

After Recording, please return this original  
signed agreement, along with all exhibit  
attachments, to the City Attorney's Office at:  
P.O. Box 237, 500 Klamath Avenue,  
Klamath Falls, OR 97601



04/24/2009 03:54:37 PM

Fee: \$251.00

## City of Klamath Falls



## Subdivision Development Agreement

*The Agreement is between the:*

City of Klamath Falls  
500 Klamath Avenue  
Klamath Falls, OR 97601  
Phone: 541-883-5314  
Fax: 541-883-5399  
("City")

and

Orc-Cal Land Development, L.L.C.  
P.O. Box 7  
32159 Transformer Road  
Malin, OR 97632  
Phone: 541-723-5031  
Fax: 541-723-3050  
("Subdivider")

## RECITALS

- A. The City Council, on **June 23, 2006**, granted tentative approval of a certain subdivision identified as Tract No. **1487** ("Plan"), **Link River Estates** ("Subdivision"). Subdivider certifies it is the sole and legal owner of the Subdivision and is now seeking the City's approval of the final Subdivision Plat in accordance with City Ordinances and City Code. The Subdivision consists of **50 single family residential lots** ("Lots"), which the Subdivider certifies does not vary by more than 10% from the tentative Plan.
- B. The parties agree that good and valuable consideration exists as a basis for this Agreement including, but not limited to, the City's approval of the Subdivision final Plat, which Subdivider agrees is a special benefit to the Subdivision.
- C. This agreement is made for the purpose of ensuring Subdivider, and/or the successor Home Owner's Association **performs the perpetual care, proper operation, maintenance, and good upkeep of all private infrastructure, including without limitation: Common Areas, private easements, private drainage facilities, private storm detention ponds, private storm discharge control structures, associated piping, etc.**
- D. It is mutually understood that the approval by the City of the final Plat for this Subdivision is not deemed acceptance by the City of any Improvements in the Subdivision, or any other physical improvements shown on the Plat for maintenance, repair or operations thereof. Subdivider shall be fully responsible and assume all of the risks and liabilities thereof, until final written acceptance of the Subdivision and project is issued by the City. Subdivider agrees the City's final written acceptance of the Improvements or signing of the Plat does not relieve the Subdivider of liability in respect to express or implied warranties or responsibility for faulty or defective materials or workmanship.

City of Klamath Falls Subdivision Development Agreement  
Tract # 1487, Link River Estates (on and off-site Improvements), City Master File # 255SD6 and 2576W7

Page 1 of 7

Subdivider's Initials: JA

## AGREEMENT

In consideration of the City's approval of the Subdivision Plat, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under this Agreement and according to the applicable ordinances of the City, the parties agree as follows:

### Section 1. CONSTRUCTION OF IMPROVEMENTS

**1(a)** Neither Subdivider, its successor Home Owner's Association, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, agents of City.

**1(b)** Subdivider shall develop and construct the Subdivision and all infrastructure improvements in the Subdivision ("Improvements"), pursuant to, and in accordance with:

- i. The provisions of the City's Community Development Ordinances and City Code;
- ii. The City Council Decision Final Order for the Subdivision on file with City Planning;
- iii. The City approved construction design plans ("construction plans") on file with City Engineering under City Master File # **2555D6 and 2576W7**;
- iv. The City Public Works Engineering Design Standards;
- v. The requirements identified in the City's Site Construction Permit(s) on file with City Engineering under City Master File # **2555D6 and 2576W7**;
- vi. The Construction Improvements Agreement and Assurance of Performance executed between City and Subdivider; and
- vii. Any applicable federal, state, or county laws that may apply.

### Section 2. TIMING OF PERFORMANCE

**2(a) Improvements Construction:** Subdivider shall execute a Construction Improvements Agreement and Assurance of Performance with the City, guaranteeing the timely and proper completion of the Improvements in the Subdivision and certain off-site improvements required for the Subdivision, if all work is not complete and accepted by the City at the time the Subdivider seeks final Plat approval. Subdivider shall complete all Improvements, including without limitation, the "Unfinished Improvements" identified in the Construction Improvements Agreement and Assurance of Performance, within the Subdivision by: **Within 1 year from the final Plat recording date (except see part 2(b) and 2(c) below).**

- i. Subdivider acknowledges that until Subdivider has obtained the City's final written acceptance of all on-site and off-site Improvements within the Subdivision (excluding sidewalks and street trees – see Section 2(b) and 2(c) below), **Subdivider or any subsequent Lot owner shall not make any private connection to any City dedicated infrastructure improvement (i.e. water), and no building or structure within the Subdivision may be occupied.**
- ii. **The Klamath County Building Department, the Klamath County Fire District, and the City Community Development Department may prohibit the issuance of building permits until final acceptance occurs for the Subdivision as detailed in Section 4 of the Construction Improvements Agreement and Assurance of Performance.**

**2(b) Sidewalks Improvements:** Subdivider certifies all Sidewalk Improvements and ADA ramps are installed at the time of execution of this agreement. Subdivider shall construct the segment of Sidewalk Improvement adjoining each building in the subdivision, with the development of each building and shall obtain written

acceptance by City **before the building on the developed Lot is occupied.** Subdivider shall install ADA curb ramps at the time of infrastructure construction (with the curb construction). In any event, Subdivider shall complete the construction and installation of **all** Sidewalk Improvements and shall obtain the written approval and acceptance by City **within 2 years from the final Plat recording date.**

**2(c) Street Trees:** The Subdivider shall install street trees in conjunction with the installation of the sidewalks for each Lot, and in accordance with the City's Community Development Ordinances and City Street Tree plans **before the building on the developed Lot is occupied.** In any event, Subdivider shall install **all** street trees **within 2 years from the final Plat recording date.**

**2(d)** Any extensions of time granted by the City to the Subdivider must be in writing, and will in no way affect the validity of this Agreement.

### **Section 3. MAINTAINANCE OF PRIVATE FACILITIES AND EASEMENTS; PUBLIC EASEMENTS**

**3(a)** The City shall not assume ownership of, operate, or maintain private utilities, private storm water drainage facilities, private alleys/roads, private easements, private structures, etc.

**3(b)** The Subdivider, and/or its successor Home Owner's Association shall perform, or properly delegate and make all necessary payments, to ensure the perpetual care, proper operation, maintenance, repairs and good upkeep of:

- i. **Common Area A, which includes, but is not limited to: all landscaping, weed abatement, drainage facilities, piping, the detention pond, fencing, access gates, retaining walls, etc.;**
- ii. **The private storm water facilities located within the Subdivision, including without limitation, the private storm water drainage piping behind the retaining walls and the storm water discharge control structure.**
- iii. **The Sixty (60) foot wide public access easement for pedestrians centered on the Lot line between Lots 15 and 16, as show on the tentative Plan.**
- iv. **The retaining walls, associated infrastructure, fencing and associated landscaping installed along the entrance road entering the Subdivision (See Exhibit D – City Revocable License & Encroachment Permit Application # 009-06).**
- v. **The storm drainage ditch located in the 10' wide private easement generally along the West side of lots 1 and 2 and Common Area A.**

**3(c)** Subdivider shall create the following public easements on the final Plat:

- i. **A Ten (10) foot wide public utility easement adjacent to all City rights-of-way, as shown on the tentative Plan.**
- ii. **A Sixty (60) foot wide public access easement for pedestrians, centered on the Lot line between Lots 15 and 16, as show on the tentative Plan.**

**3(d)** Subdivider shall create the following private easements on the final Plat:

- i. **A Ten (10) foot wide private storm drainage ditch easement generally located on the West side of Lots 1, 2 and Common Area A.**

### **Section 4. TRAFFIC MITIGATION FEE**

**4(a)** Subdivider (including its successors, assigns, or subsequent Lot Owners) shall pay their fair share of costs for the City to make traffic improvements in the vicinity of the Subdivision, for the West Side Refinement plan, which may include, but is not limited to: the cost to install a traffic signal at the Nevada – Oregon US 97 ramps,

an intersection reconstruction to a right-in/right-out for Montelius access to Nevada Avenue, etc.; or pay a traffic SDC if approved by the City Council (whichever comes first).

### Section 5. HOMEOWNER'S ASSOCIATION

**5(a)** Subdivider shall comply with the Planned Community and Homeowner's Association provisions of ORS 94.550-94.783. Subdivider shall prepare, comply with, and if appropriate, record Planned Community declarations of Covenants, Conditions and Restrictions ("CCR's") and Homeowner's Association Bylaws ("Bylaws") in compliance with State law, the City Council decisions and findings, and this Agreement.

**5(b)** Subdivider has filed CCR's of the Subdivision with the County Clerk of Klamath County, Oregon, on the 30<sup>th</sup> day of October, 2008 as document # 2008-014735 (attach copy and mark as Exhibit "B"). In the event of a conflict between the CCR's and this Agreement, the statement or provision most beneficial to the City shall apply.

**5(c)** Subdivider has filed Bylaws of the **Link River Estates Homeowners Association, Inc.**, with the County Clerk of Klamath County, Oregon, on the 7<sup>th</sup> day of April, 2009 as document # 2009 - 004850 (attach copy and mark as exhibit "B"). Subdivider shall ensure said Bylaws adequately obligate the Home Owner's Association, to fully perform the specific obligations set forth in this Agreement, including, but not limited to, Section 3(b) of this Agreement. In the event of a conflict between the Bylaws and this Agreement, the statement or provision most beneficial to the City shall apply.

**5(d)** Pursuant to ORS 94.635(3), and consistent with Bylaws of the **Link River Estates Homeowners Association, Inc.**, a Turnover Meeting shall be held no later than one-hundred-twenty (120) days after Lots representing 75 percent (75%) of the Lots have been conveyed by the Subdivider. Notice for this meeting shall be given in conformance with the Bylaws for a Special Meeting of the Shareholders. Any Lot owner may call the Turnover Meeting under ORS 94.609. The purpose of the Turnover Meeting shall be to conform to the provisions of ORS 94.609.

**5(e) Attorney Certification:** Subdivider's shall provide to the City with this agreement, a written affirmative statement (*attach original and mark as Exhibit A*) from an attorney stating he or she:

- i. Is licensed to practice law in the State of Oregon; and
- ii. Has prepared or reviewed the Subdivider's CCR's, Home Owner's Association Bylaws and any other associated documents; and
- iii. Has determined Subdivider is in compliance with Oregon law and the terms of the Oregon Planned Community Act, ORS 94.550 to 94.783.

### Section 6. NOTICES(S)

**6(a) Recording:** Subdivider shall, after obtaining the necessary signatures, record this Agreement in the office of the County Clerk, in order to put prospective purchasers and other interested parties on notice of its terms. Subdivider shall return the original signed recorded Agreement to the City Attorney's Office.

**6(b) Development Agreement:** Subdivider shall provide purchasers of the Subdivision, or any portion or Lot thereof, prior to close of sale, a copy of this Agreement.

**6(b) Construction Improvements Agreement:** Subdivider shall provide purchasers of the Subdivision or any portion or Lot thereof, prior to close of sale, a copy of the City approved Construction Improvements

Agreement and Assurance of Performance, until such time that purchasers have no obligations under that agreement.

**6(c)** All written notices shall be addressed to and filed with the addresses identified in this agreement, unless written notice of change of contact information is received by the parties.

### **Section 7. THIRD PARTY RIGHTS.**

**7(a)** No person or entity, who or which is not a party to this Agreement, has any right of action against the City under this Agreement including, without limitation, a trustee in bankruptcy, lenders, buyers, materialman, laborers, or others providing work, services, or materials for the Subdivision. Nor does any such person or entity have any interest in or claim to any security provided by the Subdivider to the City.

