

State of Oregon, County of Klamath
Recorded 05/18/2004 9:43a m
Vol M04 Pg 30807-26
Linda Smith, County Clerk
Fee \$ 116.00 # of Pgs 20

After Recording Return To:
CRANE & BAILEY
Attorneys at Law
303 Pine Street, Suite 201
Klamath Falls, OR 97601

**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
VALE HEIGHTS HOMEOWNERS' ASSOCIATION**

THIS DECLARATION made this 14th day of May, 2004, by Robert A. Stewart and Marilyn J. Stewart, (collectively referred to as "Declarant").

RECITALS

Declarant is the owner of all the real property described as Tract 1413 and Parcels 1 & 2 of Final Partition 54-93, filed in the Plat Records of Klamath County, Oregon (the "Property"), and desires to create thereon a planned community to be known as Vale Heights, Phase II with permanent roadways for the benefit of such community. The improvement is a Class I Planned Community.

Declarant is reserving the right, but not undertaking the obligation, to annex additional property to the Association and subject it to the terms and provisions of this Declaration, the Articles and the Bylaws, as the same may be amended or supplemented. The property which in the future may be annexed is described in Exhibit "A." The Declarant may annex all or a portion of this property to the Declaration in one or more Supplemental Declarations.

Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Vale Heights and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each owner of any lot thereof.

Declarant has deemed it desirable for the efficient preservation of the values and amenities in such community to create a non-profit corporation known as Vale Heights Homeowners' Association, to which should be delegated and assigned the powers of owning, maintaining and administering the common property and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the residents. The bylaws adopted by the association under ORS 94.550 will be recorded.

NOW, THEREFORE, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the provisions of the Oregon Planned Community Act, ORS 94.550 et seq., and to the covenants, restrictions, easements, charges and liens hereinafter set forth in this Declaration.

VALE HEIGHTS DECLARATION OF
COVENANTS AND RESTRICTIONS

ARTICLE 1
DEFINITIONS

1.1 "Articles" shall mean the Articles of Incorporation for the non-profit corporation, Vale Heights Homeowners' Association, Inc., as filed with the Oregon Corporation Commissioner.

1.2 "Association" shall mean and refer to Vale Heights Homeowners' Association, Inc., its successors and assigns.

1.3 "Association easements" shall mean and refer to those easements granted in Section 11.1 and shown on the map of Tract 1413.

1.4 "Bylaws" shall mean and refer to the Bylaws of the Association which must be recorded.

1.5 "Common Property" shall mean and refer to that area of land shown on the recorded plat of the Property, including any improvements thereon, which are intended to be devoted to the common use and enjoyment of the members and which land has been conveyed to the Association.

1.6 "Declaration" shall mean the covenants, restrictions, and all other provisions set forth in this Declaration of Covenants and Restrictions for Vale Heights, Phase II.

1.7 "Declarant" shall mean and refer to Robert A. Stewart and Marilyn J. Stewart, their successors or assigns, or any successor or assign to all remainder of his or her interest in the development of the Property.

1.8 "General Plan of Development" shall mean the Declarant's general plan of development of the Property as approved by appropriate governmental agencies and as set forth in this Declaration which shall represent the total general plan and general uses of land within the boundaries of the Property, as may be amended from time to time.

1.9 "Living Unit" or "Unit" shall mean and refer to any portion of a structure situated upon the Property designed and intended for use and occupancy as a residence by a single family.

1.10 "Lot" shall mean and refer to each and any of the lots of Vale Heights, Phase II and any property which may be subsequently annexed to the Association, together with any other lots that may be designed as Lots intended for residential use on any supplemental declaration and plat submitting additional property to the terms of this Declaration. Provided, however, that "Lot" shall not include any lot depicted on any plat of the Property which is designated for use as Common Property on such plat or declaration of Vale Heights, Phase II.

1.11 "Occupant" shall mean and refer to the occupant of a Living Unit who shall be either the owner, lessee or any other person authorized by the owner to occupy the premises.

1.12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.

1.13 "Property" shall mean and refer to all real property, the Common Property and all improvements located on the real property subject to this Declaration, together with such additional Lots and Common Property as may, from time to time, be annexed to the Association.

1.14 "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of Directors of the Association or the Architectural Review Board as may be from time to time amended.

1.15 "Vale Heights, Phase II" shall mean all Lots and all Common Property included within the Property.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Klamath County, Oregon and consists of the Lots and the adjoining Common Property of Vale Heights, Phase II which is Tract 1413 and Parcels 1 & 2 of Final Partition 54-93, filed in the Records of Klamath County, Oregon together with any Lots and adjacent Common Property which may be subsequently annexed to the Association.

