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After Recording Return To:
Ball Janik LLP
101 SW Main Street, Suite 1100
Portland, OR 97204-3219
Attn.: Susan Zimmerman

Washington County, Oregon
12/29/2010 11:08:35 AM
D-R/B Cnt=2 Stn=8 J GREGORY
\$198.00 \$5.00 \$5.00 \$11.00 \$15.00 - Total = \$231.00



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I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.
Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COTTAGES AT AUTUMN CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COTTAGES AT AUTUMN CREEK is made and executed on this 24 day of December 2010 by Red Leaf Cottages, L.L.C., a Washington limited liability company.

Red Leaf Cottages, L.L.C. is the owner of the real property located in Washington County, Oregon and legally described on the attached Exhibit A and desires to establish a Class I planned community on the property known as "The Cottages at Autumn Creek."

NOW THEREFORE, Red Leaf Cottages, L.L.C. hereby declares that the real property described on the attached Exhibit A shall be held, sold and conveyed subject to the covenants, conditions and restrictions declared below, which shall run with the real property and shall benefit and be binding upon all parties having or acquiring any right, title or interest in the real property or any part thereof.

1. DEFINITIONS

The terms specified below shall have the following meanings when used in this Declaration:

1.1 "ACC" means the Architectural Control Committee of the Association formed pursuant to Section 12.

1.2 "Articles" mean the Articles of Incorporation of the Association filed with the Corporation Division of the Oregon Secretary of State, as amended from time to time.

1.3 "Assessment" means any assessment levied against one or more Owners by the Association for payment of expenses relating to the Property and shall include Regular Assessments, Special Assessments, Limited Assessments and Reserve Assessments as those terms are defined herein.

1.4 "Association" means The Cottages at Autumn Creek Homeowners Association, an Oregon nonprofit mutual benefit corporation, formed for the purposes set forth in this Declaration, the Bylaws and the Articles.

1.5 “Association Landscaping” means all landscaping and all irrigation systems and utilities pertaining to landscaping located in the Common Areas and the front yard areas of the Lots, including all grass, sod, ground cover, flower and plant beds, planter strips, trees, shrubs, bushes and other plantings located in the front yard areas of the Lots, but excluding all sidewalks, driveways, fencing and other non-landscaping Improvements located in the front yard areas of the Lots.

1.6 “Board” means the duly elected Board of Directors of the Association.

1.7 “Building Maintenance Agreement” means the Declaration of Easements and Building Maintenance Agreement being recorded in the official records of Washington County, Oregon concurrently herewith and any amendments thereto. A copy of the Building Maintenance Agreement is attached hereto as Exhibit C. The Building Maintenance Agreement establishes certain easements for the construction, ownership, use, maintenance, repair and replacement of the attached Homes on adjacent Lots and confirms the respective maintenance, repair and replacement obligations of the Owners of the attached Homes on adjacent Lots.

1.8 “Bylaws” mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be adopted pursuant to ORS 94.625 and recorded in the official records of Washington County, Oregon.

1.9 “City” means the City of Hillsboro, Oregon.

1.10 “Common Areas” mean those portions of the Property legally described on the attached Exhibit B which shall be owned by the Association for the common benefit of the Owners.

1.11 “Common Maintenance Areas” mean the Common Areas and any other property that the Association is required to maintain pursuant to this Declaration or that the Board deems necessary or appropriate for the Association to maintain for the common benefit of the Owners, including without limitation, those areas described in Section 11.1.

1.12 “Declarant” means Red Leaf Cottages, L.L.C., a Washington limited liability company, and its successors or assigns who acquire any of the rights reserved for Declarant in this Declaration or the Bylaws or assume any of the duties and obligations of Declarant under this Declaration or the Bylaws. If less than all of Declarant’s rights and obligations under this Declaration or the Bylaws are transferred to a successor or assign, then the successor or assign shall only be deemed a Declarant with respect to those rights or obligations that are specifically assigned or assumed by the successor or assign. One or more persons or entities may be a Declarant.

1.13 “Declaration” means this Declaration of Covenants, Conditions and Restrictions for The Cottages at Autumn Creek, as amended from time to time in accordance with its terms.

1.14 “Design Guidelines” mean the design guidelines described in Section 13.

1.15 “Home” means a dwelling unit located on a Lot and any associated Improvements.

1.16 “Improvement” means every structure or improvement of any kind, including without limitation, buildings, sidewalks, driveways, fences, walls, works of art, trees, hedges, plantings and other landscaping, changes in exterior color or shape, site work (such as, without limitation, excavation, grading and utility improvements), and all other product of construction efforts (such as, without limitation, alterations, renovations and reconstruction) on or with respect to the Property or any portion thereof.

1.17 “Limited Assessment” means an assessment levied against an Owner by the Association for costs and expenses incurred by the Association for corrective action performed pursuant to this Declaration that is required as a result of the willful or negligent actions or omissions of the Owner or the Owner’s tenants, family members, guests, contractors, or invitees. “Limited Assessment” also includes assessments for a common expense or any part of a common expense that benefits fewer than all of the Lots, as determined in the sole discretion of the Board.

1.18 “Lot” means each of Lots 1 through 54, inclusive, as depicted on the Plat.

1.19 “Member” means each member of the Association and shall include every Owner of a Lot. There shall be two (2) classes of membership in the Association, Class A and Class B, as described in Section 3.3 below.

1.20 “Nonprofit Corporation Act” means the Oregon Nonprofit Corporation Act (ORS 65.001 to 65.990), as amended from time to time.

1.21 “Owner” means any person or entity, including Declarant, at any time owning a Lot, including any vendee under a recorded land sale contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest, a person holding only a security interest in a Lot or a vendor under a recorded land sale contract who has surrendered possession.

1.22 “Planned Community Act” means the Oregon Planned Community Act (ORS 94.550 to 94.783), as amended from time to time.

1.23 “Plat” means the Plat of The Cottages at Autumn Creek which is being recorded in the official records of Washington County, Oregon contemporaneously herewith and any amendments thereto.

1.24 “Property” means the real property located in Washington County, Oregon and legally described on the attached Exhibit A.

1.25 “Regular Assessment” means an assessment by the Association against all Owners to provide for the payment of all estimated normal expenses of the Association for the performance of the Association’s duties as provided in this Declaration or the Bylaws.