### **Section 8. SUCCESSORS IN INTEREST**

**8(a)** This Agreement shall run with the land and is binding on the Subdivider, the Subdivider's heirs, executors, administrators, successors and assigns (including, without limitation, any Home Owner's Association created to carry out any of the terms of this agreement), all jointly and individually.

### **Section 9. AMENDMENT AND WAIVER**

**9(a) Amendments:** This Agreement may only be amended by mutual written agreement between the original parties or their successors in interest; executed by duly authorized representatives of each party. The Subdivider shall record any such amendments in the office of the County clerk and shall comply with the notice requirements in section 6 above.

**9(b) No Waiver:** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. No waiver of any default under this Agreement will be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or any covenant by the City, the Subdivider, or their respective heirs, executors, administrators, successors or assigns, whether any violations thereof are known, does not constitute a waiver or estoppel of the right to do so.

### **Section 10. INDEMNIFICATION**

**10(a)** The Subdivider shall defend, indemnify, hold harmless and defend, City, its elective, officers, employees, and agents (collectively referred to as "Indemnities"), against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature based upon or arising out of damage or injury (including death) to any persons or property caused by or sustained in connection with the construction or repair of the Improvements, or the performance of this Agreement, or by conditions created thereby, or based upon the Subdivider's violation of any statute, ordinance or regulation. Subdivider shall also indemnify City against all liability and loss in connection with, and shall assume full responsibility for payment of all Federal, State and local taxes or contributions imposed or required by this agreement.

**10(b)** Subdivider agrees if any of the Indemnities are made a party to any litigation against Subdivider or any litigation commenced by any party, other than Subdivider, relating to this Agreement, Subdivider shall, at its own expense, promptly investigate all claims and demands, attend to their prompt settlement, defend the Indemnities in all actions with counsel acceptable to City, and pay all charges of attorneys and all other costs and expenses of any kind arising from any liability, damage, loss, claims, demands, and actions.

10(c) The City shall promptly notify the Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action or proceeding.

#### Section 11. LEGAL ACTIONS

11(a) This agreement will be construed under the laws of the **State of Oregon** and is enforceable only in **Klamath County Oregon**. If legal action is necessary by either party, with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of this Agreement will lie with the **Klamath County Circuit Court**.

#### Section 12. ATTORNEY FEES

12(a) In the event suit or action is initiated to enforce the terms of this Agreement, the prevailing party is entitled to recover reasonable attorney fees and all other fees, cost and expenses incurred in connection with the suit or action, including all appeals. If the court awards relief to both parties, each will bear its own costs in their entirety.

#### Section 13. STATUTORY COMPLIANCE

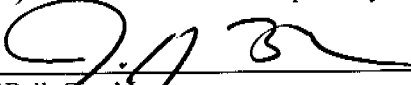
13(a) This Agreement is intended to conform to all applicable statutory requirements. Any applicable requirement of any statute omitted from this Agreement is deemed to be included herein as if fully set forth. The invalidity, in whole or in part, of any term of this Agreement does not affect the validity of the remainder of this agreement.

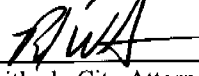
#### Section 14. HEADINGS

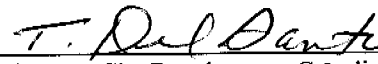
14(a) Headings to any plans, divisions, sections, paragraphs, subparagraphs and forms are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

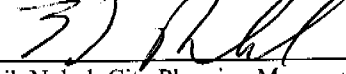
#### Section 15. CITY STAFF APPROVALS

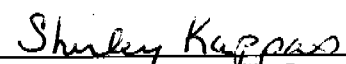
15(a) Reviewed and accepted by *(Subdivider(s) must sign, date and attach signing authority first):*

 , on this 15<sup>th</sup> day of April, 2009.  
Jeff Ball, City Manager

 , on this 9<sup>th</sup> day of April, 2009.  
Rick Whitlock, City Attorney

 , on this 10 day of April, 2009.  
Tom Del Santo, City Development Coordinator / City Surveyor

 , on this 10 day of April, 2009.  
Erik Nobel, City Planning Manager

 attested on this 16th day of April, 2009.  
Shirley Kappas, Deputy City Recorder

**Section 16. SUBDIVIDER APPROVAL \*\* Attach proof of signing authority \*\***

The terms of this Agreement are hereby accepted and effective this 8 day April, 2008

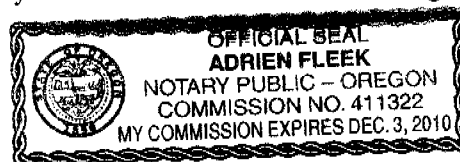
Jim Hogue  
Jim Hogue, Managing Member of Ore-Cal Land Development, L.L.C.

STATE OF OREGON )

County of Klamath )

Personally appeared before me, Jim Hogue, who being duly sworn, stated that he is the managing member of Ore-Cal Land Development, L.L.C. and that this instrument was signed on behalf of said limited liability company by authority of its Members and he acknowledged said instrument was its voluntary act and deed.

Adrien Fleeck  
Oregon Notary Public



**Section 17. EXHIBIT LIST**

- Exhibit A** – Original signed Attorney Certification letter as required by section 5(e)
- Exhibit B** – Copy of recorded CCR's for the Subdivision, as required by section 5(b)
- Exhibit B** – Copy of recorded HOA formation documents as required by section 5(c)
- Exhibit D** – Copy of recorded Revocable License and Encroachment Permit – see section 3(b)(iv)

**FOR CITY USE AND DISTRIBUTION**

Original document to: *City Attorney's Office (City Attorney's Office will forward originals to Recorder's Office)*

Attorney's office will  
email copies to:

*City Planning Division – Sandra Zaida, Erik Nobel, and Karen Burg (to print for your files)*  
*City Engineering – Tom Del Santo, Janna Thompson, and Bruce Balon (to print for your files)*  
*City Water Division – Steve Serratt, Randy Travis, and Rod Denson (FYI)*  
*City Streets Division – Chuck Cox and Joe David (FYI)*  
*City Sewer Division – Jeff Fritz and Mel Smith (FYI)*  
*Klamath County Building Department – Rex Turner (FYI)*

RECEIVED APR 07 2009 BOIVIN, UERLINGS & DIACONI, P. C.

ATTORNEYS AT LAW  
803 MAIN STREET, SUITE 201  
KLAMATH FALLS, OREGON 97601-6070  
TELEPHONE: (541) 884-8101  
FAX: (541) 884-8498

JAMES R. UERLINGS  
BARBARA M. DIACONI

FOUNDED IN 1915  
HARRY D. BOIVIN  
(1904-1999)  
ROBERT D. BOIVIN  
(1937-1999)

7 April 2009

**HAND DELIVERED**

City of Klamath Falls  
City Attorney's Office  
Rick Whitlock, Esq.  
500 Klamath Avenue  
Klamath Falls, OR 97601

Re: Tract # 1487 - Link River Estates ("Subdivision")  
Ore-Cal Land Development, LLC ("Subdivider")

Dear Mr. Whitlock,

The above referenced Subdivider is in compliance with the terms of the Oregon Planned Community Act, ORS 94.550 to 94.783, and has filed Declaration of Covenants, Conditions, and Restrictions (CC&Rs) of the above referenced Subdivision with the County Clerk of Klamath County, Oregon. The CC&Rs were filed October 30, 2008 at 02:38:09 PM, as document 2008-014735. The Subdivider filed Articles of Incorporation for the Link River Estates Homeowners' Association, Inc., with the Oregon Secretary of State Corporation Division on September 11, 2007 with Registry Number 460458-94. The Subdivider filed the Bylaws for the Link River Estates Homeowners' Association, Inc., with the County Clerk of Klamath County Oregon on April 7, 2009, at 03:04:48 PM, as document 2009-004850.

All such documents are in compliance with Oregon law. I am an attorney licensed to practice law in the state of Oregon. My Oregon State Bar number is 911510 and my membership is current.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty of perjury.

Sincerely,

BOIVIN, UERLINGS & DIACONI, P.C.

  
Barbara M. Dilaconi, Esq.

BMD/jrp

cc. Client via e-mail



**2009-004850**

Klamath County, Oregon

**BYLAWS****OF**

00063843200000040000000099

04/07/2009 03:04:48 PM

Fee: \$61.00

**LINK RIVER ESTATES HOMEOWNERS' ASSOCIATION, INC.****ARTICLE 1  
PRINCIPAL OFFICE**

The principal office of the Corporation shall be at 645 Wildland Drive, Klamath Falls, Oregon 97601, or at such location within the State of Oregon as may be designated from time to time by resolution of the Board of Directors.

**ARTICLE 2  
BOARD OF DIRECTORS**

All meetings of the Board of Directors shall be open to lot owners in the Link River Estates Estate subdivision.

**2.1 General Powers.** The Link River Estates Homeowners' Association, Inc. ("Corporation") is a homeowners association formed pursuant to the provisions of the Oregon Planned Community Act, ORS 94.550 - 94.785. The Corporation shall have all powers and duties as set forth in the Act and shall at all times comply with the provisions of said Act. The affairs of the Corporation shall be managed by its Board of Directors (the "Board").

**2.2 Number.** The number of Directors may vary between a minimum of three and a maximum of seven, the exact number of which may be fixed from time to time by resolution of the Board. Initially, the Board shall consist of three individuals. Each Director shall serve for a period of a one (1) year term.

**2.3 Vacancies.** Vacancies on the Board and newly created Board positions shall be filled by the affirmative vote of a majority of the remaining Directors even though a less than a quorum of the Board may exist.

**2.4 Quorum; Majority Vote.** A majority of the Directors then in office shall constitute a quorum for the transaction of business. The act of the majority of the Directors present at the meeting at which a quorum is present shall be the act of the Board.

**2.5 Removal of Directors.** A Director may be removed with or without cause by act of the Board at a meeting expressly called for that purpose. Such vote must be by a majority.

**2.6 Meetings.** All meetings of the Board shall be open to any owner of a lot in Link River Estates.

**2.6.a. Annual Meeting.** The annual meeting of the Board shall be held each year on the second Tuesday of May; Notice of such meeting shall be provided to each Director personally or by mail not less than seven (7), nor more than thirty (30) days prior to the meeting. Such Notice of the meeting shall also be posted in a public place in the Homeowners Association.

**2.6.b. Regular Meetings/Notices.** A regular meeting of the Board shall be held on the second Tuesday of each month at 7:00 p.m. at the principal office. Such meeting shall be held with or without any Notice other than these Bylaws. The Board may provide by resolution the time and place for holding of additional regular meetings. Notice for additional regular meetings shall be done in conformance with ORS 94.640.

**2.6.c. Special/Emergency Meetings.** Special or Emergency meetings of the Board may be called by the Chairman of the Board or by a majority of the Directors then in office. Notice of special meetings shall be provided to each Director personally or by mail not less than three (3) days prior to the meeting; provided that, in the case of any Special meeting to be held by conference telephone or similar communications equipment, Notice of such meeting may be given five (5) days, personally or by telephone, to each Director not less than twenty-four (24) hours before the time at which the meeting is to be held. Except as otherwise specifically provided in these Bylaws, neither the business to be transacted, nor the purpose of, any regular or Special meeting of the Board of Directors need be specified in the Notice of the meeting.

**2.6.d. Consent in lieu of Meeting.** Any action required by law to be taken at a meeting of the Board, or any action that may be taken at a Board meeting, may be taken without a meeting if consent in writing, setting forth the action to be taken, is signed by all Directors of the Corporation.

