ammoniacal copper quaternary (ACQ), marketed as "Preserve" treated wood and manufactured by Chemical Specialties, Inc. Consequently, wood treated with any of the following chemicals may not be used within three (3) feet of any property line of any Lot:

4.6.1 Compounds containing lead, mercury, cadmium, chromium and/or arsenic, including, but not limited to: chromated copper arsenate (CCA), ammoniacal copper zinc arsenate (ACZA), chromated zinc chloride (CZC) and acid copper chromium (ACC).

4.6.2 Pentachlorophenol (Penta).

4.6.3 Creosote.

4.7 Full Cut-Off Lighting. Lighting which sends light upward into the sky and/or outwards onto neighboring properties can be an ineffective, wasteful manner of lighting, and a serious annoyance to the occupants of said properties. Consequently, all indoor and outdoor lighting fixtures rated at two (2) watts of power or more must prevent upward distribution of light into the sky, and also upward, horizontal and/or downward light trespass onto surrounding property. Lighting fixtures shall be directed and/or shielded so as to confine the light to the target area, and within the boundaries of the Lot. In addition, the lamp or bulb attached to the fixture must not be visible beyond the boundaries of the Lot. Outdoor lights with translucent or "frosted" sides that glow with light, mercury vapor lamps, searchlights, and continuously flashing lights are expressly prohibited. Provided, however, that temporary decorative holiday lighting which does not meet the foregoing requirements is allowed, so long as the lamps use ten (10) watts of power or less. Further provided, that prior to 11:30 p.m., lights not meeting the above standard may be used to illuminate outdoor activities in which one or more people are actually present outside the home.

4.8 Landscaping. Landscaping shall be established and continuously maintained on every part of every Lot, including the area that lies within the city right-of-way. All Landscaping must comply with the requirements of Section 5.2: Height Restriction. At all times, the Landscaping shall appear well groomed and deliberate, and shall be kept free of weeds and invasive plants.

4.8.1 Owners are not required to irrigate lawns, as grasses are naturally dormant during hot summer months. Outdoor watering, especially of lawns, is the predominant use of potable water in urban areas. There is a growing need, both locally and nationally, to find ways to conserve potable water for more important purposes. Consequently, this Declaration shall not be construed to require irrigation-dependant Landscaping. Water conservation techniques that utilize principles such as limited use of lawn areas, drought

tolerant and/or native plants, reduced pruning and mowing, and generous use of mulch are encouraged.

4.8.2 Bare soil shall not be left exposed for more than ten (10) days from October 15 through June 15. If permanent Landscaping has not been established by October 25, then the area shall be seeded with grass or other ground cover, and mulched with at least two inches (2") of straw, hay, bark, compost or other appropriate material.

4.8.3 While mulching is encouraged, mulch is not a substitute for required Landscaping. Mulch may be used only as a finishing treatment to planted areas, and may cover no more than 50% of any given one hundred square foot area. Mulch under the drip line of a tree or shrub shall not be counted as mulched area. Provided, however, that mulch may cover more than 50% of such an area during the first five (5) years after the area is planted, if the plantings are of a density and species type that can be reasonably expected to cover at least 50% of the area with foliage within five (5) years.

4.8.4 Use of invasive plant species invariably leads to their subsequent escape onto neighboring private property and public sites. Control measures are costly and often involve extensive herbicide use. Therefore, none of the following plants, nor any other plant identified in the future as highly or moderately invasive in the Southern Willamette Valley by the Native Plant Society of Oregon shall be planted or allowed to remain:

*Arum italicum* (arum)  
*Acer platanoides* (Norway maple)  
*Aesculus hippocastanum* (horse chestnut)  
*Ailanthus altissima* (tree-of-heaven)  
*Alliaria petiolata* (garlic mustard)  
*Anchusa azurea* (anchusa, common bugloss)  
*Brachypodium sylvaticum* (false-brome)  
*Buddleia davidii* (butterfly bush)  
*Clematis vitalba* (traveler's-joy)  
*Corylus avellana* (European hazel, filbert)  
*Cotoneaster* spp. (cotoneasters)  
*Crataegus monogyna* (English hawthorn)  
*Cytisus scoparius* (Scot's broom)  
*Daphne laureola* (spurge laurel)  
*Digitalis purpurea* (foxglove)  
*Genista monspessulana* (broom)  
*Geranium lucidum, robertianum* (shining crane's-bill, herb Robert, stinky Bob)  
*Glechoma hederacea* (ground ivy, creeping Charlie)  
*Hedera helix* (English ivy)  
*Hypericum perforatum* (St. John's wort)  
*Ilex aquifolium* (English holly)  
*Impatiens glandulifera* (policeman's helmet)  
*Inula helenium* (alant, elecampane)  
*Iris pseudacorus* (yellow flag iris)  
*Juniperus virginiana* (eastern redcedar)  
*Leucanthemum vulgare* (oxeye daisy)  
*Lamiastrum galeobdolan* (yellow archangel)  
*Lathyrus latifolius* (sweet, perennial or everlasting pea)  
*Ligustrum vulgare* (common privet)  
*Linaria genistifolia, dalmatica, vulgaris* (dalmation toadflax, butter and eggs)  
*Lotus corniculatus* (birdsfoot trefoil)  
*Lunaria annua* (honesty, money plant)