ARTICLE 3

GENERAL PLAN OF DEVELOPMENT

3.1 General. The Declarant has developed the Property with nine lots each of which is approximately 10 acres in size and two lots each of which is approximately 20 acres in size all of which are single family residential Lots. Each such lot that is developed will be developed with a single Living Unit. The Declarant reserves the right to replat any portion of Vale Heights, Phase II before it is annexed to the Association.

3.2 Ownership of Common Property. The Declarant shall convey the Common Property which has been annexed to the Association within sixty (60) days after approval and filing of the Plat Map for Tract 1413 and this Declaration. The description of the Common Property and easements to be initially conveyed to the Association is set forth in the map of Tract 1413 which will be on file in the office of Klamath County Public Works. Additional easements and Common Property adjacent to lots in Vale Heights, Phase II which are subsequently annexed will be conveyed to the Association within ninety (90) days after such annexation. In the event the Common Property is ever assessed for property tax purposes separately from the Lots, the Association, by and through its Board of Directors, shall take such steps as may be necessary to assess all Owners equally for their share of such taxes and to pay such property taxes on a current basis.

3.3 Improvements in the Common Property. The Common Property will be improved with roadways. Association easements will be improved with drainage ponds and fire suppression facilities. It is contemplated that all improvements will be completed prior to conveyance of a Lot to any Owner. There will be a maximum of 11 Lots when and if the proposed project is completed as contemplated.

3.4 Contemplated Improvements. The declarant does not agree to build any specific improvement and does not choose to limit declarant's right to add improvements not included in this Declaration.

ARTICLE 4

USE RESTRICTIONS; ARCHITECTURAL CONTROLS AND MAINTENANCE RESPONSIBILITIES

4.1 General.

4.1.1 Governmental Restrictions. All uses, occupancy, construction and other activities conducted on any Lot shall conform with and be subject to applicable zoning, use restrictions, setback requirements, construction and building codes of all local, state and federal public authorities.

4.1.2 Outdoor Storage. No storage of recreational vehicles, trailers or boats shall be allowed on the Common Property.

4.1.3 Combination, Division. No Owner shall have the right to divide any Lot. Any Owner, upon compliance with the requirements of all applicable zoning, building and land use laws, regulations and ordinances, and the architectural requirements of the Declaration may construct (reconstruct or replace) one Living Unit on two or more Lots.

4.1.4. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon, which may be or may become an annoyance or nuisance to the neighborhood.

4.1.5. Maintenance of Lots. Each parcel and its improvements shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard or visual pollution.

4.1.6. Garbage and Refuse Disposal: No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage and other waste shall not be kept, except in sanitary containers at all times. All equipment for the storage or disposal of such material shall be kept in clean and sanitary condition. No rubbish may be burned or buried on the Planned Community, nor shall any parcel be used for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or which will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any lot that will, or might, disturb the peace, comfort or serenity of occupants of surrounding property. All lots must be maintained at all times to control and prevent grass and range fires upon the property.

All garbage containers, cuttings, refuse, fuel tanks, clothes lines and other service facilities must be screened from view of roadways and other Lots.

4.1.8. Livestock and Poultry. No poultry, fowl, livestock, horses or other animals shall be kept on any Lot, except that the Owner of each Lot may keep not more than four large animals and two dogs or cats, which shall be confined to enclosed areas on such Owner's Lot or shall be kept on a leash in the Owner's presence. Additionally, Owners of pets shall abide by all

applicable leash laws and sanitary regulations. Dogs and cats shall not be kept, bred or raised for commercial purposes. The Board of Directors of the Homeowner's Association shall have the right to require any Owner to remove any pet that is a nuisance or that interferes with the right to the quiet enjoyment by the owner and occupants of any Lot. Any dispute arising out of this Section shall be decided by a majority of the Board of Directors. Any decision of the Board on this matter shall be binding upon the member or members affected.

4.2 Use. All Lots shall be used for residential, recreation and vacation purposes only. No commercial, retail or industrial use shall be allowed on any Lot or in any Living Unit. Provided however, subject to compliance with applicable laws, an owner may rent his or her Living Unit on a nightly, monthly or other basis, even though such rental activity is considered a commercial use.

4.3 Exterior Improvements.

4.3.1 Common Property. No Owner shall construct or place any structure, material, planting, equipment or any object of any kind on any portion of the Common Property, unless granted written permission by the Board of Directors, and then only in strict compliance with such authorization.

4.3.2 Utility Connections. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes shall be erected, placed or maintained within the Property, except temporary service during the construction period.

4.3.3 Temporary Structures. No structures of a temporary character, trailer, basements, tents, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence, either temporary or permanently. No mobile homes or trailers will be allowed for temporary or permanent use. However, a builder or his agents, may construct or move a small construction shed upon the property, but only for the duration of the construction period.