**2.6.e. Telephonic Meetings.** Only Special and Emergency Meetings of the Board may be held by means of conference, telephonic or similar communications equipment, or means by which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.

**2.7 Compensation.** Compensation, if any, of the members of the Board shall be fixed by the Board and approved by majority vote.

## **2.8 Insurance.**

**2.8.1** Pursuant to ORS 94.675 the Board shall obtain insurance for all insurable improvements in the common property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost. The Board shall further procure public liability policy covering all common property and all damage or injury caused by the negligence of the association. Premiums for insurance obtained under this section 2.8.1 shall be a common

expense of the association. The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost.

**2.8.2** There are no units subject to this Association and therefore the provisions of ORS 94.680 and therefore there will be no procurement of blanket all-risk insurance.

**2.8.3** Owners of lots and homes in the Association shall be responsible to procure and pay for their own policy of insurance upon their residences. There is not prohibited policies of insurance which the owners of the lots in the subdivision may obtain. The Board will not obtain nor pay for any policy of insurance other than those described in this **Section 2.8**.

### **ARTICLE 3 COMMITTEES**

#### **3.1 Appointment and Authority.**

**3.1.a. Standing Committees.** The Board may, by resolution, appoint one or more committees, each of which shall consist of two or more Directors or homeowners. The Board shall, by resolution, define the extent of the authority of such committees. These committees, subject to the limitations of the Board's resolution and ORS Chapter 94, shall have and exercise the authority of the Board in the management of the Corporation for which it is appointed.

**3.1.b. Ad Hoc Committees.** The Board or the President may appoint other committees consisting of homeowners, who do not have the authority of the Board in the management of the Corporation. Members of these committees shall act on behalf of the Board or the President.

**3.1.c. Budget Committee.** The Board may designate two (2) or more Directors to a Budget Committee to prepare a budget in accordance with ORS 94.645. Such Budget Committee shall also be responsible for the upkeep, maintenance, repair and replacement of the common property of the detention pond. Such committee shall also be responsible for collecting the assessments from the owners. The Budget Committee shall also be responsible to review and approve all payment vouchers. Each assessment shall be paid on a monthly basis and in accordance with the budget developed. Such committee shall also be required to prepare and distribute the annual financial statement required under ORS 94.670. In preparing the annual financial statement the Budget Committee and the Treasurer shall work with the certified public accountant designated for the Association.

**3.2 Transitional Advisory Committee.** A Transitional Advisory Committee shall be formed pursuant to ORS 94.604 not later than the 60<sup>th</sup> day after the declarant has conveyed the lots representing 50 percent (50%) of the votes in Link River Estates. A meeting of lot owners shall be called by the declarant, in accordance with these Bylaws, for the purpose of selecting a Transitional

Advisory Committee. The Committee shall conform with the provisions of ORS 94.406. This requirement for a Transitional Advisory Committee shall not apply once the turnover meeting called under ORS 95.609 has been held.

#### **ARTICLE 4 OFFICERS**

**4.1 In General.** The officers of the Corporation shall be a President, a Secretary and a Treasurer and such other Vice-Presidents or officers as the Board may appoint from time to time. The office of the President and Secretary may be held by the same person concurrently.

**4.2 Election and Term.** The Board, at its annual meeting, shall elect the officers to serve a one-year term commencing the date of such annual meeting. Officers may serve successive terms without limit.

**4.3 Vacancies.** A vacancy in any office may be filled by act of the Board for the unexpired portion of the term.

**4.4 President.** The President shall be the executive officer of the Corporation, shall have responsibility for the general management of the Corporation, and shall see that all orders and resolutions of the Board are carried into effect. The President's shall from time to time report to the Board all matters within the President's knowledge affecting the Corporation that should be brought to the attention of the Board.

**4.5 Vice President.** The Vice President, if any, shall perform all such duties and services as shall be assigned to or required of such person from time to time, by the Board or the President. Should the President be unable to act, the Vice Presidents powers and perform all of the President's duties during the President's absence or disability

**4.6 Secretary.** The Secretary shall have overall responsibility for all corporate record keeping. The Secretary shall perform, or cause to be performed, the following duties: (a) official recording of the minutes of all Board meetings and actions; (b) providing all notices required by these Bylaws or by law; (c) maintain insurance coverage for the Association in accordance with ORS 94.675 and 94.685; and (d) undertaking any other duties as may be prescribed by the Board.

**4.7 Treasurer.** The Treasurer shall have overall responsibility for all corporate funds. The Treasurer shall perform, or cause to be performed, the following duties: (a) taking custody of and responsibility for all funds of the Corporation; (b) depositing all monies and other valuable affects in the name and to the credit of the Corporation in such depositories as may be designated by the Board; (c) disbursing funds when proper to do so; (d) keeping all books of account relating to the Corporation and rendering statements of the Corporation's financial condition whenever required to do so by the Board or the President; (e) collect and account for all assessments upon the homeowners pursuant to the protective covenants and restrictions of Link River Estates; (f) prepare

and distribute the annual financial statement required by ORS 94.670; and (g)undertaking any other duties as may be prescribed by the Board.

**4.8 Compensation.** The compensation, if any, for any agents and employees of the Corporation shall be fixed by the Board.

**4.9 Removal.** Any of the agents, employees and officers of the Corporation may be removed by a majority vote of the Board, to be replaced by such agent, employee or officer to serve the remaining one-year term.

## **ARTICLE 5 SHAREHOLDERS**

**5.1 Initial and Annual Meeting.** The initial meeting of owners shall be held upon the sale of five percent of the initial lots in Phase two has been sold. The method of calling such meeting shall be in accordance with article 5.6 below. The annual meeting of the shareholders shall be held on the second Tuesday in the month of May in each year, beginning with the year 2005, at the hour of 7:00 p.m., for the purpose electing Directors and for the transaction of such other business as may come before the meeting. The notice to shareholders of the initial meeting shall be these Bylaws. If the date fixed for the annual meeting shall be a legal holiday in the State of Oregon, such meeting shall be held on the next succeeding business day. Failure to hold the annual meeting at the designated time shall not work a forfeiture dissolution of the Corporation.

**5.2 Failure to Hold Annual Meeting.** If the annual meeting is not held at the designated time, the President or the Board may call the annual meeting at a time fixed by them not more than sixty (60) days after such designated time by proper notice designating the meeting as the annual meeting. If the annual meeting is not held at the designated time or during the sixty (60) day period thereafter, the annual meeting may be called by the holders of not less than one-tenth of all the shares entitled to vote at the meeting. In such event, notice shall be given not more than fifteen (15) days after the expiration of such sixty (60) day period. Such notice shall fix the time of the meeting at the earliest date permissible under the applicable notice requirements.

**5.3 Special Meetings.** Special meetings of the shareholders, for any purpose or purposes, unless otherwise prescribed by the Directors, may be called by the President or by the Board, and shall be called by the President at the request of the holders of not less than one-tenth of all the outstanding shares of the Corporation entitled to vote at the meetings.

**5.4 Turnover Meeting.** Pursuant to ORS 94.635 (3) a turnover meeting shall be held, not later than one hundred and twenty (120) days after lots representing 75 percent (75%) of the votes have been conveyed by the Declarant. Notice for this meeting shall be given in conformance with these Bylaws for a special meeting of the shareholders. Any lot owner may call the turnover meeting under ORS 94.609. The purpose of the turnover meeting shall be to conform to the provisions of ORS 94.609.

**5.5 Place of Meeting.** The Board may designate any place, either within or without the State of Oregon, as the place of meeting for any annual meeting or for any special meetings called by the Board. A waiver of notice signed by all shareholders entitled to vote at a meeting may designate any place, either within or without the State of Oregon, as the place for holding of such meeting. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be at the principal offices of the Corporation in the State of Oregon.

**5.6 Notice of Meeting.** Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not fewer than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President, Secretary, or the persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder's address as it appears on the stock transfer books of the Corporation, with first class postage paid.

**5.7 Quorum.** A majority of the outstanding shares of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares are represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice until a quorum is present or represented. At such adjourned meeting during which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave fewer than a quorum.

**5.8 Proxies.** At all meetings of shareholders, a shareholder may vote in person, by proxy executed in writing by the shareholder, or by the shareholder's duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the Corporation before, or at the time of, the meeting. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

**5.9 Voting of Shares.** Each outstanding share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of shareholders, except as otherwise provided in the Articles of Incorporation. No cumulative voting for Directors shall be permitted. The vote of the holders of a majority of the shares present and entitled to vote at any duly organized meeting shall decide any question unless the vote of a greater number shall be required by law or the Articles of Incorporation.

**5.10 Voting of Shares by Certain Holders.** Shares standing in the name of another corporation may be voted by such officer, agent, or proxy as the Bylaws of such corporation may prescribe or, in the absence of such provision, as the Board of Directors of such corporation may determine.

Shares held by administrator, executor, guardian, or conservator may be voted by such administrator, executor, guardian, or conservator, either in person or by proxy, without a transfer of such shares into such person's name. Shares standing in the name of a trustee or custodian may be voted by such trustee or custodian, either in person or by proxy, but no trustee or custodian shall be entitled to vote shares held by such trustee or custodian without a transfer of such shares into the trustee's or custodian's name.

**5.11 Informal Action by Shareholders.** Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all shareholders entitled to vote with respect to the subject matter of the action.

## **ARTICLE 6 CONTRACTS, LOANS, CHECKS, DRAFTS AND DEPOSITS**

**6.1 Contracts.** The Board may authorize any officer, agent, or employee to execute and deliver any instrument, in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**6.2 Loans.** No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name, unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances.

**6.3 Checks, Drafts, Etc.** All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer, agent, or employee of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

**6.4 Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

## **ARTICLE 7 FISCAL YEAR**

The fiscal year of the Corporation shall be on the calendar year, commencing January 1 and ending December 31 of each year.

## **ARTICLE 8 WAIVER OF NOTICE**

Whenever any notice is required to be given to any shareholder or Director of the Corporation under the provisions of these Bylaws, under the provisions of the Articles of Incorporation, or under

the provisions of the Oregon Business Non-Profit Corporation Act, a waiver of the notice in writing, signed by the person or persons entitled to the notice, whether before or after the time stated in the notice, shall be deemed equivalent to the giving of the notice.

## **ARTICLE 9 INDEMNIFICATION; INTERESTED PARTIES**

**9.1 Indemnification.** The Corporation shall indemnify to the fullest extent permitted by the Oregon Business Corporation Act any person who has been made, or is threatened to be made, a party to an action, suit, or proceeding, whether civil, criminal, administrative, investigative, or otherwise by reason of the fact that the person is or was a Director or officer of the Corporation, or a fiduciary of the Corporation. Such individuals may also be those who serve or served at the request of the Corporation as a Director or as an officer or as a fiduciary of the Corporation, partnership, joint venture, trust, or other enterprise. The right to and the amount of indemnification shall be determined in accordance with the provisions of the Oregon Business Corporation Act in affect at the time of the determination.

**9.2 Interested Parties.** A Director of the Corporation shall not be disqualified by the Director's office from contracting with the Corporation as vendor, purchaser, or otherwise; nor shall any contract or arrangement entered into by or on behalf of the Corporation in which any Director is in any way interested be avoided on that account, provided that such contract or arrangement shall have been approved or ratified by a majority of the Board without counting in such majority the Director so interested, although such Director may be counted toward a quorum, or shall have been approved or ratified by the affirmative action of the holders of a majority of the outstanding shares of the Corporation, and the interest shall have been disclosed or known to the approving or ratifying Directors or shareholders.