*Lythrum salicaria* (purple loosestrife)  
*Lysimachia nummularia* (moneywort)  
*Mentha pulegium* (pennyroyal)  
*Melissa officinalis* (lemon balm)  
*Myosotis scorpioides* (common forget-me-not)  
*Myriophyllum* spp. (parrot's feather, Eurasian milfoil)  
*Paulownia tomentosa* (empress tree)  
*Phalaris aquatica, arundinacea* (Harding grass, reed canarygrass)  
*Polygonum cuspidatum, cuspidatum x sachalinense* (Japanese knotweed)  
*Prunus laurocerasus* (English laurel)  
*Prunus lusitanica* (Portugal laurel)  
*Prunus avium* (sweet cherry)  
*Prunus cerasifera, domestica, spinosa* (Thundercloud plum, domestic cherry, sloe)  
*Pueraria lobata, montana* var. *lobata* (kudzu)  
*Pyracantha* spp. (firethorn)  
*Ranunculus ficaria* (lesser celandine)  
*Ranunculus repens* (creeping buttercup)  
*Robinia pseudoacacia* (black locust)  
*Rorippa nasturtium-aquaticum* (watercress)  
*Rosa eglanteria* (sweet-briar)  
*Rosa multiflora* (multiflowered rose)  
*Rubus armeniacus* (Armenian blackberry, Himalaya blackberry)  
*Rubus laciniatus* (evergreen blackberry)  
*Securigera (Coronilla) varia* (crown vetch)  
*Solanum dulcamara* (bittersweet nightshade)  
*Sorbus aucuparia* (European mountain-ash)  
*Umbellularia californica* (California bay laurel, myrtlewood)  
*Ulex europaeus* (gorse)  
*Verbena bonariensis* (Brazilian verbena)  
*Vinca major, minor* (periwinkle, vinca)

4.9 Fire Protection Measures. To reduce the likelihood of wildfire, all Owners shall take the following steps:

4.9.1 Remove leaves, needles and other combustibles from roofs, gutters and underneath decks at least every spring.

4.9.2 From June 15 to October 31, ensure there are no piles of brush, tree trimmings, wood scraps or other combustibles anywhere on the Lot, except that such materials are allowed in compost piles if they have been shredded, chopped or otherwise broken up so that no piece is larger than three inches (3") in any dimension.

4.9.3 Keep all trees over twenty feet (20') in height trimmed of branches less than six feet (6') from the ground, because such branches can act as a ladder to carry fire into the crown of the tree.

4.9.4 Do not store combustible materials under decks.

4.10 Protected Trees. Certain trees are noted on the attached Individual Lot Maps as "Protected Trees". From time to time, the Declarant and an Owner may designate an additional Protected Tree, in accordance with Section 8.1. Protected Trees are specimen trees that have been examined by an Arborist and found to be in good health. Protected Trees will enhance the value and desirability of the neighborhood. To increase the likelihood that these important trees will survive for years to come, the following measures are required:

4.10.1 Prior to equipment mobilization, excavation, grading, trenching, clearing or building of any sort on any Lot, fencing shall be placed around each Protected Tree at least five feet (5') outside of the drip line. During the Development Period, written approval of said fencing shall be obtained from the Declarant, and appropriate "Warning Notices" supplied by the Declarant shall be placed and maintained on the fencing advising that no oils, gas, chemicals, liquid waste, solid waste, concrete washout, construction machinery or construction materials shall be allowed within the drip line of the Protected Tree, for any length of time. Further, no one shall enter the fence perimeter except to monitor the health of the Protected Tree.

4.10.2 Grade changes, excavation, trenching, cutting, filling, or any other sort of disturbance to the soil within five feet (5') of the drip line of a Protected Tree is expressly prohibited. However, mulch may be placed under the Protected Tree, provided that the mulch layer does not exceed two inches (2") in depth.

4.10.3 During grading, excavation and trenching, if any roots of a Protected Tree over 1 inch (1") in diameter are encountered, they shall be cut off cleanly with a sharp handsaw or loppers.

4.10.4 Drainage shall not be conveyed to any area within the drip line of a Protected Tree, and finished grades shall slope away from the trunks to avoid concentrating water around the Protected Tree.

4.10.5 No irrigation, fertilization, or application of Pesticides or any other foreign substance shall ever be permitted within the drip line of a Protected Tree, except as may be prescribed in writing by an Arborist.

4.10.6 Except for removal of dead limbs and trimming of "ladder" branches as prescribed by Section 4.9.3, no Protected Tree may be limbed, trimmed or otherwise altered without written concurrence from an Arborist that such activities will not harm the Protected Tree.

4.10.7 If a Protected Tree becomes dangerously diseased or weakened, it may be removed, provided that the Owner first obtains a written opinion from an Arborist which states that the Protected Tree is so diseased and/or weakened that collapse of all or part of the Protected Tree is likely, and that there is no feasible alternative to removal (i.e. cabling the trunks, pruning, etc). If a Protected Tree dies, it shall be removed within three (3) months. Within one (1) year of the removal of a Protected Tree, it shall be replaced with a young tree of the same species, or alternatively quercus garryana (Oregon white oak) or pinus ponderosa (ponderosa pine), within five feet (5') of the location of the original Protected Tree; provided, however, that an alternate location is acceptable if a written concurrence is signed by all the record owners of any Lots or Future Development Property located so that the replacement tree, when fully mature, will be capable of intruding into the view of Dexter Lake from said Lots or Future Development Property. The replacement tree shall be considered a Protected Tree.