4.3.4 Fences. No fence, wall or hedge in excess of forty-eight (48) inches in height shall be permitted to extend from the minimum front setback line of the house to the curb line of the street without written Architectural Control Committee approval.. No fence shall exceed six (6) feet high on any portion of the lot without written Architectural Control Committee approval.. All fences shall be made of materials that are compatible with the main dwelling. The provisions of this paragraph shall not apply to fences, if any, built on the exterior boundary of the Planned Community. Such boundary fences shall be constructed of good materials and, at all times, be kept in a like new condition.

4.3.5 Lighting. No offensive exterior lighting or noise making devices shall be installed or maintained on a lot without written Architectural Control Committee approval.

4.3.6 Signs. No sign of any kind shall be displayed to the public view on any lot, except one professional sign of not more than four square feet to advertise the art, craft or hobby of the owner, or one sign of not more than nine square feet advertising the property for sale or rent.

4.3.7. Replacement. If a structure is partially damaged by fire or other hazard, the home is to be replaced to approval of the Architectural Control Committee within six (6) months. If a home is totally destroyed by fire or other hazard, and the owners prefer not to replace the home the lot is to be cleared and put in a clean and attractive condition as soon as possible.

4.3.8. Dwelling Quality and Size. No building, other than a single-family dwelling for private use, maybe constructed on any lot. No mobile home or trailer may be used as a residence. No more than one single-family dwelling shall be constructed on any lot. Accessory buildings incidental to a permitted use, such as barns, garages, storage facilities and pump houses, are permitted but shall be of the same or acceptable architecture as the main home and are permitted only with the approval of the Architectural Review Board, the decision of which is final. Minimum square footage per single-family dwelling is 2500 square feet, excluding the garage and porches.

4.3.9. Building Location. No structure shall be located on any lot nearer than seventy-five (75) feet to the centerline of the street or nearer than twenty (20) feet to an interior side lot line, nor twenty (20) feet where abutting on the side lot line which abuts a street or highway. No structure shall be located nearer than twenty-five (25) feet from a rear lot line on inside lots or sixteen (16) feet from lots on outside parameter. No structure shall unnecessarily obstruct the view of any neighboring lot.

4.3.10. Driveways. The first forty (40) feet of all driveways closest to the residence must be composed of asphalt or concrete. Thereafter, the driveway may be composed of asphalt or concrete or gravel.

4.3.11. Completion of Constructions. All dwellings shall be completed within one (1) year from the beginning of construction. Upon completion of the exterior of all buildings under construction, the owner may petition the Architectural Control Committee for permission to leave certain interior portions unfinished.

4.3.12. Parking. Parking of recreational vehicles is not permitted on the street in front of the residences. The streets shall not be used for parking vehicles except on a temporary basis. Off-street parking shall be provided by each property owner for at least two vehicles.

4.4 Exterior Maintenance, Repair and Replacement.

4.4.1 Association Responsibilities. The Association shall be responsible for the maintenance, repair and replacement of the drainage ponds and fire suppression facilities on Association easements and roads and roadways within the Common area.

4.4.2 Owner Responsibilities. Each Owner shall perform all maintenance, planting, pruning, mowing and cleaning of all lawns and landscaping on such Owner's Lot within areas enclosed by a fence or courtyard. Each Owner shall be responsible for the maintenance, repair and replacement of any improvements, or materials located within the area on such Owner's Lot.

4.5 Leases/Rentals. Each Owner shall have the right to lease or rent his or her property for any period of time, subject to full compliance with applicable laws, the Articles, Declaration, Bylaws and Rules and Regulations of the Association and applicable local, state and federal laws and regulations. All such leases or rental agreements shall be in writing and shall be deemed to provide that their terms shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws and Rules and Regulations of the Association and that any failure by the lessee or renter to comply with the provisions of such documents shall constitute a default under said lease or rental agreement. The lessee's or renter's use and enjoyment of the Common property under such lease or rental agreement shall be subject to suspension by the

Board of Directors for any of the causes set forth elsewhere in this Declaration, including, without limitation, the nonpayment of assessments with respect to the Lot occupied by the lessee or renter. Any such lessee or renter shall be entitled to the use and enjoyment of the Common Property; provided, an Owner may not sever the right to the use and enjoyment of the Common Property from the right to occupy his or her Lot and the improvements thereon by means of a lease, rental agreement or otherwise.

4.7 Architectural Review Board.

4.7.1 Composition. The Board of Directors shall serve also as an Architectural Review Board. A quorum for the Architectural Review Board action shall be a majority of its members.

4.7.2 Duties. It shall be the duty of the Architectural Review Board to regulate the external design, appearance, location and maintenance of all the Property and of improvements thereon, whether on a Lot, Association easement or Common Property, and to regulate use of such Property as described in this Declaration. Upon conveyance of the first Lot to an Owner, the Architectural Review Board shall adopt general rules to implement the purposes and interpret the covenants of this Article.