## **ARTICLE 10 MAINTENANCE, UPKEEP AND REPAIR OF COMMON PROPERTY**

The Association has been formed for the purpose of operation, upkeep, maintenance and repair of the Common Area as the Common Area is identified in Section 5 of the Conditions, Covenants and Restrictions for Link River Estates filed for the record filed October 30, 2008 at 02:38:09 PM, as document 2008-014735 by the County Clerk for the County of Klamath, State of Oregon. Payment for such operation, upkeep, maintenance and repair shall be from the assessments collected from lot owners in conformance with th Covenants, Conditions and Restriction of Link River Estates. All maintenance programs shall be approved by the Board.

## **ARTICLE 11 SEVERABILITY**

A determination that any provision of these Bylaws is for any reason inapplicable, invalid, illegal, or otherwise ineffective shall not affect or invalidate any other provision of these Bylaws.

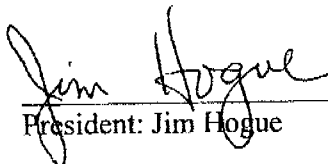


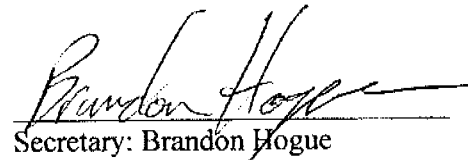
## ARTICLE 12 AMENDMENTS TO BYLAWS

These Bylaws may be altered, amended, or repealed, and new Bylaws may be adopted by the Association members by a majority vote of the Shareholders at any regular or special meeting. Furthermore, the Association may adopt administrative rules and regulations supplementing these Bylaws for the purpose of governing the details for the operation and use of the common property in accordance with the protective covenants, conditions and restrictions of Link River Estates.

### CERTIFICATION:

1. The Bylaws are duly adopted as the bylaws of the Association.

  
\_\_\_\_\_  
President: Jim Hogue

  
\_\_\_\_\_  
Secretary: Brandon Hogue

STATE OF OREGON            )  
                                      ) ss.  
County of Klamath         )

Personally appeared, Jim Hogue and Brandon Hogue, who being duly sworn, stated he is the President and Secretary of Link River Estates Homeowners' Association, Inc., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged said instrument was its voluntary act and deed, before me.



  
\_\_\_\_\_  
Notary Public for Oregon

My commission expires: 5-16-12

2008-014735

Klamath County, Oregon

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10/30/2008 02:38:09 PM

Fee: \$151.00

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
LINK RIVER ESTATES  
Tract 1487**

2186-03

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**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
LINK RIVER ESTATES  
TRACT 1487**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** FOR Link River Estates ("Declaration") is made by Ore-Cal Land Development, LLC, an Oregon Limited Liability Company ("Declarant").

**RECITALS**

Declarant is the owner of all the real property and improvements thereon located in Klamath County, Oregon, described as follows (the "Property"):

Lots, inclusive, and Parcels as shown on the plat map of Tract 1487 filed for record in the plat records of Klamath County, Oregon.

Declarant intends to develop Link River Estates as a Class II planned community. To establish Link River as a planned community, Declarant desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments, and liens on the Property, under a comprehensive general plan of improvement and development for the benefit of all Lots and Common Area in the City of Klamath Falls, County of Klamath, State of Oregon.

Declarant has deemed it desirable for the efficient preservation of the values and amenities in Link River Estates to create a nonprofit corporation, to which will be delegated and assigned the powers and authority to own, maintain, and administer the Common Areas and to administer and enforce the covenants, conditions, and restrictions of this Declaration, and to collect and disburse the assessments and charges hereinafter created.

The Declarant shall convey the COMMON AREA to the Link River Estates Homeowners' Association ("Association"). The Association shall assume the maintenance obligation of COMMON AREA shown on the recorded Plat of the Property, including any improvements located thereon, all landscaping, and the storm detention pond for the benefit of the Owners and assess the Owners of Lots 1 through 50 inclusive, equally for the expenses.

**NOW THEREFORE**, Declarant declares that the Property shall be held, transferred, sold, conveyed, and occupied subject to the Oregon Planned Community Act as may be amended from time to time (ORS 94.550-94.783) and subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the land, which shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and which shall inure to the benefit of the Association and of each Owner.

**ARTICLE I  
DEFINITIONS**

**1.1** *Architectural Review Committee or "ARC"* shall refer to that committee constituted and acting pursuant to Article 6 of this Declaration.

**1.2** *Articles* shall mean the Articles of Incorporation for the nonprofit corporation, Link River Estates Homeowners' Association, as filed with the Oregon Secretary of State.

1.3 **Association** shall mean and refer to Link River Estates Homeowners' Association, its successors and assigns.

1.4 **Board** shall mean the Board of Directors of the Association.

1.5 **Bylaws** shall mean and refer to the Bylaws of the Association, which shall be recorded in the Klamath County, Oregon, deed records.

1.6 **Common Area** shall mean and refer only to a storm detention pond and the landscaping around the detention pond which shall be owned by the Association. The Association shall maintain landscaping around the detention pond and the storm detention pond. All streets in Link River Estates shall be public streets.

1.7 **Declaration** shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration.

1.8 **Declarant** shall mean and refer to Ore-Cal Land Development, LLC, an Oregon Limited Liability Company, and its successors or assigns, or any successor or assign to all or the remainder of its interest in the Property.

1.9 **General Plan of Development** shall mean Declarant's general plan of development of the Property, as approved by appropriate governmental agencies, as may be amended from time to time.

1.10 **Home** shall mean and refer to any portion of a structure situated on a Lot and designed and intended for use and occupancy as a residence by a single family or household.

1.11 **Lot** shall mean and refer to each and any of Lots 1 through 50 inclusive; provided, however, that **Lot** shall not include COMMON AREAS.

1.12 **Master Documents** shall mean the Declaration of Easements, Covenants, and Restrictions by Ore-Cal Land Development, LLC concerning property known as Link River Estates in the City of Klamath Falls, County of Klamath, State of Oregon.

1.13 **Members** shall mean and refer to the Owners of Lots in Link River Estates.

1.14 **Occupant** shall mean and refer to the occupant of a Home, whether such person is an Owner, a lessee, or any other person authorized by the Owner to occupy the Home.

1.15 **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 of a Lot under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

1.16 **Plat** shall mean and refer to the Plat of Link River Estates known as Tract 1487 recorded in the Plat Records of Klamath County, Oregon.

1.17 **Public Road** shall mean the roadways within the Plat of Link River Estates which serve as a means of access to Lots 1 through 50.

1.18 **Property** shall have the meaning attributed to such term in the Recitals of this Declaration.

1.19 **Reserve Account(s)** shall mean and refer to an account set up by the Board to hold funds for construction, improvements or maintenance of the Common Area and the Commonly Maintained Property.

1.20 **Rules and Regulations** shall mean and refer to the documents containing rules and regulations and policies adopted by the Board or the Architectural Review Committee, as may be from time to time amended.

1.21 *Parcels* shall mean and refer to Common Areas as shown on the final project map.

## ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

**2.1 Development.** The development of Link River Estates shall consist of the Property, which shall be held, transferred, sold, conveyed, and occupied subject to this Declaration. Declarant does not intend to build any Common Area improvements in Link River Estates as delineated on the Plat of Tract 1487, other than the public streets, a storm drain system including a storm detention pond, street lighting, all sanitary sewer disposal, water delivery system, electric service access, natural gas service access, television cable service access, telephone service access, landscaping in common areas.

**2.2 No Right to Annex Additional Property or to Withdraw Property.** Declarant reserves no right to annex additional property to or to withdraw property from Link River Estates.

## ARTICLE 3 OWNERSHIP AND EASEMENTS

**3.1 Non-severability.** The interest of each Owner in the benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to the benefit from the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise, or operation of law, for such Owner's benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests, and causes of action for judicial partition of any interest in the Common Area and agrees that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment. Ownership interests in the Common Area and Lots are subject to the easements granted and reserved in this Declaration and Master Documents. Each of the easements granted or reserved herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Link River Estates.

**3.2 Ownership of Lots.** Title to each Lot in Link River Estates shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such persons and/or entities shall constitute one Owner.

**3.2.1** Owners shall be responsible for all charges related to the installation of sewer, water, natural gas, electrical and telecommunication systems directly related to their property.

**3.3 Ownership of Common Area.** Title to any Common Area shall be conveyed to the Association not later than the date of the Turnover Meeting.

**3.4 Easements.** Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.



**3.4.1 Easements on Plat.** The Common Area and Lots are subject to the easements and rights-of-way shown on the Plat. Additionally, all lots shall have a Public Utilities Easement (PUE) within the lot for the entire street frontage.

**3.4.2 Easements for Common Area.** Every Owner shall have a nonexclusive right to benefit from the Common Area, which shall be appurtenant to and shall pass with the title to every Lot. Such easement is subject to ORS 94.665, as may be amended from time to time.

**3.4.3 Easements Reserved by Declarant.** As long as Declarant owns any Lot, Declarant reserves an easement over, under, and across the Common Area in order to carry out sales activities necessary or convenient for the sale of Lots. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, over, in, upon, under, and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property in such a way as not to interfere unreasonably with the occupancy, use, enjoyment, or access to an Owner's Lot by such Owner or such Owner's family, tenants, employees, guests, or invitees.

**3.4.4 Utility and Drainage Easements.** Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of Link River Estates. No structure, planting, or other material that may damage or interfere with the installation or maintenance of utilities, that may change the direction of flow of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easement areas shall be placed or permitted to remain within any easement area.

**3.4.5 Association's Easements.** Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and Common Area as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws, and the Articles, as the same may be amended.

**3.4.6 Easement to Governmental Entities.** Declarant grants a nonexclusive easement over the Common Area to all governmental and quasi-government entities, agencies, utilities, and their agents for the purposes of performing their duties as utility providers.

**3.5 Declarant's Right to Dedicate Common Area and Grant Easements; Board's Authority After Title Transferred to Association.** Declarant reserves the right and power to dedicate and/or convey any portion or all of the Link River Estates development to any governmental body or agency. Declarant further reserves the right and power to grant an easement over Link River Estates development to any governmental body or agency or any public or private utility company or provider. Declarant's rights and power under this **Article 3.5** shall expire when Link River Estates development are conveyed to the Association. Thereafter, the Board shall have the same powers reserved to Declarant and may exercise such power upon a two-thirds or greater vote of the Board members at any duly called and held Board meeting. The provisions of this **Article 3.5** shall control over any provisions to the contrary contained in any other Section of the Declaration; provided, however, none of the rights under this **Article 3.5** shall deprive the Owners of Lots 1 through 50 from using Tract 1487 for access to their Lots.

## ARTICLE 4 LOTS AND HOMES

**4.1 Ordinances and Regulations.** The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that local governmental ordinances and regulations are more restrictive or provide for a higher or different standard, such local governmental ordinances and regulations shall prevail.

**4.2 Residential Use.** Lots shall only be used for the construction of residential single family dwellings only. Except with the Board's consent no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, and no goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business shall be kept or stored on any Lot. Nothing in this Article 4.2 shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any residence as a sales office or model home for purposes of sales in Link River Estates, and (c) the right of the Owner of a Lot to maintain such Owner's personal business or professional library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls, or confer with business or professional associates, clients, or customers in such Owner's residence. The Board shall not approve commercial activities otherwise prohibited by this **Article 4.2** unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

**4.2.1** Off site manufactured homes shall not be permitted for use as a residence.

**4.2.2** No more than one detached single family dwelling and not more than one accessory building incidental to the residential use shall be constructed on any lot.

**4.2.3** Basements, which include daylight, split entry and split level types, shall be considered in determining the number of stories that may be built on any lot as approved by the ARC.