1.26 “Reserve Assessment” means an assessment by the Association against all Owners to establish and maintain the reserve funds pursuant to Section 6.

1.27 “Special Assessment” means an assessment against all Owners in the event that the Regular Assessment for any particular year is or will become inadequate to meet the expenses of the Association.

1.28 “Special Declarant Rights” mean those rights reserved for Declarant in Section 15.

1.29 “Turnover Meeting” means the meeting of the Owners called pursuant to the Bylaws for the purpose of turning over control of the Association to the Class A Members.

2. DECLARATION

2.1 Property Covered. The property that is covered by and is hereby made subject to this Declaration is the Property.

2.2 Purpose. The purpose of this Declaration is to provide for the maintenance, restoration, repair, improvement and upkeep of the Common Maintenance Areas and to set forth other terms and conditions governing the use and enjoyment of the Property.

2.3 Declaration. The Property shall be subject to all of the conditions, covenants, restrictions, and provisions contained in this Declaration, which shall benefit and burden each Lot and all other portions of the Property. Such conditions, covenants, restrictions, and provisions shall be binding on all parties having any right, title or interest in or to the Property, or any part thereof, and each of their respective heirs, personal representatives, successors and assigns. The Property shall be a Class I planned community as defined in the Planned Community Act and shall be subject to all of the terms and provisions of the Planned Community Act. The Property shall be known as “The Cottages at Autumn Creek.”

2.4 Improvements. Declarant does not agree to build any particular Improvements on the Property, but may elect, at Declarant’s option, to build any such Improvements. Declarant elects not to limit Declarant’s rights to add Improvements not described in this Declaration.

3. THE ASSOCIATION

3.1 Organization. Declarant shall, concurrently with the execution and recording of this Declaration, organize the Association as a nonprofit mutual benefit corporation pursuant to the Nonprofit Corporation Act under the name “The Cottages at Autumn Creek Homeowners Association.” The Articles shall provide for the Association’s perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the Association to the successor unincorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles and Bylaws as if they had been drafted to constitute the governing documents of the unincorporated association.

3.2 Membership. Every Owner of a Lot shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of a Lot, be a Member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

3.3 Voting Rights. The Association shall have the following two (2) classes of voting membership:

3.3.1 Class A Members. Class A Members shall be all Owners other than Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A Members shall be all Owners, including Declarant). Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a Lot, all such persons shall be Members. However, only one (1) vote shall be exercised for the Lot. The vote for the Lot shall be exercised as the Owners of the Lot determine among themselves. If the Owners of the Lot cannot agree upon how to exercise the vote, then the vote for that Lot shall be disregarded in determining the proportion of votes with respect to the particular matter at issue.

3.3.2 Class B Members. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier to occur of: (i) the date on which all of the Lots have been conveyed to Owners other than Declarant; (ii) ten (10) years after conveyance of the first Lot to an Owner other than Declarant; or (iii) upon election in writing by Declarant.

3.4 Powers and Obligations. The Association shall have, exercise and perform all of the following powers, duties and obligations:

3.4.1 Governing Documents. The powers, duties and obligations granted to the Association by this Declaration, the Bylaws or the Articles, including, without limitation, the authority to levy Assessments against the Owners for the costs of operating and managing the Association and performing the Association's responsibilities under this Declaration or the Bylaws, as well as the operating costs and expenses of the ACC.

3.4.2 Statutory Powers. The powers and obligations of a nonprofit corporation pursuant to the Nonprofit Corporation Act, and of a homeowners association pursuant to the Planned Community Act, as either may be amended from time to time, except as provided otherwise by this Declaration or the Bylaws.

3.4.3 General. Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration and the Bylaws or otherwise promoting the general benefit of the Members. The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes to this Declaration made in accordance with the provisions herein,

accompanied by changes to the Articles or Bylaws made in accordance with such instruments, as applicable, and with the Planned Community Act and Nonprofit Corporation Act.

3.5 Liability. Neither the Association, members of the Board, officers of the Association nor members of committees established under or pursuant to the Bylaws shall be liable to any Owner for any damage, loss, injury or prejudice suffered or claimed on account of any action or failure to act by the Association or any Board member, officer or committee member, provided that the Association, Board member, officer or committee member acted or failed to act, in good faith, within the scope of his or her authority, and in a manner reasonably believed to be in the best interest of the Association and its Members, with regard to the act or omission at issue.

3.6 Board. Declarant shall have the right to appoint an interim Board consisting of one (1) to three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting as provided in the Bylaws. Following the Turnover Meeting, the Board shall consist of three (3) directors elected by the Owners as provided in the Bylaws.

3.7 Association Rules and Regulations. The Board from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots and Common Areas as it may deem necessary or appropriate in order to assure the safe, peaceful and orderly use and enjoyment of the Property, without unduly infringing on the privacy or enjoyment of any Owner or occupant of any part of the Property. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws.

4. ALLOCATION OF COMMON PROFITS AND EXPENSES

4.1 Method of Allocation. The common profits of the Association shall be distributed among, and the common expenses of the Association shall be charged to, the Lots on an equal basis, except as provided in Section 5.4 below. The common expenses of the Association may be assessed on a monthly, quarterly or annual basis as determined by the Board.

4.2 No Exception. No Owner may claim exemption from liability for contribution toward the common expenses of the Association by waiving his or her use or enjoyment of the Common Areas or by abandoning his or her Lot. No Owner may claim an offset against such liability for failure of the Association or the Board to perform its obligations.

5. ASSESSMENTS

5.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot by acceptance of a conveyance thereof, whether or not so expressed in the conveyance, shall be deemed to covenant to pay to the Association all Assessments and other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees

imposed pursuant to Section 7.4, shall be a charge on the land and shall be a continuing lien upon the Lot against which the Assessment or charge is made. Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment or charge becomes due. Such liens and personal obligations shall be enforced in the manner set forth in Section 7 below.

5.2 Regular Assessments.

5.2.1 Commencement. Regular Assessments for each Lot shall commence upon the sale of the Lot to an Owner other than Declarant. Regular Assessments shall not be levied against Declarant-owned Lots.