4.10.8 Declarant has caused some multiple-trunked Protected Trees to be cabled by an Arborist. Owners of cabled Protected Trees must keep the cables in good working order at all times, and shall not remove, alter or damage the cables, without written advice from an Arborist that said cables are no longer necessary.

4.11 Drainage. All Owners shall maintain in proper working order all drainage structures constructed on their Lots and shall ensure that the water from said drainage structures flows as

prescribed on the Individual Lot Maps. Unless authorized by said Individual Lot Maps, discharge of concentrated water onto another Lot is expressly prohibited. In order to reduce the likelihood of drainage problems, the following drainage structures are required and shall be installed prior to or concurrently with construction of a residence on each Lot:

4.11.1 Cut-off drain. To capture surface sheet flows of rainwater, cut-off (curtain) drains shall be installed by the Owner in the locations shown on the Individual Lot Map for that particular Lot. Provided, however, that if no cut-off drain is shown on a given Individual Lot Map, then none is required. Said drains shall consist of: i) a trench a minimum of 12" wide and 12" deep; ii) a 3" perforated pipe laid at the bottom of the trench; and iii) one-half to three-quarter inch diameter round rock backfill for the trench which is mounded at least two inches higher than the surrounding undisturbed ground. No filter fabric shall be used. Alternatives that are equivalent to the above-described pipe and rock may be used if approved in writing by the Architectural Review Committee. The cut-off drain shall be discharged in the manner provided on the Individual Lot Map. In some cases, special foundation drains with round gravel backfill extending from the footing to the surface of the ground can be substituted for the required curtain drain; this will be indicated on the Individual Lot Map.

4.11.2 Foundation drain. A 3" perforated pipe, together with at least one foot of round gravel backfill, shall be placed so as to drain the ground directly under the footings of the structure. No filter fabric shall be used. Foundation drains shall be discharged to the location shown on the Individual Lot Map.

4.11.3 Roof, driveway and patio drains. All water falling on impervious surfaces shall be collected and piped to the location shown on the Individual Lot Map. Provided, however, that up to three hundred (300) square feet of impervious surface on any Lot may instead be allowed to drain to the adjacent ground surface.

4.11.4 Cutbank drains. An additional drain, constructed as for "cut-off drains" above, is required at the base of any cutbank which removes more than two feet of soil from the natural grade, as measured at the base of the cut. Cutbank drains shall be discharged to locations shown on the Individual Lot Maps.

4.11.5 Acceptance of concentrated runoff. If a location for concentrated storm water runoff discharge from an adjacent Lot is shown on the Individual Lot Map, the Owner of the Lot receiving the discharge shall accept the runoff and pipe it to the City storm water system, just as if the runoff was gathered from said receiving Owner's Lot. The Owner of each Lot remains responsible for maintaining all piping located thereon.

4.12 Grading. Cutbanks are unsightly, can cause chronic drainage problems, and create areas that are often difficult to revegetate. Fills are also unsightly, and can become saturated with water and become unstable. Consequently, permanent changes in grade are not allowed unless pre-approved by the Architectural Review Committee in accordance with Article 7. A "permanent change in grade" means an alteration of the natural grade that remains visible after the project is complete, but does not include excavations that are later filled with soil or structures, as for a foundation or basement. Cuts and fills shall conform to the following requirements:

4.12.1 The face of unretained cuts and fills must not exceed 50% slope, or two horizontal units for each vertical unit. All cuts and fills must be promptly re-vegetated or faced with natural stone to control erosion and reduce unsightliness.

4.12.2 If a retaining wall exceeds four feet (4') in height, it must be designed by a registered professional engineer.

4.12.3 Additional drainage structures must be installed as specified in Section 4.11.4: Cutbank Drains.

## ARTICLE 5. GENERAL ARCHITECTURAL RESTRICTIONS

5.1 Type of Structures Allowed. No structure shall be erected, altered, placed or permitted to remain on any Lot, other than one detached, single family dwelling with a private attached garage for not less than two (2) and not more than four (4) vehicles, plus one (1) outbuilding not to exceed four hundred (400) square feet. Any structure erected on the Lot shall be constructed on site. No existing or used house or other similar structure shall be moved onto the Lot. Factory-built homes, mobile homes, modular homes, manufactured homes and prefabricated accessory buildings are expressly prohibited. Provided, however, structures may utilize roof trusses, stress skin panels, fence panels, wall panels and other similar building components.

### 5.2 Height Restriction

5.2.1 Height restriction for Improvements. An Elevation Limit is established for each Lot by a listing on the Individual Lot Map associated with that particular Lot. Elevation Limits are expressed as a height above mean sea level, and not as a height above the ground surface. No Owner shall allow any Improvement to exceed the Elevation Limit.

5.2.2 Height restriction for plants and Landscaping. Except for Protected Trees either specifically identified on the Individual Lot Maps recorded as part of this Declaration, or designated by the Declarant and an Owner in accordance with Section 8.1, no Owner shall allow any plant or Landscaping to exceed six feet (6') in height on the Lot, including the area that lies within the adjacent street right-of-way. Plants with mature heights of over six feet (6') may be planted or maintained, if the Owner maintains the plants at under six feet (6') in height at all times. Provided, however, that plants and Landscaping may exceed the six-foot height limit to the extent allowed by any variances granted under Section 8.1 Variances During the Development Period, or Section 8.2 Variances After the Development Period.