**4.2.4** Each single family dwelling unit shall have a minimum living area of 2000 square feet and meet the certification criteria for the Earth Advantage Homes Silver level certification.

**4.2.4.1** For certification at the Silver Level as an Earth Advantage Home the house must meet all Northwest Energy Star New Homes Program 2009 requirements as well as achieve a minimum of the following point totals in each of the other four Earth Advantage Homes categories; Health (25), Land (15), Materials (25), Water (15), plus an additional 10 points, for a total of 90 or more points. In addition, Core Measures are required in each of the subsections: 1) Waste Management; 2) Infiltration; 3) Insulation; 4) Windows; 5) HVAC; 6) Ventilation; 7) Lighting; 8) Water Heating; 9) Appliances; and, 10) Interior Surface Coatings.

**4.2.5** The use of earth tone stains and paints are encouraged for all structures erected on any lot. Bright colors will be restricted to front doors and accent areas only.

4.2.6 All driveways shall be composed of asphalt, pavers, concrete or other substance approved by the Home Owners Association.

4.2.7 During any construction phase the contractor shall be responsible for keeping the roads they travel on to and from their work site clear of mud and other debris.

4.2.8 No metal roofs on any structure will be allowed.

4.2.9 All homes and other buildings constructed on the Owner's property shall meet or exceed all applicable City of Klamath Falls regulations and Building Codes.

4.2.10 All homes constructed on the Owner's property shall have an in house fire sprinkler system installed at time of construction.

4.2.11 No two homes within the subdivision shall have the same or essentially similar exterior architectural features and/or exterior covering materials of a similar design or look. All exterior plans, improvements or repairs to the exterior of any home shall be approved by the ARC.

**4.3 Building Location.** The Home with the attached garage shall be located on any lot in accordance with the applicable City requirements.

4.3.1 ten (10) feet to an interior side or rear lot line;

4.3.2 fifteen (15) feet to an exterior side lot line;

4.3.3 Front yard set back to house twenty (20) feet from the lot line;

4.3.4 Garage set back on front entrance garage twenty-five (25) feet; and,

4.3.5 Garage set back on side entry garage twenty (20) feet.

**4.4 Landscaping.** Natural undisturbed landscaping or landscaping consistent with the surrounding and similar vegetation is encouraged and each Owner other than Declarant shall obtain the ARC's prior approval of all landscaping plans before commencing installation of any landscaping. Owners shall be responsible for the control of noxious vegetation in accordance with City regulation. Landscaping for all portions of the Lot shall commence within 60 days after final building inspection by the local government jurisdiction and shall be completed within six months after such inspection. This **Article 4.4** shall apply to Lots with finished Homes being held for sale. The water charge for landscaping of the Common Areas shall be borne equally by the owners of lots 1 through 50. Owners shall irrigate their entire yard to keep lawns green and other landscaping fresh. Trees and all other landscaping shall comply with the standards set forth in the City of Klamath Falls, Community Development Ordinance, Section 14.400 et. seq.

**4.5 Maintenance of Lots and Homes.** Each Owner shall maintain such Owner's Lot(s) and all improvements thereon in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, maintenance of windows, doors, garage doors, walks, patios, chimneys, and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the ARC. Each Owner shall repair damage caused to such Owner's Lot or improvements located thereon by fire, flood, storm, earthquake, riot, vandalism, or other causes within a reasonable period. Undeveloped lots and vacant residential structures shall be maintained in a visually appealing manner at all times. **The ARC shall have the final and sole discretion to determine if any lot or residential structure does not comply with this standard.**

4.5.1 Undeveloped lots may be landscaped at Owner's option with approval of

the ARC, however, Owner shall also have the option of leaving the lot in its original undisturbed/natural state if a residential structure has not been started on the lot within 24 months of purchase date.

**4.6 Rental of Homes.** An Owner may rent or lease such Owner's Home or a portion thereof, provided that the following conditions are met:

**4.6.1 Written Rental Agreements Required.** The Owner and the tenant enter into a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Declaration, Bylaws, and Rules and Regulations, and (ii) a failure to comply with any provision of the Declaration, Bylaws, and Rules and Regulations shall constitute a default under the rental or lease agreement;

**4.6.2 Minimum Rental Period.** The period of the rental or lease is not less than 180 days;

**4.6.3 Tenant Must be Given Documents.** The Owner gives each tenant a copy of the Declaration, Bylaws, and Rules and Regulations.

**4.7 Animals.** No animals, livestock, or poultry of any kind, other than a reasonable number of household pets that are not kept, bred, or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance, shall be raised, bred, kept, or permitted within any Lot. Owners whose pets cause any inconvenience or unpleasantness to other Owners shall take all steps reasonably necessary to prevent recurrence thereof and Owners whose pets damage other Owners' Lots or personal property shall reimburse such other Owners for reasonable costs actually incurred by such other Owners in repairing such damage. An Owner shall ensure that such Owner's dog is leashed when on the Property and outside of such Owner's Lot. An Owner may be required to remove a pet on the receipt of the third notice in writing from the Board of a violation of any rule, regulation, or restriction governing pets within the Property. All dog kennels will be located on the Owner's property so that they are out of sight from the front of the house and the adjoining neighbors' property.

**4.8 Nuisance.** No noxious, harmful, or offensive activities including but not limited to continually barking dogs, shall be carried out on any Lot or Common Area. Nor shall anything be done or placed on any Lot or Common Area that interferes with or jeopardizes the enjoyment of, or that is a source of annoyance to, the Owner or other Occupants.

**4.9 Parking.** On street parking is not allowed. Boats, trailers, commercial vehicles, mobile homes, campers, and other recreational vehicles or equipment, regardless of weight, shall not be parked on any part of the street, or on any streets on or adjacent to the Property at any time or for any reason, including loading or unloading, but may be parked on any Lot for a maximum of six hours or such other period as may be permitted by the Association Rules and Regulations. The garage on each Lot shall be used to park the occupant's primary passenger vehicles, and for no other purpose. Guest parking is allowed on one side of the street and in each Owner's personal driveway. Motor homes and boats are permitted on the property if they are stored in a covered and enclosed storage facility. Guest parking of motor homes and travel trailers is allowed on a temporary basis not to exceed one (1) week per quarter per year in the Owner's driveway and not on the public street.

**4.10 Vehicles in Disrepair.** No Owner shall permit any vehicle that is in a state of disrepair or that is not currently licensed to be abandoned or to remain parked on the Common

Area or on any street on or adjacent to the Property at any time and may not permit them on a Lot for a period in excess of 48 hours. A vehicle shall be deemed in a "state of disrepair" when the Board reasonably determines that its presence offends the occupants of the neighborhood. If an Owner fails to remove such vehicle within five days following the date on which the Association mails or delivers to such Owner a notice directing such removal, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner as a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

**4.11 Signs.** No signs shall be erected or maintained on any Lot except that not more than one "For Sale" or "For Rent" sign placed by the Owner or by a licensed real estate agent, not exceeding 24 inches high and 36 inches long, may be temporarily displayed on any Lot. The restrictions contained in this Article 4.9 shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant. Provided, however, political signs shall be removed within three days after the election day pertaining to the subject of the sign. Real estate signs shall be removed within three days after the sale closing date. During the construction phase the Contractor may erect a sign not to exceed 4 feet by 8 feet and the sign must be removed within 5 business days after the final approval for occupancy is granted.

**4.12 Rubbish and Trash.** No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard rakings, dirt, and other material resulting from landscaping work shall not be dumped onto streets, the Common Area, or any other Lots. If an Owner fails to remove any trash, rubbish, garbage, yard rakings, or any similar materials from any Lot, any streets, or the Common Area where deposited by such Owner or the Occupants of such Owner's Lot after notice has been given by the Board to the Owner, the Association may have such materials removed and charge the expense of such removal to the Owner. Such charge shall constitute a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

**4.13 Fences and Hedges.** No fences or boundary hedges shall be installed or replaced without prior written approval of the ARC. No fence shall be permitted from the minimum front setback line of the house to the curb line of the street. No fences, wall or hedge shall exceed six (6) feet in height on any portion of any lot. All fences shall be constructed of materials compatible with the exterior of the house and no chain link or wood fences will be allowed.

**4.14 Service Facilities.** Service facilities (garbage containers, fuel tanks, clotheslines, etc.) shall be screened so that such facilities are not visible at any time from the street or placed underground in conformance with applicable law and subject to approval by the ARC.

**4.15 Solar Panels, Antennas and Satellite Dishes.** Except as otherwise provided by law or this section, no exterior solar panels, antennas, satellite dishes, microwave, aerial, tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic radiation shall be erected, constructed, or placed on any Lot without prior written consent from the ARC. Exterior solar panels, satellite dishes or antennas with a surface diameter of one meter or less and antennas designed to receive television broadcast signals only may be placed on any Lot if they are not visible from the street and are screened from neighboring Lots. The Board or ARC may adopt reasonable rules and regulations governing the installation, safety,

placement, and screening of such antennas, satellite dishes, and other transmission devices. Such rules shall not unreasonably delay or increase the cost of installation, maintenance, or use or preclude reception of a signal of acceptable quality. (The ARC, in its sole discretion, may determine what constitutes a signal of acceptable quality.) Such rules may prohibit installation of exterior satellite dishes or antennas if signals of acceptable quality can be received by placing antennas inside a Home without causing an unreasonable delay or cost increase.

**4.16 Exterior Lighting or Noise-making Devices.** Except with the consent of the ARC, no exterior lighting or noise-making devices, other than decorative lighting in the front and back yards, front security and fire alarms, shall be installed or maintained on any Lot.

**4.17 Basketball Hoops.** Basketball hoops shall be allowed on Owner's driveway but not in the public streets.

**4.18 Grades, Slopes, and Drainage.** There shall be no interference with the established drainage patterns or systems over or through any Lot within Link River Estates so as to affect any other Lot or Common Area or any real property outside Link River Estates unless adequate alternative provision is made for proper drainage and is approved by the ARC. The term "*established drainage*" shall mean the drainage swales, conduits, inlets, and outlets designed and constructed for Link River Estates.

**4.19 Tree-Cutting Restrictions.** No tree the diameter of which is six inches, at three (3) feet above the base, or more may be removed from any Lot without the prior approval of the ARC unless it is diseased, poses an immediate danger to persons or property, or is within 10 feet from the base of the tree trunk to an existing or proposed building or five feet of a paved surface. Tree removal within any public right-of way and in all public street areas shall comply with the standards set forth by the City of Klamath Falls for the removal of trees.

**4.20 Damage or Destruction to Home and/or Lot.** If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (a) restore the damaged improvements or (b) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (a) above must be performed so that the improvements are in substantially the same condition in which they existed before the damage, unless the owner complies with the provisions of **Article 6**. The Owner must commence such work within 60 days after the damage occurs and must complete the work within six months thereafter.

**4.21 Temporary Structures.** No structure of a temporary character or any trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot as a residence, temporarily (unless with pre-approval by the ARC for use during the period of house construction) or on a permanent basis.

**4.22 Master Documents.** The Link River Estates project is subject to, and all Owners shall be bound by the Declaration of Easements, Covenants, and Restrictions for Link River Estates Tract 1487 recorded in Klamath County, Oregon.

**4.23 Building Height.** The City of Klamath Falls, Oregon as of December 31, 2004 has a height restriction on residential homes of twenty-eight (28) feet. All residences shall comply with the twenty-eight foot height restriction on residential structures, unless the City of Klamath Falls, Building Department amends or adopts new design standards.