5.2.2 Amount of Regular Assessments. The Regular Assessments shall be based upon an annual budget prepared by the Board with respect to projected expenses of the Association, including, without limitation, the following:

- (a) maintenance, repair, replacement, and upkeep of the Common Maintenance Areas;
- (b) premiums for all insurance policies that the Association is required or permitted to maintain pursuant to the Bylaws;
- (c) any deficits remaining from the previous fiscal year of the Association;
- (d) costs related to the preparation, review and update of the reserve study and maintenance plan described in Section 6; and
- (e) such other and further costs, expenses, obligations, and liabilities as the Board, in its discretion, may incur for the management, operation, and maintenance of the Property and the Association in accordance with this Declaration and the Bylaws.

5.2.3 Allocation of Regular Assessments. The Regular Assessments shall be allocated equally among all Lots subject to assessment pursuant to Section 5.2.1.

5.3 Special Assessments. In addition to the Regular Assessments, the Association shall have the authority to levy Special Assessments to satisfy any actual or projected deficiency between the expenses of the Association and the amounts realized through Regular Assessments; provided, however, that prior to the Turnover Meeting, any special assessment for capital improvements or additions shall be approved by the Owners holding at least fifty percent (50%) of the total voting power of the Association, determined on the basis of one vote per Lot notwithstanding the special voting rights of Declarant under Section 3.3.2 hereof. Special Assessments shall be allocated equally among all Lots. Special Assessments are payable as the Board may from time to time determine, but no sooner than thirty (30) days after mailing notice thereof to the Owners.

5.4 Limited Assessments. The Association shall have the authority to levy against any Owner a Limited Assessment equal to the costs and expenses incurred by the Association, including legal fees, for corrective action performed pursuant to this Declaration or the Bylaws that is required as a result of the willful or negligent actions or omissions of the Owner or the Owner's tenants, family members, guests, contractors, or invitees, or for a common expense or any part of a common expense that benefits a particular Lot or Lots rather than all the Lots, as determined in the sole discretion of the Board.

5.5 Reserve Assessments. The Association shall have the authority to levy Reserve Assessments necessary to fund the reserve account created under Section 6. The Reserve Assessments for each Lot shall commence upon the sale of the Lot to an Owner other than Declarant. Reserve Assessments shall not be levied against Declarant-owned Lots. The Reserve Assessments shall be allocated equally among all Lots subject to assessment pursuant to this Section 5.5. The amount of the Reserve Assessments shall be based upon the reserve study described in Section 6.2 and other sources of reliable information. The Board may adjust the amount of the Reserve Assessments to reflect changes in current maintenance, repair or replacement costs over time as indicated by the reserve study or update and may provide for other reserve items that the Board, in its discretion, deems appropriate. If, after reviewing the reserve study or reserve study update, the Board determines that the reserve account will be adequately funded for the following year, then the Board may vote to reduce or eliminate Reserve Assessments for that particular year. Additionally, following the Turnover Meeting, on an annual basis, the Board, with the approval of all Owners, may elect not to fund the reserve account for the following year regardless of whether or not the reserve account is fully funded.

5.6 Statement of Account. Upon the request of an Owner or an Owner's agent, for the benefit of a prospective purchaser, the Board shall make and deliver a written statement of any unpaid Assessments against the Owner's Lot through the date specified in the statement and the purchaser in that case shall not be liable for any unpaid assessments against the Lot that are not included in the statement provided by the Board. The Association is not required to provide a statement of outstanding Assessments if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

6. RESERVE ACCOUNT; RESERVE STUDY AND MAINTENANCE PLAN

6.1 Reserve Account. The Association shall maintain a reserve account for the major maintenance, repair and replacement, in whole or in part, of the Common Maintenance Areas and any Improvements located in, on, or under the Common Maintenance Areas for which the Association has maintenance responsibility pursuant to this Declaration, including exterior painting, if the Common Maintenance Areas include any exterior painted surfaces, that will normally require major maintenance, repair or replacement in more than one (1) year and fewer than thirty (30) years. The reserve account need not include those items that could reasonably be funded from the maintenance fund or for which one or more Owners are responsible for maintenance or replacement under this Declaration or the Bylaws. The reserve account shall be funded by the Reserve Assessments. The Reserve Assessments shall be kept separate from other funds of the Association and may be used only for maintenance, repair, and replacement of the

Common Maintenance Areas for which reserves have been established as specified in this Section 6.1. However, after the Turnover Meeting, the Board may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other unexpected increases in expenses. Funds borrowed to meet unexpected increases in expenses under this Section shall be repaid from Regular or Special 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 of the borrowed funds within a reasonable period. Any funds established for any of the purposes mentioned in this Section shall be deemed to be a reserve fund notwithstanding that it may not be so designated by the Board. The amount of the reserve fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner. An Owner may treat his or her outstanding share of the reserve fund as a separate item in a sales contract.

6.2 Reserve Study. The Board shall annually conduct a reserve study, or review and update an existing study, of the Common Maintenance Areas and other reserve items set forth in Section 6.1 to determine the requirements of the reserve fund described in Section 6.1. The reserve study shall: (a) identify all items for which reserves are or will be established; (b) include the estimated remaining useful life of each item as of the date of the reserve study; and (c) include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of the item's useful life.

6.3 Maintenance Plan. The Board shall prepare a maintenance plan for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration, the Bylaws or the Planned Community Act. The maintenance plan shall: (a) describe the maintenance, repair and replacement to be conducted; (b) include a schedule for the maintenance, repair and replacement; (c) be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association; and (d) address issues that include, but are not limited to, warranties and the useful life of the items for which the Association has maintenance, repair and replacement responsibility. The Board shall review and update the maintenance plan as necessary.

7. ENFORCEMENT

7.1 Default in Payment of Assessments; Enforcement of Lien. If an Assessment or any other charge levied under this Declaration or the Bylaws is not paid within ten (10) days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth in Section 7.4 below and, in addition, the Association may exercise any or all of the following remedies as allowed under the Planned Community Act:

7.1.1 Lien. The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.709 shall apply to the Association's lien. The lien

shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS 94.709 through 94.719. The Association, through its duly authorized agents, may bid on the Lot at a foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

7.1.2 Suit or Action. The Association may bring an action to recover a money judgment for unpaid Assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in Section 7.1.1. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

7.1.3 Fines. In addition to any other remedies available to the Association hereunder and subject to the requirements of ORS 94.630(1)(n), the Association shall have the right to impose reasonable fines upon an Owner who violates the Declaration, Bylaws or any rules and regulations of the Association, in the manner and amount the Board deems appropriate in relation to the violation.