4.7.3 Approval Required. No outbuilding, fence, wall or other structure of any type shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, change in, painting or staining of, or alteration to any Living Unit, outbuilding, fence, wall, or other structure on the Property of any type be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Architectural Review Board as to the harmony of external design, materials, color and location in relation to surrounding structures and topography.

4.7.4 Procedure. An Owner wishing to take any action requiring approval under this Article shall give notice of such proposed action to the Architectural Review Board, together with complete plans and specifications therefor. The Architectural Review Board shall meet to review the Owner's request within thirty (30) days of receipt and shall render a decision by the vote of a majority of Board Members present within forty-five (45) days of receipt. Interested Owners shall have an opportunity to comment on the request at all such meetings, which shall be open to all Owners. If the Architectural Review Board fails to render a written decision within the time allowed, the request shall be deemed to be approved.

4.7.5 Appeal. The decision of the Architectural Review Board under this Article (including any failure to approve or disapprove within the time allowed) shall be subject to appeal by any Interested Owner as set forth in this Article. Upon the payment of a reasonable fee established by the Architectural Review Board to cover administrative costs not to exceed Two Hundred Fifty Dollars (\$250), any interested Owner may appeal the decision of the Architectural Review Board to the Association members. The appeal shall be made in writing and shall be filed with the Secretary of the Association within thirty (30) days of the decision of the Architectural Review Board. The Board of Directors shall call a special or ballot meeting to be held after ten (10) days notice and within thirty (30) days after the appeal has been filed with the Secretary of the Association. It shall require a vote of at least a majority of the votes of each Class of Association members to reverse or modify the decision of the Architectural Review Board.

4.7.6 Exemptions. The following actions by the following persons shall be exempt from the provisions of this Article:

- (a) The planting of any shrubs, flowers or other plants (excepting trees) by any Owner within an enclosed courtyard or fenced area on such Owner's Lot;
- (b) Any act of the Declarant in implementing his or her General Plan of Development with respect to any Lot or any easement or portion of the Common Property in the development, whether or not annexed to Vale Heights or a part of the Association.

4.7.7 Delegation. The Board of Directors may delegate the duties of the Architectural Review Board to a committee appointed by the Board composed of not less than three (3) Owners.

ARTICLE 5

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1 Members. Each Owner shall be a mandatory member of the Association. Membership in the Association shall be to appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and rules and regulations of the Association and any amendments thereof.

5.2 Proxy and Substitute Voting.

5.2.1 Each Owner may cast his or her vote by absentee ballot or pursuant to a proxy executed by the Owner. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.

5.2.2. Unless the bylaws provide otherwise:

(a) An executor, administrator, guardian or trustee may vote, in person or by proxy, at a meeting of the association with respect to a lot owned or held in a fiduciary capacity if the fiduciary satisfies the secretary of the board of directors that the person is the executor, administrator, guardian or trustee holding the lot.

(b) When a lot is owned by two or more persons jointly, according to the records of the association:

(A) When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. The vote or proxy of the lot may be exercised by a co-owner in the absence of protest by another co-owner. If the co-owners cannot agree upon the vote, the vote of the lot shall be disregarded completely in determining the proportion of votes given with respect to such matter. Fractionalized or split votes shall be disregarded, except for purposes of determining a quorum. The total number of votes as of such termination date and thereafter shall be equal to the total number of Lots annexed to the Property and subjected to this Declaration as of such termination date.

(B) A valid court order may establish the right of co-owners' authority to vote.

5.3 Voting Rights. The Association shall have two (2) classes of voting members:

5.3.1 Class A. Class A members shall be all Owners of Lots other than the Declarant, and each Class A member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

5.3.2 Class B. The Class B member shall be the Declarant, their successors and assigns. The Class B member shall have three (3) votes for each Lot owned. Provided, however, that all Class B memberships shall cease upon the earlier of a date five (5) years from the recording of this Declaration or the conveyance by the Declarant of Lots, representing seventy-five percent (75%) of the total number of votes ("termination date"). Thereafter, each Owner, including the Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots.

5.4 Procedure. All meetings of the Association, the Board of Directors, the Architectural Review Board, and Association committees shall be conducted in accordance with such rules of order as may from time to time be adopted by the Board of Directors. A tie vote does not constitute a majority or approval of any motion or resolution.

ARTICLE 6

DECLARANT CONTROL

6.1 Interim Board and Officers. The Declarant hereby reserves administrative control of the Association. The Declarant, in their sole discretion, shall have the right to appoint and remove members of a three-member Interim Board of Directors, which shall manage the affairs of the Association, and which shall be invested with all powers and rights of the Board of Directors. Notwithstanding the provisions of this Section, at the Turnover Meeting at least one (1) Director shall be elected by Owners other than the Declarant, even if the Declarant otherwise has voting power to elect all five (5) Directors.