**4.24 Airport Location.** All purchasers of property within the development have been

advised that there is a commercial airport near the Owner's property. The Klamath Falls Airport has a military Air National Guard base stationed as the airport. The military aircraft operate at a Stage 1 noise level that can exceed 100 decibels under certain circumstances. The property is also under the Klamath Falls Airport extended traffic pattern and when the airport is busy, numerous over flights may occur.

## **ARTICLE 5 COMMON AREA**

**5.1 Common Areas.** Common Area landscaping and maintenance is subject to the provisions of the Declaration, Bylaws, Articles, and the Rules and Regulations adopted by the Board. There shall be no obstruction of any part of the Common Area. The Common Area will be the sole responsibility of the Association and maintained for the benefit of all property owners within the development.

**5.2 Maintenance of Common Area.** The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area, except where such maintenance is provided by the City of Klamath Falls, a government agency or utility company, at the equal expense of the Owners of Lots 1 through 50 inclusive. The Association shall keep the Common Area in good condition and repair, provide for all necessary services, and cause all acts to be done that may be necessary or proper to assure the maintenance of the Common Area.

**5.2.1** Common Area maintenance, repair and upkeep shall apply to the landscaping immediately surrounding the detention pond and the detention pond; and,

**5.2.2** The front entrance block retaining wall at Link River Drive and the storm drain system installed behind the retaining wall on the east and west side of Link River Drive along with the security fences on top of these walls are considered areas subject to maintenance repair and upkeep by the Association.

**5.3 Alterations to Common Area.** Only the Association shall construct, reconstruct, or alter any improvement located on the Common Area. A proposal for any construction of or alteration, maintenance, or repair to any such improvement may be made at any Board meeting. The Board may adopt a proposal, subject to the limitations contained in the Bylaws, this Declaration and the Master Documents.

**5.4 Funding.** Expenditures for alterations, maintenance, or repairs to an existing improvement for which a reserve has been collected shall be made from the Reserve Account. As provided in **Article 10.5**, the Board may levy a special assessment to fund any construction, alteration, repair, or maintenance of an improvement (or any other portions of the Common Area) for which no reserve has been collected or for which the Reserve Account is insufficient to cover the cost of the proposed improvement.

**5.5 Landscaping.** All landscaping on the Common Area, shall be maintained and cared for in a manner that is consistent with Declarant's or the ARC's original approval of such landscaping. Weeds and diseased or dead lawn, tree, groundcover, or shrubs shall be removed and replaced. Lawns shall be neatly mowed and trees and shrubs shall be neatly trimmed. The Association shall maintain all landscaping on the Common Area. All landscaping shall be irrigated in a horticulturally proper manner, subject to water use restrictions or moratoria by government bodies or agencies. Each Owner shall maintain all portions of the landscaping on

their Lot.

**5.6 Condemnation of Common Area.** If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain, or by purchase in lieu of eminent domain, the Board shall receive and expend the entire award in a manner that, in the Board's discretion, is in the best interest of the Association and the Owners. The Association shall represent the interest of all Owners in any negotiations, suit, action, or settlement in connection with such matters.

**5.7 Damage or Destruction of Common Area.** If all or any portion of the Common Area is damaged or destroyed by an Owner or any of Owner's guests, Occupants, Tenants, licensees, agents, or members of Owner's family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner hereby authorizes the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constituted or as may be modified or altered subsequently by the Association in the discretion of the Board. Reasonable costs incurred in connection with effecting such repairs shall become a special assessment on the Lot and against the Owner who caused or is responsible for such damage.

**5.8 Power of Association to Sell, Dedicate, or Transfer Common Area.** As provided in ORS 94.665, the Association may sell, dedicate, transfer, grant a security interest in, or grant an easement for installation and maintenance of utilities or for similar purposes with respect to, any portion of the Common Area. Except for grants of easements for utility-related purposes, no such sale, dedication, transfer, or grant of a security interest shall be effective unless approved by 80% of the votes of both Class A and Class B members and by U.S. Housing and Urban Development or Department of Veterans Affairs, whichever is applicable, as long as there is Class B membership. Provided further, if there is only one class of votes, such sale, dedication, transfer, or grant of a security interest (other than a grant of an easement for utility-related purposes) must be approved by 80% of the votes held by Owners other than Declarant.

## **ARTICLE 6 ARCHITECTURAL REVIEW COMMITTEE**

**6.1 Architectural Review.** No improvement shall be commenced, erected, placed, or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. This Article's purpose is to assure quality of workmanship and materials and harmony between exterior design and the existing improvements and landscaping and as to location with respect to topography and finished grade elevations. The ARC shall not be responsible for determining compliance with structural and building codes, solar ordinances, zoning codes, or other governmental regulations, all of which are the applicant's responsibility. The procedure and specific requirements for review and approval of construction shall be set forth in design guidelines and standards adopted from time to time by the ARC. The provisions of this Article shall apply in all instances in which this Declaration requires the ARC's consent.

**6.2 Architectural Review Committee, Appointment and Removal.** Declarant reserves the right to appoint all members of the ARC and all replacements thereto until Link



River Estates is 100% built out. The ARC shall consist of no fewer than three members, from three households and no more than five members. Each member of the ARC shall reside within the subdivision for a minimum of eight (8) months per calendar year. Each ARC member shall serve for one year. After build out, Declarant shall assign to the Board the right to appoint and remove members of the ARC. Board members and persons who are not Owners but who have special expertise regarding the matters that come before the ARC may serve as all or some of the ARC's members. In the Board's sole discretion, non-Owner members of the ARC may be paid. The Board may appoint itself as the ARC or any of its members to the ARC. If an ARC has not been appointed, the Board shall serve as the ARC.

**6.3 Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

**6.4 Duties.** The ARC shall consider and act on the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations, and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, and similar features that may be used in Link River Estates; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

**6.5 ARC Decision.** The ARC shall render its written decision approving or denying each construction application submitted to it within thirty (30) working days after its receipt of all materials required with respect to such application. If the ARC fails to render such written decision within 30 days of its receipt of all required materials or request an extension, the application shall be deemed approved. The ARC shall be entitled to request one or more extensions of time, not to exceed 45 days per extension. In the event of such extension is requested, if the ARC does not render a written decision within 15 days after the expiration of the extension(s), the application shall be deemed approved. Provided, however, the applicant may agree to further extensions to allow the applicant to complete or supplement the application.

**6.6 ARC Discretion.** The ARC, at its sole discretion, may withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Link River Estates. The ARC may consider siting, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots or the Common Area, and any other factors that it reasonably believes to be relevant in determining whether or not to consent to any proposed work.

**6.7 Non-waiver.** Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

**6.8 Appeal.** After Declarant has assigned the right to appoint ARC members to the Board pursuant to **Article 6.2**, any Owner adversely impacted by ARC action may appeal such action to the Board. Such appealing Owner shall submit to the Board a written notice of appeal,

setting forth specific objections or mitigating circumstances justifying the appeal, within 10 days after the ARC's action. The Board shall issue a final, conclusive decision within 45 days after receipt of such notice, and such decision shall be final and binding on the appealing Owner and the ARC. Provided, however, the Board shall make reasonable efforts to reach a decision within 20 days. If the Board is serving as the ARC, then such appeal shall be deemed a request for reconsideration.

**6.9 Effective Period of Consent.** The ARC's consent to any proposed work shall automatically expire three months after issuance unless construction of the project has been commenced or the Owner has applied for and received an extension of time from the ARC.

**6.10 Determination of Compliance.** The ARC may inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

**6.11 Noncompliance.** If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an ARC approval or has constructed an improvement without obtaining ARC approval, sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5:00 p.m. on the third day after issuance of such notice, the ARC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than 30 days from the date on which the notice of noncompliance was issued. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of achieving compliance and may issue a fine against the noncomplying Owner for such amount. The ARC also shall require the Owner to remedy such noncompliance within 10 days after the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or any extension thereof granted by the ARC, at its sole discretion, the ARC may remove the noncomplying improvement, remedy the noncompliance, and/or record a notice of noncompliance in the county deed records. The costs of any such action shall be assessed against the Owner as a Reimbursement Assessment either before or after any remedial action is taken.

**6.12 Liability.** Neither the ARC nor any member thereof shall be liable to any Owner, Occupant, or Builder for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the ARC or the member has, in accordance with its or his or her actual knowledge, acted in good faith.

**6.13 Estoppel Certificate.** Within 15 working days after the ARC's receipt of a written request from an Owner and the ARC's receipt of payment of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairperson or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that, as of the date thereof either (a) all improvements made or done upon such Lot comply with this Declaration, or (b) such improvements do not so comply, in which event, the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner and such Owner's heirs, devisees, successors, and assigns shall be

entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as among Declarant, the ARC, the Association, all Owners, and all persons deriving any interest through any of them.

**6.14 Fees.** The ARC may charge applicants a reasonable application fee and additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers, and other consultants to advise the ARC concerning any aspect of the applications and/or compliance with any appropriate architectural criteria or standards, including, without limitation, those pertinent to house sitting and height. Such fees shall be collectible as assessments pursuant to **Article 10**.

**6.15 Declarant and Successor Exempt from ARC.** The Declarant or a successor to all of the unsold Lots shall be exempt from the requirement to submit and have plans approved by the ARC. However, the Declarant and its successor shall not be exempt from the provisions of Article 4 of the Declaration.

## **ARTICLE 7 MEMBERSHIP IN THE ASSOCIATION**

**7.1 Members.** Each Owner shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot shall automatically transfer membership in the Association. Without any other act or acknowledgment, Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and the Rules and Regulations of the Association and any amendments thereof.

**7.2 Proxy.** Each Owner may cast such Owner's vote in person, by written ballot, or pursuant to a proxy executed by such Owner. An Owner may not revoke a proxy given pursuant to this Article 7.2 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 year after its date, unless the proxy specifies a shorter term.

**7.3 Voting Rights.** The Association shall have two classes of voting members:

**7.3.1 Class A.** Class A members shall be all Owners of Lots other than Declarant, and each Class A member shall be entitled to one vote for each Lot owned with respect to all matters on which Owners are entitled to vote.

**7.3.2 Class B.** The Class B member shall be Declarant, its successors, and its assigns. The Class B member shall have three votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of the following dates (the "Termination Date"):

**7.3.2.1** The date on which 75% of the total number of Lots in Link River Estates have been sold and conveyed to Owners other than Declarant; and

**7.3.2.2** The date on which Declarant elects in writing to terminate Class B membership.

**7.3.3.** After the Termination Date, each Owner, including Declarant, shall be entitled to one vote for each Lot owned with respect to all matters on which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots

subject to this Declaration, initially or through annexation.

**7.3.4 When** more than one person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event shall fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum.

**7.4 Procedure.** All meetings of the Association, the Board, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board. Notwithstanding which rule of order is adopted, the President shall be entitled to vote on all matters, not merely to break a tie vote. A tie vote does not constitute a majority or approval of any motion or resolution.

## **ARTICLE 8 DECLARANT CONTROL**

**8.1 Interim Board and Officers.** Declarant hereby reserves administrative control of the Association. Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim board (the "Interim Board"), which shall manage the affairs of the Association and be invested with all powers and rights of the Board until the Turnover Meeting (as hereinafter defined). The Interim Board shall consist of from one to three members. Notwithstanding the provision of this **Article 8.1**, at the Turnover Meeting, at least one Director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all three Directors.

**8.2 Turnover Meeting.** Declarant shall call a meeting for the purposes of turning over administrative control of the Association from Declarant to the Class A members within 60 days of the earlier of the following dates:

**8.2.1 Earliest Date.** The date on which Lots representing 75% of the total number of votes of all Lots in Link River Estates have been sold and conveyed to persons other than Declarant;

**8.2.2 Optional Turnover.** The date on which Declarant has elected in writing to terminate Class B membership.

**8.2.1 Declarant** shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws.

**8.2.2 If** Declarant does not call the Turnover Meeting required under this Section the transitional advisory committee or any Owner may do so.