7.1.4 Other Remedies. The Association shall have any other remedy available to it by law or in equity.

7.2 Notification of First Mortgagee. Upon the advance written request of the first mortgagee of any Lot, the Board shall notify the first mortgagee of any default in the performance of the terms of this Declaration by the Lot's Owner that is not cured within sixty (60) days.

7.3 Subordination of Lien to First Mortgages. The Association's lien for the Assessments and other charges provided for in this Declaration shall be subordinate to the lien of any first mortgage or deed of trust of record. The sale or transfer of any Lot shall not affect the Association's lien. However, the sale or transfer of a Lot pursuant to the foreclosure of a first mortgage lien or the execution of a deed in lieu of foreclosure of a first mortgage lien shall extinguish the Association's lien with respect to Assessments and other charges that became due prior to such sale or transfer. No sale, foreclosure or transfer of a Lot shall extinguish the personal obligation of the Owner who owned the Lot at the time the Assessment or other charge became due.

7.4 Interest, Expenses and Attorneys' Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate of twelve percent (12%) per annum, or at such other rate as may be established by the Board, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board. If the Association files a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board. If the Association brings any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the defaulting Owner shall pay to the Association all costs and expenses incurred by the Association in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

7.5 Nonexclusiveness and Accumulation of Remedies. An election by the Association to pursue any remedy provided in this Section 7 for a violation of this Declaration shall not prevent the concurrent or subsequent exercise of any other remedy permitted hereunder. The remedies provided in this Declaration are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, that are available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

8. PROPERTY RIGHTS AND EASEMENTS

8.1 Owners' Use and Occupancy. Except as otherwise expressly provided in this Declaration, the Bylaws, the Building Maintenance Agreement, the Plat or any easement, covenant or any other instrument of record, the Owner of a Lot shall be entitled to the exclusive use and benefit of his or her Lot. Declarant and any representative of the Association authorized by the Association may, at any reasonable time and upon reasonable notice to the Owner, enter upon any Lot for the purpose of determining whether or not the use of and/or the Improvements on the Lot are then in compliance with this Declaration, the Bylaws, the Design Guidelines or the rules and regulations of the Association. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of the Lot. Declarant or the Association may grant or assign easements over or with respect to any Lot to municipalities or other utilities performing utility services and to communications companies.

8.2 Owners' Easements of Enjoyment. Subject to any restrictions contained in this Declaration, the Bylaws, the Plat or any easement, covenant or other instrument of record, every Owner and every Owner's family members, tenants, guests, and invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot. Use of the Common Areas shall not result in unreasonable disturbance of the Owners and occupants of the other Lots and shall be subject to the rules and regulations as may be adopted by the Board from time to time pursuant to Section 3.7.

8.3 Title to Common Areas. Declarant shall convey fee title to the Common Areas to the Association free and clear of liens and encumbrances no later than the Turnover Meeting.

8.4 Extent of Owners' Rights. The rights and use of enjoyment in the Property shall be subject to the following easements and all other provisions of this Declaration:

8.4.1 Association's and Owners' Easements. Declarant reserves for itself and grants to the Association and the Board and their duly authorized agents and representatives for the benefit of the Association and all Owners of Lots within the Property the following easements:

(a) An easement under and upon the Common Areas and the unimproved portions of the Lots, for installation and maintenance of power, gas, electric, sewer, water and other utility and communication lines and other utility and communication lines and services installed by Declarant or with the approval of the Board;

(b) An easement under and upon the Common Areas, for construction, maintenance, repair, and use of the Common Areas and any Improvements thereon;

(c) The right to have access to the Common Areas and to all Lots as may be necessary for the installation, maintenance, repair, upkeep or replacement of the Common Maintenance Areas, for determining whether or not the use of and/or the Improvements on a Lot are then in compliance with this Declaration, the Bylaws, the Design Guidelines or the rules and regulations of the Association, or to make emergency repairs thereon necessary for the public safety or to prevent damage to the Common Maintenance Areas or to another Lot or Home. In case of an emergency originating in or threatening any Lot or Home or the Common Maintenance Areas, each Owner hereby grants the right of entry to any person authorized by the Board or the Association, whether or not the Owner is present at the time;

(d) Such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration, the Bylaws and Articles, as the same may be amended or supplemented;

(e) Each Lot shall have an easement over any adjoining Lot as may be required to perform maintenance, repair or reconstruction of the Home located on the benefited Lot. The Owner of the benefited Lot shall be responsible for restoring any damage to the burdened Lot resulting from such use and shall indemnify and hold harmless the owner of the burdened Lot for, from and against any damage, claim, loss or liability resulting from such use; and

(f) Pursuant to ORS 94.733(3), each Lot, Home and all Common Areas shall have an easement over all adjoining Lots, Homes and the Common Areas for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the Property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Lots, Homes and the Common Areas so long as the encroachments shall exist, and except as otherwise provided, the rights and obligations of Owners shall not be altered in any way by the encroachment, nor shall the encroachment be construed to be encumbrances affecting the marketability of title to any Lot, Home or Common Areas.

8.4.2 Declarant's Easements. So long as Declarant owns any Lot, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under and across the Common Areas in order to carry out development, construction, sales and rental activities necessary or convenient for the development of the Property or the sale or rental of Lots and for such other purposes as may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights hereunder.

8.4.3 Utility and Other Municipal Easements. Declarant or the Association may (and, to the extent required by law, shall) grant or assign easements to municipalities or other utilities performing utility services and to communications companies, and the Association may

grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving the Property.

8.4.4 Transfer of the Common Areas. The Association may not sell, transfer or grant a security interest in any portion of the Common Areas unless approved by the Owners holding at least eighty percent (80%) of the total voting power of the Association, including eighty percent (80%) of the votes not held by Declarant, and the Class B Member, if any. A sale, transfer or grant of security interest in any portion of the Common Areas in accordance with this Section 8.4.4 may provide that the Common Areas so conveyed shall be released from any restrictions imposed on such Common Areas by this Declaration or the Bylaws. No such sale, transfer, or grant of security interest may, however, deprive any Lot of such Lot's right of access or support without the written consent of the Owner of such Lot.

