

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
PLEASANT VISTA, STAGE II HOMEOWNERS' ASSOCIATION**

THIS DECLARATION made this 10 day of January, 2006, by Jerry O. Anderson, Trustee of the Jerry O. Anderson and Elizabeth Anderson Loving Trust, ("Declarant").

**RECITALS**

Declarant is the owner of all the real property described as Pleasant Vista, Stage II Development, Klamath County Tract 1378 in Klamath County, Oregon, (the "Property") and desires to create thereon a planned community to be known as Pleasant Vista II, with permanent, county dedicated and maintained roadways and utility installations. In addition Declarant has created and obtained legal right to the use of a detention pond and adjoining storm drains portions of which are not within the planned community.

Declarant does not reserve the right to annex additional property to the Association and subject it to the terms and provisions of this Declaration, the Articles and the Bylaws.

Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Pleasant Vista II and for the maintenance of the detention pond, 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, to which should be delegated and assigned the powers of owning, maintaining and administering the detention pond and adjoining storm drains and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and promoting the health, safety and welfare of the residents.

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.

## **ARTICLE 1**

### **DEFINITIONS**

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

**1.2** "Association" shall mean and refer to Pleasant Vista II Homeowners' Association, Inc., its successors and assigns.

**1.3** "Association easements" shall mean and refer to those easements granted in Section 12, all easements related to the detention pond and as shown on the map of Tract 1378.

**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 the detention pond and storm drain located on real property described in Article 2, which are intended to be devoted to the common benefit of the members and which improvements will be 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 Pleasant Vista II.

**1.7** "Declarant" shall mean and refer to the Jerry O Anderson and Elizabeth Anderson Loving Trust, its successors or assigns, or any successor or assign to all remainder of its interest in the development of the Property.

**1.8** "Detention Pond" shall mean the pond located in Land Partition 19-99, Klamath County, Oregon, more particularly described in Article 2.

**1.9** "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.

**1.10** "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.

**1.11** "Lot" shall mean and refer to each and any Lots 1 through 34 of Pleasant Vista, Stage II Development.

**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 including the Common Property and all improvements located on the real property subject to this Declaration.

**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** "Storm drains" shall mean and refer to the storm drain running from a grate in Pleasant Vista, Stage II to the detention pond and from the detention pond to a grate which storm drain is located within the easements described in Article 2.

## **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 Lots 1 through 34 of Pleasant Vista II which is included within Klamath County Tract 1378 in Klamath County, Oregon together with a detention pond located on the following described real property:

A drainage pond easement being a portion of that tract of land described in deed volume M00 page 30694 of the Klamath County deed records, situated in the NW1/4 of section 1, T39S, R9EWM, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the west line of said deed volume, from which the NW1/16 corner of said section 1 bears N34°40'50"W 1508.44 feet; thence S89°50'00"E 34.00 feet; thence N00°10'00"E 102.00 feet; thence N89°50'00"W 34.00 feet to a point on the said west line; thence S00°10'00"W 102.00 feet to the point of beginning, with bearings based on the plat of "TRACT 1304-Pleasant Vista" on file at the office of the Klamath County Clerk.

and, in addition, a storm drain from a grate in Pleasant Vista, Stage II to the detention pond described above and from the detention pond to the existing storm drain in Simmers Avenue as shown on the approved construction plans on file at Klamath county Public Works, which storm drain is located within the easements described as follows:

The 30 foot wide public utilities, drainage and sewer easement located on Lots 36 and 37, Pleasant Vista, Stage II Development, Klamath County Tract 1378, together with

The 30 foot wide access & public utilities easement as described in Land Partition 19-99, together with

The 40' drainage and utility easement as described in Land Partition No. 42-01, all being within Klamath County, Oregon

## **ARTICLE 3**

### **GENERAL PLAN OF DEVELOPMENT**

**3.1 General.** The Declarant has developed the Property with 34 buildable residential Lots.

**3.2 Ownership of Common Property.** The Declarant shall convey its interest in the easement to the detention pond and storm drain to the Association within sixty (60) days after 75% of the Lots have been conveyed to purchasers. The legal description of the detention pond and storm drains to be conveyed to the Association is set forth in Article 2. In the event the detention pond or storm drain 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 detention pond and storm drain are completed on the real property described in Article 2.