5.2.3 Improvements made after the Development Period, whether to replace a pre-existing Improvement or to add a new Improvement, may not have a greater adverse impact on views of Dexter Lake from the surrounding Lots than did the Improvements approved under Article 7: Architectural Review. Owners contemplating such Improvements are strongly advised to review their plans with the Owners of all surrounding Lots that could be affected by the planned Improvements, to ensure there will be no objections. For a replacement Improvement, retention of as many features of the original Improvement as possible, such as roof section design and heights, and overall size and location of Improvements on the lot, will help minimize potential adverse impacts on views. For new Improvements, careful consideration of the potential effects on neighboring Lots is strongly advised.

5.2.4 Variances. Notwithstanding the foregoing, certain Improvements and Landscaping may exceed the Elevation Limit if a written Variance for each such object is recorded pursuant to Sections 8.1: Variances During the Development Period or 8.2: Variances After the Development Period.

5.3 Siding. Siding materials shall be stucco, brick, stone, other comparable masonry, or wood siding which is either: 1) Siding composed of wooden boards in its natural state, not to include chipboard, particleboard, waferboard, pressboard, plywood or other composite wood product,

provided that said wooden boards must be dimensionally stable and free of loose or open knot holes, and shall not have noticeable warp, twist, buckle or wane; or 2) Bevel, drop or lap siding which is a composite wood or cement based product but which closely resembles real wood siding, and which consists of separately-formed boards not more than ten inches (10") in width, and which are individually applied, provided said siding is applied in like fashion to real wood siding, including the use of staggered joints. Those products that are applied as sheets instead of as individual boards, even when intended to resemble real wood siding, are prohibited.

5.4 Fascia. Fascia shall be rot-resistant boards with a minimum nominal size of two inches (2") by eight inches (8").

5.5 Roofing. Roofing shall be Class A Fire Rated, and shall have a minimum life rating of twenty-five (25) years. Wood shakes are not allowed, due to wildfire hazard. Metal roofs must be of the standing edge type, with no exposed fasteners. All roofing must be non-reflective. Roofs shall have a minimum overhang of eighteen inches (18"). Ninety percent (90%) of the total roof area shall have a pitch of at least three inches (3") of vertical rise per twelve inches (12") of horizontal run.

5.6 Exterior Colors. During the Development Period, the ARC shall approve exterior colors as provided in Article 7: Architectural Review. After the Development Period, colors chosen for exterior use shall be similar to colors previously approved by the ARC for use on that Lot, or on other Lots, so as to preserve visual harmony within Sunridge Subdivision.

5.7 Vents, Chimneys and Flashings. Roof-top attic venting shall utilize inconspicuous ridge or hip vents; jack vents and similar roof-mounted vents are prohibited. Plumbing vents, flashings, gutters, chimney caps, and other similar parts shall be painted to match the roof material, unless they are copper or are already a color which matches the roof material. Exposed metal chimneys or flues shall not protrude more than two feet (2') above the roof surface.

5.8 Driveways and Sidewalks. Where required by the City of Lowell in Sunridge Subdivision's final approval, each Owner shall construct a five foot (5') wide concrete sidewalk along the entire street frontage of the Lot, prior to completion of the exterior of the residential structure. Said sidewalk must meet the approval of the City of Lowell, which will own and maintain the sidewalk. Each Owner shall construct and maintain at least two uncovered off-street parking spaces for the Lot, in addition to the required two-car garage. Spaces shall be at least eighteen feet (18') long, and may be part of the driveway. All driveways shall be concrete, brick, or masonry paver.

5.9 Fencing. All fencing must be of good craftsmanship and built straight both vertically and horizontally. Wood fences must have either naturally rot-resistant posts, or treated posts meeting the requirements of Section 4.6: Chemically Treated Wood in Perimeter Fences. Boards must be dimensionally stable and free of open knot holes, and shall not have noticeable warp, twist, buckle or wane. Chain link fences are prohibited, unless under four feet (4') in height and screened from view by vegetation of a density and type that will completely cover the fence within three (3) years after the fence is erected. Pallet fences, barbed wire and wire mesh fences are expressly prohibited. Hedges along property lines must be approved in writing by adjoining Owners prior to planting, and shall be maintained by both parties thereafter. Fences must either be natural wood color, dark tan, dark grey, brown or green. White, light tan, blue, red, yellow, orange, black and purple fences are expressly prohibited. Fencing may not exceed six feet (6') in height, except that in the front twenty feet (20') of the Lot, fencing may not exceed three feet (3') in height.

5.10 Antennae. All exterior-mounted antennae and any satellite dish exceeding eighteen inches (18") in diameter are prohibited, unless completely screened from view by vegetation, fencing or other appropriate enclosure.

5.11 Solar Panels. Solar panels must attach directly to the roof structure and must lie in the same plane as the roof at a pitch that is within five degrees (5°) of the roof's pitch.