8.4.5 Authority to Grant Easements and Other Property Interests in Common Areas. The Association may execute, acknowledge and deliver leases, easements, rights of way, licenses, and other similar interests affecting the Common Areas and consent to vacation of roadways within and adjacent to the Common Areas. Except for those matters described in ORS 94.665(4)(b), which the Board may approve without Owner consent, the granting of any interest pursuant to this Section 8.4.5 must be approved by at least seventy-five percent (75%) of the Owners present at a meeting of the Association or with the consent of at least seventy-five percent (75%) of all Owners solicited by any means the Board determines is reasonable. If a meeting is held to conduct the vote, the meeting notice shall include a statement that the approval of the granting of an interest in the Common Areas will be an item of business on the agenda of the meeting.

8.5 Maintenance and Reconstruction Easements. An easement is hereby reserved in favor of the Association and its successors, assigns, contractors, agents, and employees over and across each Lot, for purposes of accomplishing the repair and restoration of the Common Maintenance Areas pursuant to Section 14. The Lots are also subject to the easements set forth in the Building Maintenance Agreement.

9. GENERAL PROVISIONS FOR AND RESTRICTIONS ON USE OF LOTS

9.1 Each Lot, including the Home and all other Improvements located thereon, shall be maintained in a clean and attractive condition, in good repair, and in such a manner as not to create a fire hazard.

9.2 No Lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling and a private garage or carport. The Home and any other Improvements on a Lot shall comply with all applicable City height restrictions.

9.3 A greenhouse of noncommercial type, or a garden tool shed or other residential accessory buildings or improvements, may be erected, provided that these types of Improvements are of an acceptable architectural design (as determined by the ACC in accordance with Section 12), shall have the exterior painted and, if such structure is separate from the Home, shall be

located within the fenced-in patio or courtyard. Such accessory buildings or improvements shall comply with applicable City requirements. All Homes shall provide a garage or carport sufficient to accommodate a minimum of two (2) vehicles.

9.4 All garbage, trash, cuttings, refuse, garbage and refuse containers, oil tanks, clothes lines or other service facilities, stored trailers, and recreational vehicles (“RV’s”) shall be screened from the view of neighboring Homes and from the Common Areas in a manner approved by the ACC. No RV’s shall be visibly parked on a Lot for more than five (5) continuous days in a calendar month. The intent of this provision is to minimize the negative visual impact caused by the visible parking or storage of RV’s.

9.5 No noxious or offensive activity shall take place on any Lot, nor shall anything be done or placed on any Lot that interferes with or jeopardizes enjoyment of other Lots or within the Property.

9.6 If any tree, shrub, or other vegetation blocks or substantially obscures the view from any Home, the Owner of the Home may petition the ACC for the trimming, topping, or removal of such tree, shrub, or other vegetation. Upon receipt of such petition, the ACC shall investigate the matter and make a determination in writing whether such view is actually blocked or substantially obscured. If the ACC makes such a determination, the Owner of the offending tree, shrub, or other vegetation shall have ten (10) days from the date the ACC made such determination to elect whether the offending tree, shrub, or other vegetation should be trimmed, topped, or entirely removed. If the offending tree, shrub, or other vegetation is not part of the Association Landscaping, then the Owner of the Lot on which the offending tree, shrub, or other vegetation is located shall bear sole responsibility for the entire cost of such trimming, topping, or removal and shall be solely responsible for obtaining any approvals from the City prior to proceeding with topping or removal.

9.7 The maintenance and replacement (if removed) of trees planted in the rear and side yards of all Lots shall be the responsibility of each Owner; provided, that no tree may be removed without the prior approval of the ACC and any required governmental approvals. Customary trimming and pruning in accordance with professional arboriculture industry standards of trees shall be permitted in the rear and side yards of the Lots without prior approval.

9.8 All fences, walls, hedges, landscaping and other Improvements installed on any Lot shall comply with the City vision clearance requirements and height restrictions. Owners who desire a fence are encouraged to use the same or similar material in style as fencing in the areas near the Property. Prior to construction, design of all fences, hedges or walls must be approved in writing by the ACC.

10. GENERAL RESTRICTIONS ON USE OF PROPERTY

10.1 Common Areas. No person shall construct or reconstruct any Improvements, or alter or refinish any Improvements, make any excavation or fill, make any change in the natural or existing surface drainage, or install a utility line in the Common Areas without the prior

written approval of the Board or a duly appointed committee to which the Board has delegated such responsibility and, if required, the City.

10.2 Association Landscaping. No person shall remove, alter, modify or replace any Association Landscaping without the prior written approval of the Board or a duly appointed committee to which the Board has delegated such responsibility and, if required, the City.

11. MAINTENANCE OBLIGATIONS

11.1 Association Maintenance Obligations. The Association shall be responsible for the maintenance, repair, upkeep and replacement of the following Common Maintenance Areas:

(a) Tracts A, B and D, as shown on the Plat, including all including all paved street surfaces, street signs, lighting and other Improvements located thereon, to be maintained as a private streets and subject to all easements described on the Plat;

(b) Tracts C and E, as shown on the Plat, including all walkways, play structures, recreation areas, fencing, landscaping and other Improvements located thereon, to be maintained as open space and subject to all easements described on the Plat;

(c) The Association Landscaping;

(d) All cluster mailboxes serving the Lots; and

(e) Any other area determined by the Board to be in the interest of the Association to maintain.

The Association shall regularly inspect, maintain, repair and keep the Common Maintenance Areas in good condition and provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the proper maintenance of the Common Maintenance Areas. The Association shall perform all maintenance obligations set forth in this Declaration or the Bylaws, any maintenance manual provided by Declarant or the maintenance plan described Section 6 above and shall employ all other commonly accepted maintenance practices intended to prolong the life of the materials and construction of Improvements within the Common Maintenance Areas.

11.2 Owner's Maintenance Obligations. Except for the Association Landscaping, which shall be maintained by the Association, each Owner shall maintain his or her Lot and the Home and other Improvements located thereon in a clean and attractive condition, in good repair and in such a fashion as not to create a hazard of any kind. Such maintenance shall include, without limitation, painting or staining, repair, replacement and care of roofs, gutters, downspouts, surface water drainage, walks, driveways, landscaping and other exterior Improvements. In addition, each Owner shall keep his or her Lot free of trash and other unsightly materials. The provisions of the preceding sentence include the areas between the property line of any Lot and the nearest curb, including sidewalks and street trees unless otherwise included in the Association Landscaping. In addition to the foregoing, each Owner is

subject to and shall at all times comply with the obligations and requirements of the Building Maintenance Agreement.