6.2 Transitional Advisory Committee. The Declarant shall form a Transitional Advisory Committee to provide for the transition of administrative control of the Association from the Declarant to the Class A members. Not later than the sixtieth (60th) day after the Declarant has conveyed Lots representing fifty percent (50%) of all votes in Vale Heights, Phase II, the Declarant shall call a meeting of Owners for the propose of selecting a Transitional Advisory Committee. The committee shall consist of three (3) members. The Class A members shall, by a majority vote, elect two (2) members, and the Declarant shall elect one (1) member. The committee shall have reasonable access to such information and documents as the Declarant is required by law to make available. If the Declarant fails to call the meeting required under this section, any Owner may do so.

6.3 Turnover Meeting. The Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the Class A members within one hundred twenty (120) days of the earlier of:

6.3.1 Date Certain. A date five (5) years from the date this Declaration is recorded; or

6.3.2 Based on Lots Sold. The date that Lots representing seventy-five percent (75%) of the total number of votes have been conveyed to persons other than the Declarant.

The Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If the Declarant does not call the meeting required under this section, any Owner may do so.

ARTICLE 7 COMMON PROPERTY

7.1 Obligations of the Association. Subject to the rights of Owners set forth in this Declaration, the Association shall be responsible for the exclusive management and control of the Association easements and the Common Property and any improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair, including, but not limited to, the removal of snow, trash and debris, the maintenance, cleaning and repair of the streets, parking areas, landscaped and unlandscaped land located on the Association easements or the Common Property. This obligation shall include, without limitation, the obligation for the maintenance, repair and replacement of the drainage ponds and fire suppression facilities on the Association easements and roads and roadways within the Common area.

7.2 Members' Easement of Enjoyment. Subject to the provisions of this Declaration, the Bylaws, and Rules and Regulations of the Association, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot.

7.3 Extent of Members' Easements. The members' easements of enjoyment created hereby shall be subject to the following:

7.3.1 Subject to Rules and Fees. The right of the Association to establish reasonable rules and to charge reasonable assessments and fees for capital expenditures on the Association easements and Common Property and the maintenance and upkeep of the Association easements and Common Property and payment of all Association expenses.

7.3.2 Suspension of Member's Right. The right of the Association to suspend the right of an Owner or any occupant of a Lot to use the Common Property and facilities for any period during which any assessment against such Owner or occupant's Lot remains unpaid for more than thirty (30) days after notice of such nonpayment; the right of the Association to suspend the right of a member to use any Common Property for a period not to exceed sixty (60) days for any other infraction of the Declaration, Bylaws or the Rules and Regulations of the Association. Provided, however, that no such suspension pursuant to this subsection 3.2 shall deprive an Owner of access to his or her Lot.

7.3.3 Sale of Common Property. As provided by ORS 94.665, the right of the Association to sell, dedicate or transfer any portion of the Common Property or to create a security interest therein is granted as provided herein. Except as to the grant of easements for utilities and similar or related purposes, no such sale, dedication or transfer shall be effective unless approved by seventy-five percent (75%) of the votes of both Class A and Class B members. Provided further, if there is only one class of votes, such sale, dedication or transfer

(except for utility and similar easements) must be approved by seventy-five percent (75%) of the votes held by Owners other than the Declarant.

7.4 Declaration of Use. Any Owner may delegate his or her right of enjoyment to the Common Property and facilities to the members of the Owner's family and to a reasonable number of guests subject to general regulations as may be established from time to time by the Association and included within the Book of Resolutions.

7.5 Damage or Destruction of Common Property by Owner. In the event any Association easement or Common Property is damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents or members of his or her family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair damage in a good and workmanlike manner as originally constituted or as the area may be modified or altered subsequently by the Association in the discretion of the Association. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is otherwise responsible for such damage.

ARTICLE 8

COVENANTS FOR MAINTENANCE ASSESSMENTS/SPECIAL ASSESSMENTS; AND COMMON PROFITS

8.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association (1) regular assessments or charges for common expenses, and (2) special assessments as provided in Section 8.7. All such assessments, together with interest thereon at the rate established from time to time by resolution of the Board of Directors and together with all other costs, fees, charges and fines allowed by law, shall be a lien and charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law.

8.2 General Assessments.

8.2.1 Purpose of Assessments. The assessments levied under this Article shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property, and for the improvement and maintenance of such Property, including payment of premiums for insurance required under this Declaration and to fund a replacement reserve for those items the Association has maintenance responsibility, and for payment of any common operating expenses such as landscaping, maintenance, Association water, management services, legal and accounting services and the like. Neither the Association, nor any assessments of the Owners shall be used to engage in lobbying or to exert political influence.