5.12 Tanks and Mechanical. All tanks larger than five (5) gallons, and all other equipment and apparatus, such as air conditioners and heat pumps, must either be buried underground or be completely screened from view on all sides, including the top, by vegetation, fencing or other appropriate enclosure. Provided, however, that air conditioners and heat pumps need not be screened if the equipment is colored in natural tones such as dark tan, brown, green or dark gray. All noise producing equipment and apparatus must be set back at least twenty feet (20') from the property line, except that no setback is required along a property line abutting a public street or a panhandle driveway. Provided, however, that equipment with a manufacturer's sound rating of 70 decibels (7.0 bels) or less may be within two feet (2') of the property line; equipment with a manufacturer's sound rating of 71 or 72 decibels (7.1 or 7.2 bels) may be within five feet (5') of the property line; and equipment with a manufacturer's sound rating of 73 or 74 decibels (7.3 or 7.4 bels) may be within ten feet (10') of the property line. Lesser distances are allowed only if agreed to in writing by the adjacent Owner(s). Such agreements must be duly recorded in the Lane County Real Property Records. Proof of the manufacturer's sound rating must be provided upon request to adjacent Owners or to the Declarant. Central vacuums and noise-producing furnaces that exhaust outside the home must be muffled. Window-mounted air conditioners are not allowed.

5.13 Mailboxes and Newspaper Tubes. No mailboxes, drop boxes or newspaper tubes shall be erected or maintained on any Lot or within an adjacent street right-of-way, other than those originally provided by the Declarant.

5.14 Coverings for Cuts and Fills. Natural basalt stone shall be used for all retaining walls, coverings for cuts and fills, planter bed edging, terracing, and similar uses. Use of any other type of landscaping element, such as wood, plastic, concrete, brick or other masonry, is prohibited. Provided, however, that incidental decorative use of natural wood is allowed, such an unusual piece of driftwood.

## ARTICLE 6. GENERAL USE RESTRICTIONS

6.1 Allowed Uses. Lots shall be used primarily for residential purposes, No tent, shack, trailer, camper, recreational vehicle, or partly finished house may be used as a residence at any time. Provided, however, that visitors to a Lot may sleep in a camper or recreational vehicle parked on the Lot for up to seven (7) consecutive days, with a cumulative maximum of twenty one (21) days in any one year period. Home businesses are allowed provided that: i) the business is conducted entirely indoors; ii) the business is incidental to the residential use of the Lot; iii) workers and customers park entirely on the proprietor's Lot; iv) no more than two (2) worker and/or customer cars are visible from outside the Lot at any given time; v) no more than eight (8) customers visit the business during any twenty-four (24) hour period; and vi) the business complies with all applicable laws and regulations.

6.2 Maintenance. All Improvements must be maintained at all times in a good, workmanlike manner in substantially the same condition as when first constructed. No Improvement shall be permitted to fall into disrepair or to become unsightly. Refinishing of all buildings and fences must be done before there is noticeable fading, checking, blistering or loss of finish on any surface. Owners shall also maintain the portion of the street right-of-way that is between their Lot and the sidewalk edge, in the same manner as the Lot itself.

6.3 Storage and Parking. Storage or parking of any type of vehicle which is in a state of disrepair or is not in regular family use, trucks and similar equipment in excess of one ton rating, boats, snowmobiles, all-terrain vehicles (ATVs), jet-skis, trailers, recreational vehicles (RVs), motor homes or campers shall not be allowed on any Lot, nor on any public or private street adjacent to

any Lot, except within a completely enclosed garage, or other area which is completely screened from view by vegetation or fencing. Provided, however, that from time to time such equipment may be parked outside of a garage or screened area on a temporary basis for periods not to exceed seven (7) consecutive days, with a cumulative maximum of twenty one (21) days in any one year period. Parking of allowed vehicles shall occur primarily upon the Lots, with street parking allowed only when additional parking is required due to special circumstances, such as the arrival of guests. Storage of any kind of household item, goods, merchandise, fuel, firewood, bicycles, tools, materials, machinery or supplies must be within areas that are completely screened from view by vegetation, fencing or other appropriate enclosure. Garbage and debris must be kept in sanitary containers in an enclosed area and taken from the Lot to a lawful garbage dump site at least every other week. Provided, however, that organic materials may be naturally composted on the Lot if the composting area is screened from view by fencing, vegetation or other enclosure.

6.4 Repair of Vehicles and Equipment. Repair, rebuilding and overhaul of vehicles and equipment must take place inside a completely enclosed garage.

6.5 Rental. Lots may be rented by the Owner, provided that the Owner ensures that the tenants comply fully with each and every relevant Restriction, in the same manner as if said tenants were the record owners of the Lot.

6.6 Derogation of Laws. All Owners and occupants of all Lots, and any guests, shall comply with all applicable city, county, state and federal laws and regulations. In case of conflict with said laws and regulations, and this Declaration, the more restrictive of the two shall control. Provided, however that this Declaration shall not be construed to require violation of any applicable law or regulation.

6.7 Burning. Outdoor burning of yard, household or other waste is prohibited. Provided, however, that small, controlled fires of wood or charcoal are allowed, for recreational purposes only.

6.8 Signs. No signs shall be allowed on any Lot, or on a public right-of-way adjacent to any Lot, other than as follows: i) temporary signs under three (3) square feet advertising the Lot for sale or for rent; ii) political signs during election campaigns, provided said signs are promptly removed upon completion of the campaign; iii) home business signs under two (2) square feet and attached to the home; iv) discreet security signs or notifications regarding home security systems; and v) signs required by law. Signs must be freestanding or attached to a building, and may not be attached to a tree.