11.3 Damage or Destruction By Owner. If damage to the Common Maintenance Areas, including any Improvements located thereon, beyond ordinary wear and tear is directly attributable to an Owner or the family members, invitees, licensee, or guest of an Owner, then that Owner shall be responsible for the cost of repairing the damage and the Association may levy a Limited Assessment against the Owner for the repair cost.

12. ARCHITECTURAL CONTROL COMMITTEE

12.1 Creation of Committee. The ACC with the powers and authority described in this Section 12 shall be created as a committee of the Association. The ACC shall have three (3) members, who shall be appointed by Declarant until the Turnover Meeting, after which the ACC members shall be appointed by the Board and shall serve at the pleasure of the Board. Following the Turnover Meeting, Members of the ACC must be Owners. Board members may also serve as ACC members. Appointed members of the ACC shall remain in office until new members are appointed by the Board unless they sooner resign or are disqualified.

12.2 Operations. The members of the ACC shall elect a chairperson, who shall conduct all meetings and shall provide for reasonable notice to each member of the ACC prior to any meeting. The notice shall set forth the time and place of the meeting. Notice may be waived by any member.

12.3 Majority Action. The affirmative vote of a majority of the members of the ACC shall govern its actions and constitute the act of the ACC. A quorum of the ACC shall consist of a majority of the ACC members. The ACC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

12.4 Review Procedures. If the ACC fails to provide written approval or disapproval of plans and specifications within thirty (30) days after such complete plans and specifications have been submitted, approval of the ACC shall not be required and the related covenants shall be deemed to have been satisfied, unless within twenty (20) days of receipt of the complete plans and specifications, the ACC notifies the Owner of the ACC's intention to extend the approval period by an additional fifteen (15) days to a total of forty-five (45) days after receipt of complete plans and specifications. The ACC shall, from time to time, adopt application forms and rules specifying those requirements necessary to constitute a complete application.

12.5 Approval of Plans by ACC. No Home, building, garage, structure, or other Improvement of any kind or nature, including, without limitation, landscaping, shall be commenced, erected, placed, or altered on any Lot until the construction plans and specifications, and a plan showing the nature, shape, height, materials, and colors, together with detailed plans showing the proposed location of the same on the particular building site and proposed landscaping has been submitted to and approved in writing by the ACC. All such Improvements and alterations shall be in conformance with the Design Guidelines and all other applicable governmental laws, ordinances, conditions of approval, rules and regulations. To the extent that

the requirements of any applicable governmental law, ordinance, rules or regulation conflict with the Design Guidelines, the more restrictive standard shall apply. Complete plans and specifications for approval by the ACC must include all material required by the rules of the ACC as provided in Section 12.4 above. In no case shall any plans and specifications be accepted for approval that are inconsistent with the requirements of Section 9.2. The ACC may approve or disapprove plans and specifications as submitted or may approve such plans and specifications with specific conditions to such approval.

12.6 Damages Inadequate. Damages are hereby declared to be inadequate compensation for any breach of the covenants, conditions, and restrictions imposed by this Declaration. Declarant, the ACC, or any Owner may, by appropriate proceedings, enjoin, abate, and remedy any such breach and the continuance

12.7 Nuisance. The result of every act of omission or commission or the violation thereof, whether such covenants, conditions, and restrictions are violated in whole or in part, shall constitute a nuisance, and every remedy allowed by law or equity against such nuisance, either public or private, shall be applicable against every such result and may be exercised by Declarant, the ACC, or by any Owner, and may be prohibited or enjoined.

12.8 Non-Waiver. The provisions contained in this Declaration shall inure to the benefit of and be enforceable by Declarant, the ACC, or any Owner, and each of their legal representatives, heirs, successors, and assigns. Failure by Declarant, the ACC or any Owner or their legal representatives, heirs, successors, and assigns to enforce any of the provisions contained herein shall in no event be deemed a waiver of the right to do so thereafter.

12.9 Estoppel Certificate. Within fifteen (15) business days after an Owner delivers a written request to the ACC, the ACC shall provide the Owner with an estoppel certificate executed by a member of the ACC. The estoppel certificate shall state whether or not the Improvements located on the Lot owned by the requesting Owner comply with the provisions of this Declaration. If the estoppel certificate indicates that the Improvements are not in compliance, then it shall identify the specific non-conforming Improvements and set forth with particularity the nature of the noncompliance. Any purchaser in due course from the Owner, and any mortgagee, beneficiary, or secured party having any interest in the Lot and any associated Improvements, may rely on the estoppel certificate with respect to the matters set forth therein, and the estoppel certificate shall be conclusive as between the ACC, all Owners, and such purchaser, mortgagee, beneficiary, or secured party.

12.10 Defenses. The issuance of an estoppel certificate as described in Section 12.9 shall constitute an absolute defense to claims brought against an Owner pursuant to this Section 12 with respect to matters within the purview of the ACC, where the Improvement at issue was in existence at the time of the issuance of the estoppel certificate.

12.11 Liability. The ACC shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the ACC nor any individual ACC member shall be liable to any person for any official act of the ACC in connection with submitted plans and specifications, except to the extent the ACC or any individual ACC member acted with

malice or wrongful intent. Approval by the ACC does not necessarily assure approval by any governmental authority. Notwithstanding that the ACC has approved plans and specifications, neither the ACC nor any of its members shall be responsible or liable to any Owner, occupant, builder, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval. Review or analysis of structural, geophysical, engineering, or other similar considerations shall be outside the scope of the ACC's review. Neither the Board, the ACC, or any agent thereof, nor Declarant or any of its members, managers, employees, agents, or consultants, shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. The Association shall indemnify, hold harmless, and defend the ACC and its members in any suit or proceeding which may arise by reason of any of the ACC's decisions, provided that the ACC members acted in good faith, within the scope of their authority, and in a manner reasonably believed to be in the best interest of the Association and its Members. The Association shall use reasonable efforts to procure errors and omissions insurance coverage with respect to the ACC members, in accordance with the provisions of the Bylaws.

12.12 Activities of Declarant. This Section 12 shall not apply to the activities of Declarant or its affiliates.

13. DESIGN GUIDELINES

13.1 Paint Requirement. The exterior of any Home erected on a Lot shall be fully completed and painted within one (1) year after construction of the Home has commenced.