8.2.2 Basis for Assessment. There shall be two levels of assessments against Lots dependent upon whether such Lots have been improved with a substantially completed Living Unit.

(a) Unimproved Lots. Lots that have not been improved with a substantially completed Living Unit shall be assessed equally with other such Lots. The assessment against such unimproved Lots shall include only amounts attributable to the Association easements and Common Property Reserve Account as set forth in Section 8.5, together with amounts attributable to the liability insurance premium covering the Association easements and Common Property. The Declarant, at the Declarant's option, may accrue the Common Property Reserve Account portion of the assessment for an unimproved Lot until such Lot is conveyed to an Owner other than the Declarant as set forth in Section 8.5, but may not accrue the liability insurance portion. The Declarant may require the Owner to whom such Lot is conveyed to reimburse the Declarant for these amounts.

(b) Improved Lots. Lots that have been improved with a substantially completed Living Unit shall be assessed equally with other such Lots. The assessment of Lots improved with substantially complete Living Units shall include the following items:

- (1) Expenses of administration.
- (2) Expenses of maintenance, repair or replacement of all improvements and buildings on the Common Property.
- (3) Any deficit in common expenses for any prior period.
- (4) Utilities for the Association easements and Common Property.
- (5) The cost of any professional management desired by the Board of Directors.
- (6) Any other items properly chargeable as an expense of the Association.
- (7) Reserve items as more particularly set forth in Sections 8.5 and 8.6.

All initial, general and special assessments shall be equally allocated among the Lots, except that improved and unimproved Lots shall be assessed in different manners as described herein.

8.2.3 Method of Assessment. The Board of Directors shall determine the annual assessment in accordance with the provisions hereof, provided, however, the annual assessment shall be sufficient to meet the obligations imposed by the Declaration. The budget shall be presented to Association and may be amended by a majority of the votes of each class of members. Both annual and special assessments must be fixed at a uniform rate for all Lots. The Board shall set the date(s) such assessment shall become due. The Board may provide for collection of assessments annually or in monthly, quarterly or semi-annual installments; provided, however, upon the default in the payment of any one or more installments, the entire balance of such assessment may be accelerated at the option of the Board and be declared due and payable in full, together with interest and attorneys fees and costs as hereinafter provided.

Notwithstanding any other provisions of this Section 8.2, the general assessments of the Association may not be increased by more than twenty percent (20%) in any one year without approval of a majority of the Owners at a meeting at which a quorum exists, or a majority of the votes of all Owners, if the vote is taken by written ballot.

8.3 Date of Commencement of Annual Assessments. The general assessments with respect to the Lots shall commence at the time the Directors declare, but in no event later than the first day of the month following the conveyance of a Lot to an Owner other than the Declarant.

Following such declaration, the pro rata annual assessment shall commence with respect to an improved Lot within the Property upon the substantial completion of a Living Unit on such Lot.

8.4 Initial Assessment. Upon the closing of the sale of each Lot to an Owner other than the Declarant in Vale Heights, Phase II, (regardless of whether such Lot has been improved with a Living Unit), each Owner shall contribute a sum equal to two (2) times the monthly assessment (as determined for lots improved with Living Units) as a one-time contribution to the working capital of the Association, together with such other sums as may be called for by the sales agreement and Bylaws. Within sixty (60) days after conveyance by the Declarant of the first Lot in the Property, the Declarant shall make such contribution in respect to all Lots in the Property which have not yet been conveyed to a purchaser. If the Declarant has made such contribution, no further contributions shall be required to the Association, but each purchaser, upon closing, shall reimburse the Declarant for the amount of such contribution made by the Declarant in respect to the Lot conveyed. In the event that the monthly assessments have been reduced pursuant to the authority granted to the Declarant to subsidize the Association's budget, the initial deposit to the Association pursuant to this section shall be equal to twice the monthly assessment based upon the projected amount of assessments upon the substantial completion of Living Units on all Lots then subject to this Declaration.

8.5 Common Property Reserve Account. The assessment against each Lot, regardless of whether it has been improved with a substantially complete Living Unit, shall include an amount allocated to a reserve account established for the purpose of funding replacements of those elements of the Association easements and Common Property that will normally require replacement, in whole or in part, in more than three (3) and less than thirty (30) years. Until revised in accordance with the Bylaws, the initial annual reserve assessment shall be \$250.00 per Lot. Amounts assessed with respect to reserves shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The assessments pursuant to this section shall accrue from the date of conveyance of the first Lot in the Property. The Declarant, at the Declarant's option, may defer payment of the accrued assessments for a Lot pursuant to this section until the date the Lot is conveyed to an Owner other than the Declarant, at which time such accrued assessments shall be paid to the Association. The Declarant may require the Owner to whom such Lot is conveyed to reimburse the Declarant for such portion of the assessment.