**3.4 Classification.** The Development is a Class 3 planned community in accordance with ORS 94.550.

## **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 Land Use and Building Type.** All lots shall be used as single-family residential and residential home development with a minimum of 1500 square feet per home. Rooflines must have a minimum of 6/12 pitch. No vertical siding or T1-11 lap siding is allowed on the front of residences. All colors must be cohesive, neutral and compatible with neighboring homes. No metal roof or three tab roofing material shall be used. All Lots shall be used for residential, recreation and vacation purposes only. No commercial, retail or industrial use shall be allowed on any Lot. No manufactured home is permitted. All dwellings shall be completed within six months after a building permit has been issued. All driveways, paths, and sidewalks are to be constructed of p.c.c. concrete.

**4.1.3 Landscaping and Maintenance of Lots.** Landscaping in the front yard shall include a minimum of sod grass and an in ground sprinkler system which is to be completed at the time of final occupancy of the residence. Rear yard landscaping is to be completed within six months of occupancy. Small rock beds are permitted, however, landscape material comprised of all rock is not permitted. Each parcel, and its improvements, shall be maintained in a clean and attractive condition, and in good repair.

**4.1.4 Outdoor Storage.** No outdoor storage of recreational vehicles, trailers or boats shall be allowed on any street, road, on the Common Property or closer to a street than the allowable front building line of any Lot.

**4.1.5 Garages.** No garage shall be used for any purpose other than storage of automobiles, pick-ups, vans, "four wheel drive vehicles" and motorcycles, if such vehicles are intended and used for ordinary highway transportation of passengers and to store golf carts. Additionally, fishing or pleasure boats may be stored in one parking space of a garage if it can be completely enclosed when the garage door is closed provided, however, at least one garage space shall be used for the family vehicle.

**4.1.6 Temporary Structures.** No structures of a temporary character, tents, shacks, garages, sheds or other outbuildings shall be used on any lot at any time as a residence either

temporarily or permanently. Construction/Contractor utility/construction trailers are permitted during the construction period of each home.

**4.1.7 Garbage and Refuse Disposal.** All garbage and other waste materials shall be kept in a sanitary container at all times and stored behind the front of the residence and/or screened from street view. All equipment for the storage of such materials shall be kept in a clean and sanitary area. No lot shall be used for the storage of property or thing that will cause such lot to appear in an unclean or untidy condition or which will be unattractive to the eye, nor shall any substance, thing or material be kept upon any lot that will disturb the peace, comfort or serenity of the occupants of surrounding property.

**4.1.8 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 and any rules and regulations of the Association may construct (reconstruct or replace) one Living Unit on two or more Lots.

**4.1.9 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. The shooting of any firearm within the Property is prohibited.

**4.1.10 Animals.** Owners of animals shall comply with state, county and local ordinances.

**4.1.11 Fencing.** Rear yard fencing shall not exceed six (6) feet in height up to the front building line. All fencing in front of the front building line shall not exceed three (3) feet in height. Fence material must be compatible with the home. "Good neighbor" fencing is suggested.

#### **4.2 Exterior Maintenance, Repair and Replacement.**

**4.2.1 Association Responsibilities.** The Association shall perform all maintenance related to the detention pond and storm drain.

**4.2.2 Owner Responsibilities.** Each Owner shall perform all maintenance, planting, pruning, mowing and cleaning of all lawns and landscaping on such Owner's Lot.

**4.3 Underground Utilities.** No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes nor any pole, antennae, satellite receiving dish, tower or other structure for independent reception, transmission or support of any of the above shall be erected, placed or maintained within the Property.