13.2 Designs, Materials, and Construction Quality. The external designs and materials of all Homes shall harmonize with each other and shall be reasonably harmonious with those employed on the Homes on other Lots. All auxiliary buildings on a Lot shall be of the same general design and materials as the Home on the Lot. The primary exterior color tone of all buildings shall blend with the natural environment. Bright, unnatural exterior colors are prohibited, except for limited use as trim and accent panels. All Homes, auxiliary buildings, fences, retaining walls, and other Improvements shall be constructed in a good, quality manner in accordance with locally accepted professional building practices.

13.3 Home Size. The ground floor area of each Home, exclusive of one story open porches, garages, and carports, shall not be less than that required by the City Building Code.

13.4 Foundations. All structures erected shall have full, concrete masonry or concrete or wooden piers and piling foundations as approved by the City and designed to accommodate the surrounding terrain. Foundations and exterior walls of all buildings shall be finished in a suitable and customary manner for each such type of building.

13.5 Height Restrictions. All Homes and other Improvements constructed on the Lots shall comply with the applicable City height restrictions. Any height adjustment granted by the City shall be approved by the ACC, unless the ACC determines that the building will unreasonably restrict the view of neighboring Lots.

13.6 Environmental Conditions. Owners shall insure that design and construction of structures in the Property shall properly withstand environmental conditions, including the protection of the flora on the Property.

13.7 Factory Built Homes. All Homes shall be constructed on the Lots. Mobile homes, factory built homes, or manufactured homes shall not be permitted. Notwithstanding the foregoing, panels constructed off-site but assembled on the Lot shall be permitted.

13.8 Additional Design Guidelines. The ACC shall have the authority, but not the obligation, to promulgate and issue, and thereafter to amend from time to time, additional design guidelines supplementing and/or interpreting, but not contradicting, the design guidelines set forth in this Section 13 or elsewhere in this Declaration. Such guidelines shall be supplied in writing to all Owners and shall be fully binding upon all parties as if set forth in this Declaration and shall be applied by the ACC in reviewing and approving or denying proposed improvements or modifications. The ACC shall take into account any proposed building site envelope in order to minimize any impact on neighboring Lots and shall have authority to establish and modify guidelines as necessary or convenient to further this purpose.

13.9 Activities of Declarant. This Section 13 shall not apply to the activities of Declarant or its affiliates.

14. CASUALTY AND CONDEMNATION

14.1 Casualty. The Owner of each Home shall repair, reconstruct, and rebuild the damaged or destroyed portions of his or her Home to substantially the same condition that existed prior to the damage or destruction. In the event of damage to or destruction of the Common Areas or Association Landscaping, the Association shall repair and restore the damaged portion of the Common Areas, unless the holders of at least 75% of the Class A Member voting power of the Association and the Class B Member, if any, agree that the damaged or destroyed portions shall not be repaired or restored. All repair, reconstruction, rebuilding, or restoration shall begin within six (6) months following the damage or destruction and shall be diligently pursued to completion within twelve (12) months following the damage or destruction, unless work is delayed by causes beyond the reasonable control of the Owner or the Association, as the case may be. If the proceeds of the insurance policies held by the Association are insufficient to fund the full cost of repair and/or restoration of the Common Areas or Association Landscaping, the difference between the amount of such proceeds and such cost shall be charged to all Owners by means of a Special Assessment.

14.2 Condemnation. If any part of the Common Areas are taken by any authority having the power of condemnation or eminent domain (or shall be sold under threat of condemnation), each Owner shall be entitled to notice of such event. The Association shall represent the Owners in negotiations with the condemning authority. The condemnation award shall be applied first to restoration of the Common Areas not taken (unless holders of at least 75% of the Class A Member voting power of the Association and the Class B Member, if any, agree that the remaining Common Areas shall not be restored) and then to such other purposes as the Board may determine in its discretion (including payment to the Owners).

15. SPECIAL DECLARANT RIGHTS

15.1 Declarant shall have the following Special Declarant Rights:

15.1.1 Responsibility and control of the ACC and the Association until the Turnover Meeting, including the right to appoint, remove and replace members of the Board and the ACC.

15.1.2 The right to maintain a sales and management office on the Property.

15.1.3 The right to reserve easement and access rights across the Common Areas for use in connection with future development.

15.1.4 The right to construct Improvements in the Common Areas, whether or not such Improvements are described in this Declaration, provided that Declarant has no obligation to construct any such Improvements.

15.1.5 The right to approve amendments to this Declaration and the Bylaws prior to the Turnover Meeting and for a period of ten (10) years thereafter regardless of whether Declarant still owns a Lot. No such amendment shall be effective unless so approved in writing by Declarant.

15.1.6 The right to approve Special Assessments for capital improvements or additions for so long as Declarant owns a Lot. No such Special Assessment shall be levied against Declarant unless so approved in writing by Declarant.

15.1.7 The right to receive notice of and to attend all Owner meetings and Board meetings for a period of ten (10) years following the Turnover Meeting regardless of whether Declarant still owns a Lot. Meeting notices to Declarant shall be given in the same manner as notices to the Owners; provided, however, that any notice of a Board meeting that is posted at the Property pursuant to the Bylaws must also be given to Declarant by mail or any other delivery method described in Section 17.4 within the time period prescribed in the Bylaws.

15.1.8 The right to review and make copies of all inspection, maintenance and other records of the Association regardless of whether the Turnover Meeting has occurred or Declarant still owns a Lot.

15.1.9 The rights of Declarant under the Planned Community Act, including but not limited to those under ORS 94.550(21), and all other rights reserved for Declarant elsewhere in this Declaration or in the Bylaws.