6.9 Animals. No horses, cattle, goats, swine or other such livestock may be raised, bred or kept on the Lot. A maximum of two dogs, plus an aggregate of five cats, rabbits, chickens and/or other similar animals, may be kept on each Lot, so long as they are not raised, bred or kept for commercial purposes. Dog runs or other outdoor animal enclosures must be at least two thousand (2000) square feet, and located in the rear two-thirds (2/3) of the Lot. All animal waste must be removed at least twice a week, and proper sanitation shall be maintained at all times. Pets, including cats, shall not be allowed off the Owner's Lot unless leashed or enclosed. Owners shall immediately remove any waste left by pets on other Lots, public rights-of-way or parks.

6.10 Nuisance. No noxious, unsightly or offensive condition, or anything that may be or become an annoyance or nuisance to owners and/or occupants of any part of Sunridge Subdivision, or the Future Development Property, shall be permitted. Nuisances include, but are not limited to, disruptive noise during nighttime hours, barking dogs, offensive smells or loud music.

## ARTICLE 7. ARCHITECTURAL REVIEW

7.1 Architectural Review Committee (ARC). During the Development Period, there shall be an Architectural Review Committee (ARC) comprised of one (1), three (3) or five (5) individuals chosen by the Declarant. Any or all of the ARC members may be removed and replaced by the Declarant at any time, with or without cause.

7.2 Architectural Review Required. During the Development Period, no Improvement shall be commenced, erected, altered or maintained upon any Lot unless and until the Improvement is approved in writing by the ARC as described in this Article 7. Provided, however, that walls, excavations and earthwork less than twenty four inches (24") in height or depth, fences, patios and decks are considered minor and shall not require prior ARC approval. Plans for Improvements requiring a building permit may not be submitted to the City of Lowell, or any other permitting agency, until such plans have been first been approved by the ARC. Only plans bearing the ARCs approval may be submitted for building permit review, and only ARC-approved plans may be present on the jobsite as the working plans.

7.3 Scope of Review. This Declaration contains provisions that dictate objective qualities of proposed Improvements. However, in order to preserve the value, attractiveness, livability and desirability of the Sunridge Subdivision and the Future Development Property, certain subjective qualities must also be controlled, such as exterior colors, window and deck placement, roof design, proportions and bulk, quality and use of materials, changes in the natural grade of the land, and the overall harmony of the general design, type, style, size and location of proposed Improvements with the topography of Sunridge Subdivision and the Future Development Property, and with other contemplated or existing Improvements. However, descriptions of desirable subjective qualities are difficult to reduce to writing without unreasonably limiting the creativity of individual builders. Therefore, the ARC shall review the subjective aspects of proposed Improvements, as generally described above, and shall use its judgment to determine whether or not said Improvements will make a positive contribution towards the value, attractiveness, livability and desirability of the Sunridge Subdivision and the Future Development Property, without detracting from same. The ARC may, in its sole and absolute discretion, withhold or condition its approval of any proposed Improvement if it finds the Improvement does not meet the foregoing standard. The ARC may maintain a portfolio containing examples of subjective qualities the ARC deems desirable, and use it as a guide when making decisions. At its discretion, the ARC may also choose to review proposed Improvements for compliance with some or all of the other provisions of this Declaration, and may withhold approval upon a finding of noncompliance. However, such a review by the ARC shall not relieve the Owner of the responsibility to ensure that all Improvements are constructed and maintained in compliance with the entirety of this Declaration. Variances and Temporary Exemptions may be granted only as provided in the following Article 8: Variances and Temporary Exemptions, and may not be granted by the ARC.

7.4 Application. To receive approval for a proposed Improvement, the Owner shall submit to the ARC an application specifying the approval requested, two (2) sets of plans showing the nature, kind, shape, size, height, materials, color, texture and location of the proposed Improvements, and any other material reasonably required or desired by the ARC to make an informed decision. The ARC may adopt detailed procedures and requirements for such applications, and may impose a reasonable fee, not to exceed five hundred dollars (\$500), to cover the cost of processing the application. If the ARC finds that the application as submitted is not detailed enough to allow a decision to be made, the ARC shall so notify the Owner in writing within seven (7) days of its receipt of the incomplete application. The notice shall include a list of the additional details that are required. The application shall be deemed complete when the Owner submits all said additional details to the ARC. If no such notice is made to the Owner within said seven (7) day period, the application shall be deemed complete as originally submitted.

7.5 ARC Decision. The ARC shall make written approval or denial of the proposed Improvements within fourteen (14) days of the date the application was deemed complete under

the above Section 7.4. If the ARC finds reason to object to the proposed Improvements, it shall provide the Owner with a written denial identifying the concerns and objections thereto. If the ARC fails to respond in writing within said fourteen (14) day period, ARC approval of said Improvements shall not be required, and compliance with this Article 7 shall be presumed. Provided, however, that said Improvements must still comply with all other provisions of this Declaration, excepting only this Article 7.

7.6 Majority Action. A majority of ARC members shall have the power to act on behalf of the ARC, without the necessity of a meeting and without consulting or notifying the remaining ARC members. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

7.7 Post-Development Period Improvements. After the Development Period, the ARC shall be automatically dissolved, and ARC approval shall no longer be required prior to construction of Improvements. Improvements must still comply with all other provisions of this Declaration, excepting only this Article 7. However, Improvements approved by the ARC, but not completed prior to the ARC's dissolution, must be completed in compliance with the ARC's approval.