#### **4.4 Architectural Review Board.**

**4.4.1 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.

**4.4.2 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 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, including, but not limited to, rules not less restrictive than those contained in this Declaration to regulate animals and tenants, storage and use of recreational vehicles, storage and

use of machinery, use of outdoor drying lines, trash containers, planting, maintenance and removal of vegetation of the Property.

**4.4.3 Approval Required.** No outbuilding, fence, wall or other structure of any type shall be commenced, erected or maintained upon the Property, 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.

**4.4.4 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.

**4.4.5 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.

**4.4.6 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 portion of the Common Property in the development, whether or not annexed to Pleasant Vista II or a part of the Association.

**4.4.7 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.

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## 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.** 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.

**5.3 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, its 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.

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. 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.

**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 his or her 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

(l) 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 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 West Hills, 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.** The Association shall be responsible for the management, repair and control of the detention pond and storm drains and any improvements thereon, and shall keep the same in good condition, order and repair without regard to who may have caused damage to such facilities.

**7.2 Damage or Destruction of Detention Pond by Owner.** In the event the detention pond or storm drain 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.

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**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 the improvement and maintenance of the detention pond and storm drain, 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 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.** All initial, general and special assessments shall be equally allocated among the Lots. The Declarant, at the Declarant's option, may accrue the Detention Pond Reserve Account portion of the assessment for a 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. The assessment of Lots shall include the following items:

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

**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.

**8.4 Initial Assessment.** Upon the closing of the sale of each Lot to an Owner other than the Declarant in Pleasant Vista II each Owner shall contribute a sum equal to two (2) times the monthly assessment 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.

**8.5 Detention Pond and Storm Drain Reserve Account.** The assessment against each Lot shall include an amount allocated to a reserve account established for the purpose of funding repair or replacements of the detention pond and storm drain that will normally require replacement, in whole or in part, in more than three (3) and less than thirty (30) years. 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 detention pond if sufficient funds 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 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.

## **ARTICLE 9**

### **DECLARANT'S SPECIAL RIGHTS**

With respect to each Lot on the Property, the Declarant shall have the following special rights:

**9.1 Sales Office and Model.** The Declarant shall have the right to maintain a sales office and model on one or more of the Lots which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

**9.2 "For Sale" Signs.** The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property..

## **ARTICLE 10**

### **GENERAL PROVISIONS**

**10.1 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.

**10.2 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.

**10.3 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.

**10.4 Severability.** Invalidity 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.

**10.5 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.

**10.6 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.

**10.7 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.

**10.8 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.

**10.9 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.

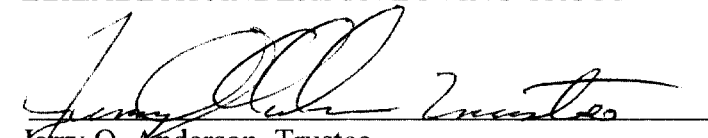
**10.10 Release of Right of Control.** The Declarant may give up its right of control in writing at any time by notice to the Association.

**10.11 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.

**10.12 Approval of Klamath County.** Notwithstanding any provision contained in this Article, the obligation of the Homeowners Association to maintain the detention pond and storm drain shall not be amended or terminated without the prior written approval of the Klamath County Public Works Department or its successor.

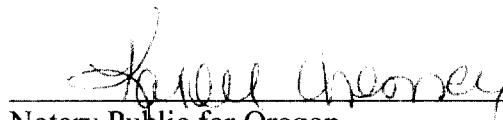
IN WITNESS WHEREOF, the undersigned being Developer herein, has executed this instrument this 10th day of January, 2006.

THE JERRY O. ANDERSON AND  
ELIZABETH ANDERSON LOVING TRUST

  
\_\_\_\_\_  
Jerry O. Anderson, Trustee

STATE OF OREGON            )  
  ) ss.  
County of Klamath         )

This instrument was acknowledged before me on January 10, 2006, by Jerry O. Anderson as Trustee of The Jerry O. Anderson and Elizabeth Anderson Loving Trust.

  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: 9-2-06