## **ARTICLE 9 DECLARANT'S SPECIAL RIGHTS**

**9.1 General.** Declarant is undertaking the work of developing Lots and other improvements within Link River Estates. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. Until the Homes on all Lots on the Property have been constructed, fully completed, and sold, with respect to the Common Area and each Lot on the Property, Declarant shall have the special rights set forth in this **Article 9**.

**9.2 Marketing Rights.** Declarant shall have the right to maintain a sales office and

model on one or more of the Lots that Declarant owns. 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. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Area.

**9.3 Declarant Easements.** Declarant reserves easements over the Property as more fully described in **Articles 3.4 and 3.5** hereof.

**9.4 Additional Improvements.** Declarant does not agree to build any improvements not described in this Declaration.

**9.5 Declarant and Successor Exempt from Fees.** The Declarant or a Successor to all of the unsold lots shall be exempt from the requirement to pay any assessments, pursuant to Article 10, until such time 100% of the Lots are sold and/or the Turn Over Meeting has been held which ever event occurs last in time. Further, Declarant, or its Successor, shall not be liable for any retroactive assessments by Link River Estates Homeowner's Association, Inc., imposed on or after the Turn Over Meeting.

**9.5.1** Developer is at no time liable for any Home Owners Fee assessment.

**9.5.2** Developer will maintain in a natural state all lots until sold.

## **ARTICLE 10 FUNDS AND ASSESSMENTS**

**10.1 Purpose of Assessments; Expenses.** The assessments levied by the Association shall be used exclusively welfare and benefit of the Owners and Occupants of Link River Estates, for the improvement, operation, and maintenance of the Common Area for the administration and operation of the Association, for the payment of the pro rata share of the "Common Area Operating Expenses" and "Common Area Infrastructure Costs" as provided in the Master Documents **Sections 2.4 and 2.5**, and for property and liability insurance.

**10.2 Covenants to Pay.** Each Owner covenants and agrees to pay the Association the assessments and any additional charges levied pursuant to this Declaration or the Bylaws. All assessments for operating expenses, repairs and replacement, and reserves shall be allocated among the Lots and their Owners as set forth in **Article 10.4.2**, and subject to the Declarant's exemption granted in **Article 9.5** above.

**10.2.1 Funds Held in Trust.** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely as set forth in **Article 10.1**. On the sale or transfer of any Lot, the Owner's interest in such funds shall be deemed automatically transferred to the successor in interest to such Owner.

**10.2.2 Offsets.** No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

**10.2.3 Right to Profits.** Association profits, if any, shall be the property of the Association and shall be contributed to the Current Operating Account.

**10.3 Basis of Assessment; Commencement of Assessments.** A fifty (50) dollar fee shall be assessed each Owner at the time of the initial purchase of each lot and no further fees shall be assessed an Owner until after the Turn Over Meeting and no fees shall be assessed retroactively after the Turn Over Meeting.

**10.4 Annual Assessments.** Annual assessments for each fiscal year shall be established

when the Board approves the budget for that fiscal year. The initial annual assessment shall be determined by Declarant and shall be prorated on a monthly basis at the time of the closing of the first sale from Declarant. Each Lot shall be assessed \$35 per month beginning the thirtieth (30th) day after closing date until the Turn Over Meeting. For proration purposes, any portion of a month shall count as a full month. Annual assessments shall be payable on a periodic bases, not more frequently than monthly, as determined by the Board. The fiscal year shall be the calendar year unless another year is adopted by vote of the Association members.

**10.4.1 Budgeting.** Each year the Board shall prepare, approve, and make available to each Member a pro forma operating statement (budget) containing: (a) estimated revenue and expenses on an accrual basis; (b) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies; (c) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement, or additions to major components of such improvements as provided in **Article 10.6.2**; and (d) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement, or additions to major components of the Common Area. Notwithstanding that budgeting shall be done on an accrual basis, the Association's books shall be kept on a cash basis and the Association shall be a cash basis taxpayer, unless applicable governmental regulations require otherwise. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy or summary thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, within 30 days after adoption of such budget.

**10.4.2 Allocation of Assessments.** The total amount in the budget shall be charged against all Lots as annual assessments as follows:

| <u>Lot</u>             | <u>Percentage</u> |
|------------------------|-------------------|
| Each Lot, 1 through 50 | 1/50th or 2%      |

**10.4.3 Non-waiver of Assessments.** If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new annual assessment is fixed.

**10.5 Special Assessments.** The Board and/or the Owners shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

**10.5.1 Correct Deficit.** To correct a deficit in the operating budget, by vote of a majority of the Board;

**10.5.2 Special Obligations of an Owner.** To collect amounts due to the Association from an Owner for breach of the Owner's obligations under this Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

**10.5.3 Repairs.** To collect additional amounts necessary to make repairs or renovations to the Common Area or Commonly Maintained Property if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board; or

**10.5.4 Capital Improvements.** To make capital acquisitions, additions or improvements, by vote of at least 80% of all votes allocated to the Lots.

**10.5.5 Reimbursement Assessments.** The Association shall levy a reimbursement assessment against any Owner and such Owner's Lot if a failure to comply with this Declaration, Bylaws, Architectural Standards, or any Rules and Regulations has (a) necessitated an expenditure of monies by the Association to effect compliance or (b) resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot (a "Reimbursement Assessment"). A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least 10 days' written notice to the Owner being assessed. If, within said 10-day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct it not less than 10 nor more than 30 days after the request by the Owner, and shall make its decision within not more than 30 days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

**10.6 Accounts.**

**10.6.1 Types of Accounts.** Assessments collected by the Association shall be deposited into at least two separate accounts with a bank, which accounts shall be clearly designated as (a) the Current Operating Account and (b) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Withdrawal of funds for the Association's Reserve Account shall require the signatures of either two Directors or one Director and an officer of the Association who is not a Director. In its books and records, the Association shall account separately for operating expenses relating to the Common Area/Commonly Maintained Property and operating expenses relating to all other matters, as well as for necessary reserves relating to the Common Area/Commonly Maintained Property and necessary reserves relating to all other matters.

**10.6.2 Reserve Account.** Declarant shall establish a Reserve Account, in the name of the Association, which shall be kept separate from all other funds held by the Association. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair, or replacement of Common that normally requires replacement, in whole or in part, within three to 30 years and not for regular or periodic maintenance and expenses. No funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

**10.6.2.1 Calculation of Reserve Assessment; Reserve Study.** The Board of Directors of the Association shall annually conduct a reserve study, or review and update an existing study, of the Common Area and Commonly Maintained Property to determine the reserve account requirements. A reserve account shall be established for those items of the Common Area all or part of which will normally require replacement in more than three and less than 30 years, for exterior painting, and for the maintenance, repair, or replacement of other items as may be required under the Declaration or Bylaws or that the Board of Directors, in its discretion, may deem appropriate. The reserve account need not include

items that could reasonably be funded from operating assessments. The reserve study shall include:

**10.6.2.1.1 identification** of all items for which reserves are required to be established;

**10.6.2.1.2** the estimated remaining useful life of each item as of the date of the reserve study;

**10.6.2.1.3** the estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and

**10.6.2.1.4** a 30-year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

**10.6.2.2 Reserve Account Assessment.** The Reserve Account Assessment shall be allocated pursuant to **Article 10.4.2.**

**10.6.2.3 Loan from Reserve Account.** After the Turnover Meeting described in **Article 8.2**, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet unexpected increases in expenses. Funds borrowed must be repaid later from assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment within a reasonable period.

**10.6.2.4 Increase or Reduction, or Elimination of Reserve Account Assessment.** At any time after the second year after the Turnover Meeting, future assessment for the Reserve Account may be increased or reduced by the vote of Owners of Lots representing 75% of the votes computed in accordance with **Article 7.3.**

**10.6.2.5 Investment of Reserve Account.** Nothing in this **Article 10.6** prohibits the prudent investment of Reserve Account funds, subject to any constraints imposed by the Board, the Bylaws, or the Rules and Regulations.

**10.6.2.6 Refunds of Assessments.** Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers or Owners of Lots may treat their outstanding share of the Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their Lot.

**10.6.3 Current Operating Account.** All costs other than those to be paid from the Reserve Account pursuant to **Article 10.6.2** may be paid from the Current Operating Account.

## **10.7 Default in Payment of Assessments, Enforcement of Liens.**

**10.7.1 Personal Obligation.** All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligations of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (i.e., one other than through foreclosure or a deed in lieu of foreclosure), the grantees shall be jointly and severally liable with the grantors for all Association assessments imposed through the recording date of the instrument effecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.



**10.7.2 Association Lien.** The Association shall have a lien against each Lot for any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof that is delinquent. Such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorney fees (whether or not suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Recording of the Declaration constitutes record notice and perfection of the lien. Said lien may be foreclosed at any time pursuant to the Planned Community Act. The Association shall record a notice of a claim of lien for assessments and other charges in the deed records of Klamath County, Oregon, before any suit to foreclose may be filed. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, any first mortgage, deed of trust or land sale contract recorded before the Association's notice of lien, and any mortgage or deed of trust granted to an institutional lender that is recorded before the Association's notice of lien.

**10.7.3 Interest; Fines; Late Fees; Penalties.** The Board, in its reasonable discretion, may from time to time adopt resolutions to set the rate of interest and to impose late fees, fines, and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, Architectural Standards, and the Rules and Regulations adopted by the Board or the ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than 30 days before the effective date by a notice mailed to the assessment billing address of such Owners. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violation of this Declaration, the Bylaws, or any rule and regulation, other than late fees, fines, or interest arising from an Owner's failure to pay regular, special, or reimbursement assessments may not be imposed against an Owner or such Owner's Lot until such Owner is given an opportunity for a hearing as elsewhere provided herein.

**10.7.4 Acceleration of Assessments.** If an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, on not less than 10 days' written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

**10.7.5 Association's Right to Rents; Receiver.** In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of such Owner's Lot or shall be entitled to the appointment of a receiver.

## **ARTICLE 11 GENERAL PROVISIONS**

**11.1 Records.** The Board shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board also shall keep detailed and accurate financial records, including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid on the account, and the balance due on the assessments. The minutes of the Association, the Board and Board committees, and the Association's financial records shall be maintained in the State of Oregon and reasonably available for review and copying by the

Owners. A reasonable charge may be imposed by the Association for providing copies.

**11.2 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 such person 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 such person acted in good faith and in a manner that such person 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 that such person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner that such person 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 that such person's 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 to reimbursement of such payment from such person, should it be proven at a later time that such 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 benefited from the acts that created said liability.

**11.3 Enforcement; Attorney Fees.** The Association and the Owners and any mortgagee holding an interest on a 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, condition, 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 (including without limitations, for the collection of assessments), the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event that is the subject of the suit or action, 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 and costs incurred in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed.

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

**11.5 Duration.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the land for a term of 35 years from the date of this Declaration being recorded,

after which time they shall be automatically extended for successive periods of 10 years, unless rescinded by a vote of at least 90% of the Owners and 90% of the first mortgagees; provided, however, that amendments that do not constitute rescission of the planned community may be adopted as provided in **Article 11.6** and 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 21 years after the death of the last survivor of the now living descendants of Jim and Carla Hogue.