8.6 Special Assessments. The Board of Directors shall have the power to levy special assessments against an owner or all owners in the following manner for the following purposes:

- (a) To correct a deficit in the operating budget by vote of a majority of the Board;
- (b) To collect amounts due to the Association from an owner for breach of the owner's obligations under the Declaration, these Bylaws, or the Association's rules and regulations, by vote of a majority of the Board;
- (c) Upon vote of a majority of the Board of Directors, to make repairs or renovations to the Association easements or common property if sufficient refunds are not available from the operating budget or replacement reserve accounts; or

(d) To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

8.7 Effect of Non-Payment of Assessments: Remedies of the Association. In addition to any other remedies provided by law, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien upon the Property. No such action or a judgment entered therein shall be a waiver of the lien of the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his or her Lot.

8.8 Subordination of the Lien to Mortgages. The lien with respect to any assessment provided for herein shall be prior to any homestead exemption and all other liens and encumbrances on a Lot, except:

- (a) A first mortgage of record; and
- (b) A lien for real estate taxes and other governmental assessments or charges; and
- (c) Liens and encumbrances recorded before the recordation of this Declaration. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments which became due prior to such sale or transfer.

8.9 Common Profits. Profits arising from any operation or from the sale of any Association asset shall be shared among the Owners in proportion to their liability for payment of assessments, i.e. equally, unless some lots are unimproved.

ARTICLE 9

DECLARANT'S SPECIAL RIGHTS

Until the Lots have been sold, with respect to the Common Property and each Lot on the Property, the Declarant shall have the following special rights:

9.1 "For Sale" Signs. The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, the Common Property.

9.2 Declarant Easements. The Declarant has reserved easements over the Property as more fully described in Article 12 hereof.

ARTICLE 10

CONDEMNATION OF COMMON PROPERTY

In the event that all or any portion of the Common Property is appropriated as the result of condemnation or threat or imminence thereof, the following rules and guidelines shall apply:

10.1 Representation by Association. The Board of Directors of the Association shall have the sole authority, right and duty to represent each of the Owners for the purpose of negotiating and contesting, if it deems so doing to be necessary or appropriate, any condemnation

award offered by the condemning authority in question and may authorize expenditures and assessments to retain adequate counsel or other experts for such purposes.

10.2 Allocation of Condemnation Award. The Board of Directors of the Association shall allocate and distribute any condemnation award received by it with respect to the Common Property to the Owners in proportion to the diminution in fair market value incurred by them with respect to their respective Lots and improvements as a result of said condemnation.

10.3 Arbitration. In the event of any controversy by, among or between any Owner or Owners and the Board of Directors arising under this Section, each of the disputing parties shall choose one (1) arbitrator and such arbitrators shall choose one (1) additional arbitrator. The three (3) arbitrators shall resolve the controversy by majority vote and said decision shall be final, binding and unappealable upon the disputing parties. Any action or decision of the Board of Directors pursuant to this Section shall carry a rebuttable presumption of correctness for purposes of arbitration pursuant to this Section. The disputing parties each shall pay all the fees and expenses of the arbitrator designated by each of them and shall pay equally all fees and expenses of the third arbitrator. The disputing parties each shall pay their own expenses in connection with the arbitration.

10.4 Retention of Rights. No provision of this Section shall be construed as negating the right of the individual Owners to such incidental relief as the law may provide as a result of the condemnation of the Common Property.

ARTICLE 11 EASEMENTS

11.1 Association's Easements. The Declarant hereby grants to the Association a blanket easement with respect to all Lots on the Property for the purpose of maintaining, repairing and replacing any underground facilities located on the Lots and, in addition, grants to the Association easements over Lots 4 and 7 for water drainage and maintenance of a water drainage system and over Lots 1 and 2 for fire suppression facilities. The description of the easements conveyed to the Association is set forth in the map of Tract 1413 which will be on file in the office of Klamath County Public Works. The easements granted in this Section shall be perpetual and shall run with the land.

11.2 Declarant's Easements. The Declarant hereby reserves to itself a blanket easement over, upon, through and under the Property, including, without limitation, all Lots and Common Property, for all purposes reasonably required in carrying out the General Plan of Development or otherwise developing the real property. The easement herein reserved shall include the right to store materials on the Common Property at such places and for such periods as may be reasonably required to effect the purposes for which this easement is reserved. The easement shall be perpetual and shall run with the land and shall be freely assignable by the Declarant.

ARTICLE 12
GENERAL PROVISIONS

12.1 Records. The Board of Directors shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual assessment accounts of owners, the balance sheet and income and expense statements. Individual assessment account shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

12.2 Indemnification of Directors, Officers, Employees and Agents. The Association shall indemnify any Director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he or she is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of no contest or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his or her conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefitted from the acts which created said liability.