7.8 Conditional Approvals and Inspections. The ARC may approve an application subject to certain conditions specified in the approval letter. The ARC may also require that compliance with certain provisions of the approval, or with other provisions of this Declaration, be demonstrated by passing an inspection prior to covering or completing the Improvement. Examples of Improvements that may need to be inspected include, but are not limited to, foundation drains, cut-bank drains, and forming for concrete driveways prior to pouring. The ARC may designate one or more ARC members to perform inspections. Improvements subject to an ARC inspection requirement may not proceed without written ARC approval.

## ARTICLE 8. VARIANCES AND TEMPORARY EXEMPTIONS

8.1 Variances During the Development Period. During the Development Period, the Declarant shall have the right, in its absolute and sole discretion, to permanently waive any or all of the Restrictions found in the following sections: 3.1: Construction Timetables, 3.2: Required Contractor's Registration, 4.10: Protected Trees, 4.11: Drainage, 4.12: Grading, all of Article 5: General Architectural Restrictions, and Section 6.3: Storage and Parking. Declarant may choose to make such Variances for one Lot only, for some Lots and not for others, or for all Lots. Variances shall be in writing, shall specify exactly which Restrictions are modified or waived, shall specify which Lot or Lots are affected by the Variance, shall be signed by the Declarant, and shall be duly recorded in the Lane County Real Property Records. In exchange for receiving a Variance on a Lot, an Owner may agree to accept certain new Restrictions; for example, a Variance allowing a certain tree to exceed the Elevation Limit may also designate that tree as a Protected Tree. In such cases, said Owner shall also sign the Variance.

8.2 Variances After the Development Period. After the Development Period, no Variances may be granted except for Section 5.2: Height Restriction. Such a Variance must be signed by all the record owners of any Lots or Future Development Property located so that the object in question is capable of intruding into the view of Dexter Lake from said Lots or Future Development Property. The Variance may specify an alternate Elevation Limit for the object or objects covered by the Variance. The Variance shall be duly recorded in the Lane County Real Property Records.

8.3 Temporary Exemptions for Declarant. During the Development Period, the Declarant, and all Lots owned by the Declarant, shall be temporarily exempted from Section 4.7: Dark Sky

Lighting and all of Article 6: General Use Restrictions, provided that nothing shall be done which will result in a violation of any part of this Declaration after the Development Period.

8.4 Temporary Exemptions for Others. For one (1) year following the issuance of building permit for a residential structure on any Lot, that Lot shall be temporarily exempted from the following Restrictions to the extent necessary to permit the efficient, economical and convenient completion of said Improvements, provided that during the course of such construction nothing shall be done which will result in a violation of any part of this Declaration upon completion of construction: Section 4.7: Dark Sky Lighting, Section 6.1: Allowed Uses, Section 6.2: Maintenance, Section 6.3: Storage and Parking, Section 6.4: Repair of Vehicles and Equipment, Section 6.8: Signs, and Section 6.10: Nuisance.

8.5 No Waiver. Variances and Temporary Exemptions shall not be construed as constituting any waiver of any provision in the future or as to any property not specifically described in or by the Variance or Temporary Exemption. No Variance or Temporary Exemption allowed shall in any way restrict the ability of a party hereto to enforce violations of this Declaration against Lots or Owners that do not have specific written Variances or Temporary Exemptions.

## ARTICLE 9. ENFORCEMENT

9.1 Who May Enforce. This Declaration shall inure to the benefit of, and be enforceable by, the record owner or owners of any portion of the Sunridge Subdivision and/or the Future Development Property, and the legal representatives, heirs, successors or assigns of owners of interests in any such land. Provided, however, that because Section 4.11: Drainage and Section 5.8: Driveways and Sidewalks contain requirements which are conditions of Sunridge's development approval, these two sections may also be enforced by the City of Lowell. Sunridge Subdivision shall include the Sunridge Subdivision as initially created and as it may have been subsequently enlarged by any additions pursuant to Article 10. A failure, either by said owners, or their legal representatives, heirs, successors or assigns, or by the City of Lowell, to enforce any or all provisions of this Declaration in one or more instances shall in no event be deemed a waiver of the right to enforce such provision(s) thereafter. The Restrictions established by this Declaration are intended to be real and not personal.

9.2 Manner of Enforcement. Enforcement of this Declaration shall be accomplished by use of the procedures described herein. A party seeking to enforce any provision of this Declaration shall first make written demand for the discontinuance of the alleged violation. Such written demand shall be made to the Owner in question, and shall contain the name and address of the enforcing party, and a description of the alleged violation. The demand may also contain a statement as to what actions, if any, said Owner could take that would settle the matter.

9.3 Arbitration. The parties are encouraged to try to resolve disagreements among themselves, before resorting to arbitration. However, thirty (30) days after written demand is made in accordance with the above Section 9.2, arbitration proceedings may be initiated by an owner of Sunridge Subdivision property or Future Development Property. Arbitration shall take place in Eugene, Oregon. The matter shall then be resolved by a single arbitrator in accordance with ORS 36.300-365, or its successor. The arbitrator's decision shall be binding and conclusive, if not appealed, and any party to an award rendered shall be entitled to have judgement entered thereon. Notwithstanding the foregoing, the arbitrator's award may be appealed to the circuit court. The arbitrator may award injunctive relief [as to present and future violations] and/or monetary damages [for past violations].