**11.6 Amendment.** Except as otherwise provided in **Article 11.5** or ORS 94.590, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than 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 or Articles without compliance with the provisions of such documents, and the Oregon Nonprofit Corporation Act and that no amendment affecting the general plan of development or any other right of Declarant herein contained may be effected without the express written consent of Declarant or its successors and assigns, including, without limitation, amendment of this **Article 11.6**.

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

**11.8 Unilateral Amendment by Declarant.** In addition to all other special rights of Declarant provided in this Declaration, 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. Before the Turnover Meeting, no such amendment shall require notice to or approval by any Class A member.

**11.9 Resolution of Document Conflicts.** In the event of a conflict among any of the provisions in the documents governing Link River Estates, such conflict shall be resolved by looking to the following documents in the order shown below:

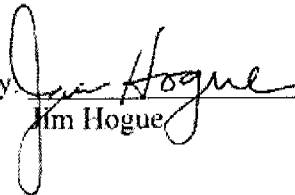
- 11.9.1** Declaration;
- 11.9.2** Articles;
- 11.9.3** Bylaws;
- 11.9.4** Rules and Regulations.

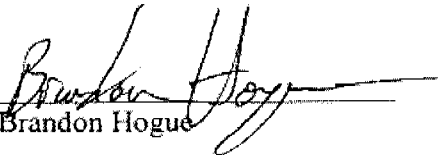
**11.10 Utility Connections.** Within the area known as Link River Estates and on all lots therein all utilities, pipes and wires used for the connection of telephone system, power systems, internet access, and any and all other improvement supply facilities now or in the future existing shall be below ground. Satellite dishes shall be located in unobtrusive areas and shall not block the view from any other property within Link River Estates.

**11.11 Easements:** Easements for the installation and maintenance of all utilities and drainage facilities are reserved as shown on the recorded plat of Tract 1487. Owners shall provide a clear strip free of building and other materials on said easements.

**IN WITNESS WHEREOF,** Declarant has executed this instrument this 30<sup>th</sup> day of October, 2008.

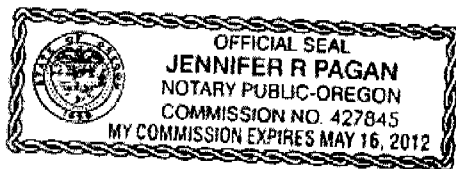
Ore-Cal Land Development, LLC

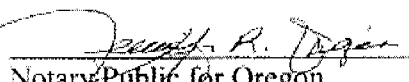
By:   
Jim Hogue

By:   
Brandon Hogue

STATE OF OREGON           )  
  ) ss.  
County of Klamath         )

This instrument was acknowledged before me on the 30<sup>th</sup> day of October 2008, by Jim Hogue and Brandon Hogue of the Ore-Cal Land Development LLC.



  
Notary Public for Oregon  
My commission expires: 5-16-12

**AFTER RECORDING RETURN TO:**

City Recorder  
500 Klamath Avenue  
Klamath Falls, OR 97601

00064833200900056980030030

04/24/2009 03:52:37 PM

Fee: \$31.00

**GRANTEE:**

Ore-Cal Land Development, LLC  
PO Box 7  
32159 Transformer Road  
Malin, OR 97632

**GRANTOR:**

City of Klamath Falls  
500 Klamath Avenue  
Klamath Falls, OR 97601

**REVOCABLE LICENSE & ENCROACHMENT PERMIT**

The City of Klamath Falls, Oregon, a municipal corporation (City) and Ore-Cal Land Development, LLC (Grantee) for and in consideration of the covenants and conditions hereinafter set forth, agree as follows:

City hereby gives and grants to Grantee, its successors and assigns, upon the terms and subject to the conditions hereinafter set forth, non-exclusive permission to encroach upon two separate portions of the Contra Loma Street (connecting to the newly created Link River Drive) right-of-way in the City of Klamath Falls along the frontage of Government Lot 8, and Lots 1, 2 and 3 in Block 121 of the Buena Vista Addition to the City of Klamath Falls, all located in the S½, NE ¼, Section 30, Township 38S, Range EWM (as shown on the attached map Exhibit "A"). This license/permit is granted for the limited purpose of constructing two retaining walls, together with the associated infrastructure, and a fence and is subject to the following conditions:

- 1) Grantee shall comply with all relevant local, state and federal regulations pertaining to Grantee's use of the area, including but not limited to, City Planning and building regulations;
- 2) Grantee shall submit the as-built construction plans to the City's Public Works Department and shall conform to any modifications or restrictions imposed by the Department; and
- 3) Grantee shall be responsible: for the maintenance of the retaining wall, the associated infrastructure and the fence; for all expenses for removal of the retaining wall and fence, if required under this license/permit; and for restoration of the right-of-way damaged by such maintenance or removal.

Grantee agrees to pay to the City, as compensation for the privileges herein granted, the sum of Eighty-One Dollars (\$81.00), receipt of which is hereby acknowledged by City.

Grantee shall save and hold harmless the City from, and indemnify the City against, any and all liability for or on account of any death or injury to persons, or damage to property incurred in any manner whatsoever connected with or arising out of Grantee's use or the public's loss of the privileges herein granted.

This agreement shall run from year to year unless terminated. It may be terminated upon sixty (60) days written notice by either party. Upon termination, Grantee shall remove all structures herein authorized and restore the public right-of-way in accordance with the directions of the City's Director of Public Works within sixty (60) days. Grantee agrees that City shall not be responsible for damage to any structures within the right-of-way caused by or related to City's legitimate use of the right-of-way.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed this 24<sup>th</sup> day of April, 2009.

CITY OF KLAMATH FALLS

By: [Signature]  
Rick Whitlock, Acting City Manager

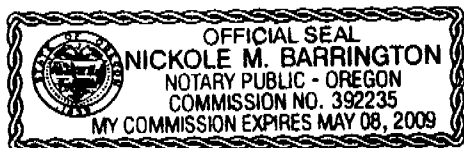
ORE-CAL LAND DEVELOPMENT LLC

By: [Signature]  
Name: Jim Hogue  
Title: Acting Member

STATE OF OREGON           )  
  ) ss.  
County of Klamath         )

On the 24<sup>th</sup> day of April, 2009, personally appeared Rick Whitlock, who, being first duly sworn, did say that he is at the present time the Acting City Manager of the City of Klamath Falls, an Oregon municipal corporation, and that the instrument was signed on behalf of said municipal corporation; and he acknowledged said instrument to be its voluntary act and deed.

BEFORE ME:

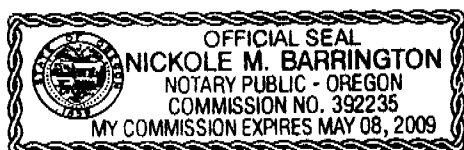


[Signature]  
Notary Public for Oregon  
My Commission Expires: 5-8-2009

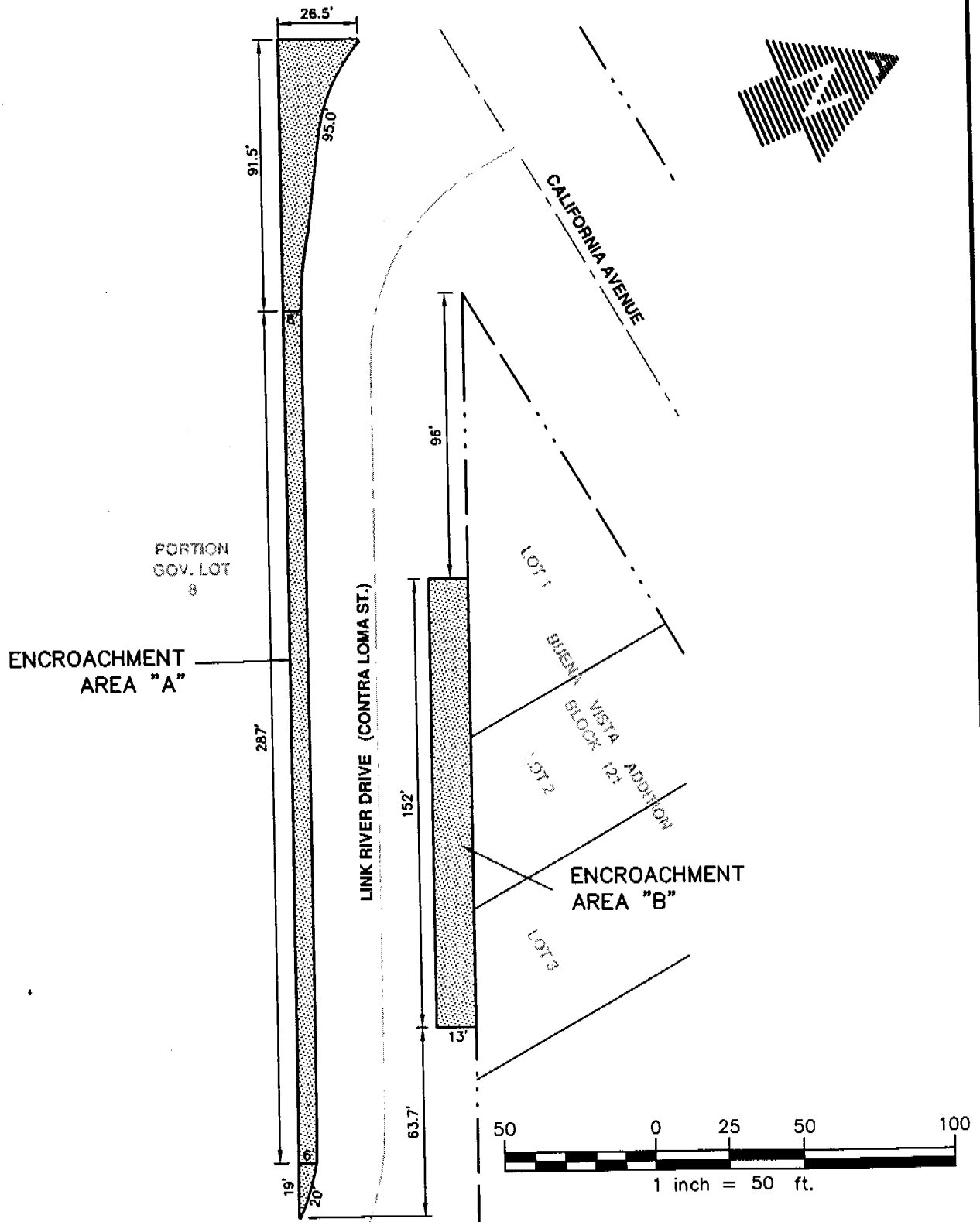
STATE OF OREGON           )  
  ) ss.  
County of Klamath         )

On April 24<sup>th</sup>, 2009, personally appeared Jim Hogue, who, being first duly sworn, did acknowledge that he/she is the Acting Member of Ore-Cal Land Development LLC, that the foregoing instrument was signed on behalf of Ore-Cal Land Development LLC, that he/she is authorized to execute this instrument and that this instrument is the voluntary act and deed of that entity.

BEFORE ME:



[Signature]  
Notary Public for Oregon  
My Commission Expires: 5-8-2009



**ADKINS**

CONSULTING  
ENGINEERS, INC.

Engineers ▲ Planners ▲ Surveyors

2950 Shasta Way · Klamath Falls, Oregon 97603 · (541) 884-4666 · FAX (541) 884-5335  
Klamath Falls, OR · Medford, OR · Alturas, CA

APRIL, 2009

ENCROACHMENT

2186-03

MAP OF ENCROACHMENT AREA  
FOR  
TRACT 1487 - LINK RIVER ESTATES  
IN  
S½NE¼ SEC. 30, T38S, R9EWM  
KLAMATH COUNTY, OREGON