12.3 Enforcement. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or

action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

12.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

12.5 Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees. Provided however, amendments which do not constitute rescission of the planned community may be adopted as provided in Section 13.6. Additionally, any such rescission which affects the Common Property shall require the prior written consent of Klamath County. Provided, however, that if any of the provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or, in the event the rule against perpetuities applies, until twenty-one (21) years after the death of the last survivor of the now living descendants of President George W. Bush.

12.6 Amendment. As provided by ORS 94.590 and except as otherwise provided in Sections 13.5 and 13.11, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes of each class of members that are eligible to vote. Any amendment must be executed, recorded and certified as provided by law. Provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws, the Articles of Incorporation without compliance with the provisions of such documents, and the Oregon Non-Profit Corporation Act. Provided further, no amendment affecting the general plan of development or any other right of the Declarant herein contained may be effected without the express written consent of the Declarant or its successors and assigns.

12.7 Rights of Mortgagees. Any holder of a first mortgage or equivalent lien on any Lot and/or the improvements located thereon, upon written request to the Board of Directors of the Association, shall have the right to:

- (a) Receive timely written notice of meetings of the Association;
- (b) Receive timely written notice of any proposed abandonment, termination or contraction of this planned unit development;
- (c) Receive timely written notice of any material amendment of the Declaration or the Articles of Incorporation or Bylaws of the Association;
- (d) Receive timely written notice of any decision by the Association to terminate professional management and to assume self-management of the Property, if the Association previously has retained professional management services;

(e) Inspect the financial records and similar documents of the Association at reasonable intervals during normal business hours;

(f) Receive written notice of substantial damage to or destruction of any Lot and/or the improvements thereon or the Common Property and/or any improvements thereon; and

(g) Receive timely written notice of any condemnation or eminent domain proceeding affecting the Common Property or any portion thereof.

12.8 Notice of Default by Mortgagor. The Association shall give each mortgagee written notification of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under the Declaration and Bylaws which is not cured within thirty (30) days.

12.9 Prior Consent of Mortgagees. The termination of the status of the Property as a planned community, or any material amendment to this Declaration or the Bylaws of the Association shall require the prior written consent of all first mortgagees or equivalent liens on Lots and/or the improvements located thereon.

12.10 Release of Right of Control. The Declarant may give up its right of control in writing at any time by notice to the Association.

12.11 Unilateral Amendment by Declarant. The Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots. Prior to the turnover meeting, no such amendment shall require notice to or approval by any Class A member.

12.12 Resolution of Document Conflicts. In the event of a conflict among any of the provisions in the documents governing Vale Heights, Phase II, such conflict shall be resolved by looking to the following documents in the order shown below:

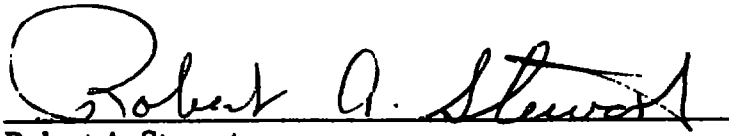
- (1) Declaration of Covenants, Conditions and Restrictions;
- (2) Articles of Incorporation;
- (3) Bylaws;
- (4) Rules and Regulations.


/////

/////

/////


IN WITNESS WHEREOF, the undersigned being Developer herein, has executed this instrument the date first written.


Robert A. Stewart


Marilyn J. Stewart

STATE OF OREGON)
) ss.
County of Klamath)

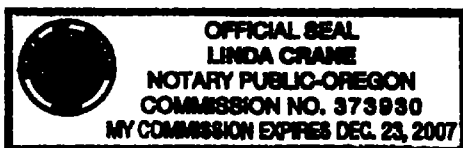
This instrument was acknowledged before me on the 14TH day of May, 2004, by Robert A. Stewart as President of Vale Heights Homeowners' Association.


NOTARY PUBLIC - State of Oregon
My Commission Expires: 11/15/2004

STATE OF OREGON)
) ss.
County of Klamath)



This instrument was acknowledged before me on the 14 day of May, 2004, by Marilyn J. Stewart as Secretary of Vale Heights Homeowners' Association.



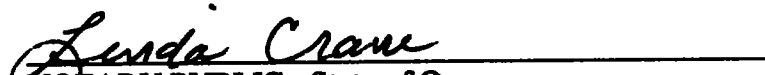

NOTARY PUBLIC - State of Oregon
My Commission Expires: 12/23/07

EXHIBIT "A"
PROPERTY WHICH IN THE FUTURE MAY BE ANNEXED

Final Partition 29-01

S1/2 Section 6, Range 10 EWM

SW1/4 Section 5, Range 10 EWM