9.4 Correction of Violation (Present and Prospective Relief). If the arbitrator finds that a violation of this Declaration occurred, has not yet been corrected, and is the type of violation that

can reasonably be corrected, the arbitrator shall order the losing party to take action sufficient to remedy the violation, which may include ordering remedial steps and/or an order enjoining future violations.

9.5 Liquidated Damages (Relief for Past Harm). If the arbitrator finds that a violation of this Declaration occurred, the arbitrator shall, at a minimum, award to the enforcing party or parties liquidated damages as follows:

9.5.1 For a violation of Section 3.5: Concrete Washout or Section 6.7: Burning, liquidated damages shall be five hundred dollars (\$500) per occurrence.

9.5.2 For a violation of Section 4.5: Outdoor Use of Certain Pesticides or Section 4.3: Storm Drain Dumping, liquidated damages shall be one thousand dollars (\$1,000) per occurrence.

9.5.3 For a violation of Section 4.10: Protected Trees, if the violation(s) result in the death of a Protected Tree, liquidated damages shall be five thousand dollars (\$5,000) per Protected Tree.

9.5.4 For a violation of Section 6.6: Derogation of Laws, no liquidated damages are required.

9.5.5 For a violation of any other Restriction, liquidated damages shall be two hundred dollars (\$200), plus an additional one hundred dollars (\$100) for each day that passes from the time the written demand was first delivered to the Owner in question, to the time the violation has been fully corrected.

9.6 Attorneys Fees and Other Costs. If arbitration proceedings are initiated as provided herein, the prevailing party shall be entitled to have and recover from the losing party all costs, fees and expenses, including reasonable attorney fees, incurred in the arbitration proceedings, in any court action associated with the arbitration proceedings, and in any subsequent appeal. Should members of the Architectural Review Committee be made parties to a dispute under this Declaration, such member(s) shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys fees, should the decision or position of the Architectural Review Committee be substantially sustained by the arbitrator proceeding and in any subsequent appeal.

9.7 No Limitation of Arbitrator's Powers. Nothing in this Article 9 shall limit the arbitrator's right and ability to require additional remedial actions, or to award additional sums as damages, beyond those specifically required herein.

## ARTICLE 10. ADDITIONS TO SUNRIDGE SUBDIVISION

10.1 Additions to Sunridge Subdivision. Declarant shall have the right, in its absolute and sole discretion, to add additional real property to Sunridge Subdivision, so that it shall become subject to and restricted by this Declaration. An addition to Sunridge Subdivision shall be made by a supplementary declaration, containing such modifications of the provisions of this Declaration as may be necessary to reflect the different character, if any, of the addition to Sunridge Subdivision. Provided, however, that any such modifications shall apply only to the property being added to Sunridge Subdivision by said supplementary declaration. A supplementary declaration shall be signed by the Declarant and by all the record owners of the additional property, and duly recorded in the Lane County Real Property Records. Property lawfully divided and expressly made subject to this Declaration (with any appropriate modifications) as described above shall thereafter be deemed to be part of Sunridge Subdivision for purposes of the applicability and functioning of this Declaration

as if all such properties and lots simultaneously had been made subject to this Declaration. Should a portion of the Future Development Property be added to the Sunridge Subdivision, the remaining portions of the Future Development Property shall continue to have the rights, including without limitation the enforcement rights, as are allocated to the Future Development Property above.

## ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Notification. Any notice permitted or required under this Declaration shall be in writing and shall be made either in person or by certified United States mail, return receipt requested. Notices shall be mailed to record owners of Lots and Future Development Property at the addresses shown in the Lane County Assessment and Taxation Records. Notice to the Declarant shall be made to: Shade Tree, Inc., 40160 East First Street, Lowell, OR 97452. In the event the notice is properly mailed to the correct address, but the addressee does not accept delivery, it shall nevertheless be deemed delivered on the date the United States Post Office returns the notice to the sender as undeliverable.

11.2 Limitation of Liability. Neither the Declarant nor any member of the ARC shall be liable for damages to any party regarding a request for general contractor approval under Section 3.2: Approval of General Contractor, a request for ARC approval of Improvement plans under Article 7: Architectural Review, or a request for Declarant's approval of a Variance under Section 8.1: Variances During the Development Period, by reason of the Declarant's or the ARC's approval or disapproval of said requests, failure to act on said requests, or any other action or failure to act regarding said requests.

11.3 Severability. Invalidation of any provision of this Declaration shall in no way affect any of the other provisions, which shall remain in full force and effect.

11.4 No Change of Circumstance. It is expressly contemplated that the Future Development Property and/or other nearby property may be divided and developed for residential purposes and also that other urban development of the vicinity may occur; such division and/or development is expressly contemplated by this Declaration and would not constitute any change in the character of Sunridge Subdivision, the Future Development Property or the surrounding neighborhood, nor any change of circumstance.

11.5 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of preserving the value, attractiveness, livability and desirability of the Sunridge Subdivision and the Future Development Property. The captions and titles in this Declaration are inserted only as a matter of convenience and for reference, and in no way describe, define, or limit the intent of this Declaration, and are not to be used in interpreting this Declaration.

11.6 Exhibits. All exhibits and attachments to this Declaration are incorporated herein.