16. DISPUTE RESOLUTION.

16.1 Required Procedure. To the fullest extent allowed by law, all claims, controversies, or disputes, whether they are statutory, contractual, tort claims, and/or counterclaims between or among Declarant, Declarant's successors and assigns, the Association, and/or Owner(s) (collectively, the "Parties" and individually, a "Party") which arise out of or are

related to the Property, the Lots, the Homes, the Planned Community Act, this Declaration, the Bylaws, the Articles, the Design Guidelines or the rules and regulations of the Association, or which relate to the interpretation or breach of the Planned Community Act, this Declaration or the Bylaws, the Articles, the Design Guidelines or the rules and regulations of the Association (collectively referred to as "Claims") shall be resolved in accordance with the procedures specified herein. Except as otherwise required by the Planned Community Act, the following matters are excluded from this dispute resolution clause and do not constitute Claims: (i) judicial or non-judicial foreclosure or any other action or proceeding to enforce assessments, fines, interest or a trust deed, mortgage, Association lien, or land sale contract; (ii) a forcible entry and detainer action; (iii) actions by the Association or any Owner related to removal of a structure or other condition that violates this Declaration, the Bylaws, the Design Guidelines or any rules and regulations of the Association; (iv) actions for the appointment of a receiver; (v) provisional remedies such as injunctions or the filing of a lis pendens; or (vi) the filing or enforcement of a mechanic's lien. The filing of a notice of pending action (lis pendens) or the application to any court having jurisdiction thereof for the issuance of any provisional process remedy described in Rules 79 through 85 of the Oregon Rules of Civil Procedure (or corresponding federal statutory remedies), including a restraining order, attachment, or appointment of receiver, shall not constitute a waiver of the right to mediate or arbitrate under this Section, nor shall it constitute a breach of the duty to mediate or arbitrate. The proceeds resulting from the exercise of any such remedy shall be held by the Party obtaining such proceeds for disposition as may be determined by an agreement of the Parties pursuant to a mediation or by the arbitration award.

16.2 Negotiated Resolution. The Parties will seek a fair and prompt negotiated resolution of Claims and shall meet at least once to discuss and seek to resolve such Claims, but if this is not successful, all Claims shall be resolved by mediation, in small claims court, or by binding arbitration as set forth in Sections 16.3, 16.4 or 16.5, as applicable.

16.3 Mediation. Prior to mediation of any Claim, the Parties shall endeavor to resolve disputes through the process set forth in Section 16.2 above. All Claims that are not resolved by such process shall be subject to mediation as a condition precedent to arbitration or the filing of a small claims complaint. The request for mediation may be made concurrently with the filing of a demand for arbitration as set forth in Section 16.5 below, but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties. All mediation shall be in Washington County, Oregon with any dispute resolution program available that is in substantial compliance with the standards and guidelines adopted under ORS 36.175, as it may be amended. The foregoing requirement does not apply to circumstances in which irreparable harm to a Party will occur due to delay or litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

16.4 Small Claims. All Claims that have not been resolved by mediation and which are within the jurisdiction of the Small Claims Department of the Circuit Court of the State of Oregon shall be brought and determined there, and all Parties shall be deemed to have waived their right to a jury trial with respect to such Claims.

16.5 Arbitration. Prior to arbitration of any Claim, the Parties shall endeavor to resolve disputes through the processes set forth in Section 16.2, 16.3 and 16.4 above, as applicable. All Claims that have not been resolved by such processes shall be resolved by binding arbitration. Such arbitration shall be conducted by and pursuant to the then effective arbitration rules of Arbitration Service of Portland, Inc., or another reputable arbitration service selected by Declarant. If Declarant is not a Party to such dispute, the arbitration service shall be selected by the Board. Any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

16.6 No Attorneys' Fees. Unless otherwise specifically provided for in this Declaration, the Bylaws or the Planned Community Act, no party in the arbitration, mediation or other proceeding shall be entitled to recover costs or attorneys' fees in connection therewith. To the fullest extent allowed by law and except for Claims in an amount less than or equal to \$7,500, no Claim shall be initiated by the Association without approval from the Owners holding seventy-five percent (75%) of the total voting power of the Association. The foregoing vote requirement shall not be required to institute or respond to the following: (i) actions to collect delinquent Assessments, fines or other charges under the Declaration, these Bylaws or any rules and regulations adopted by the Association; (ii) actions initiated by the Association prior to the Turnover Meeting; (iii) actions challenging ad valorem taxation or condemnation proceedings; (iv) actions initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association; (v) the defense of claims filed against the Association or the assertion of counterclaims in proceedings instituted against it (except for non-mandatory counterclaims); (vi) actions by the Association to appoint a receiver; or (vii) actions to summarily abate, enjoin and remove a structure or condition that violates this Declaration, the Bylaws, the Design Guidelines or any rules and regulations of the Association.

16.7 Confidentiality. The Parties shall keep all discussions of disputes, all settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties unless compelled to do so by an order of a court of competent jurisdiction. The Parties agree that if a Party breaches its confidentiality obligation then the other Party or Parties to the dispute shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance and each Party hereby waives any claim or defense that the other Party has an adequate remedy at law for any such breach and the Parties agree that the aggrieved Party shall not be required to post any bond or other security in connection with any such equitable relief.

17. MISCELLANEOUS

17.1 Term. The covenants, conditions and restrictions of this Declaration shall run for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless amended, modified or terminated by a vote of the Owners holding at least seventy-five percent (75%) of the total voting power of the Association.

17.2 Amendment and Repeal.

17.2.1 This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners holding at least seventy-five percent (75%) of the total voting power of the Association and the written consent of Declarant prior to the Turnover Meeting and for a period of ten (10) years thereafter.

17.2.2 Upon approval of an amendment as provided herein, the president and secretary of the Association shall execute an instrument amending this Declaration and certifying that the amendment was adopted in accordance with this Declaration and ORS 94.590, which certification shall be properly acknowledged in the manner of acknowledgment of deeds, and the Board, or other duly appointed and authorized persons, shall record the instrument amending this Declaration.

17.2.3 In no event shall an amendment to this Declaration create, limit or diminish any Special Declarant Rights without Declarant's written consent. Additionally, no amendment to this Declaration shall change the boundaries of a Lot, any uses to which a Lot is restricted, the method for determining liability for common expenses, the method for determining the right to common profits or the method of determining voting rights unless the Owners of the affected Lots unanimously consent to the amendment.

17.3 Regulatory Amendments. Notwithstanding the provisions of Section 17.2, until the Turnover Meeting, Declarant shall have the right to amend this Declaration or the Bylaws without any other Owner approval in order to comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community.

17.4 Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered by: (i) messenger service (or hand delivery); (ii) overnight courier service; (iii) regular U.S. Mail; or (iv) electronic mail, facsimile transmission or any other form of electronic communication acceptable to the Board and permissible under the Planned Community Act. Notices delivered by messenger service (or hand delivery), overnight courier service or regular U.S. Mail shall be sent to each Member's mailing address last appearing on the books of the Association. Notices delivered by facsimile or email shall be sent to the Member's email address or facsimile number last appearing on the books of the Association. Notwithstanding the foregoing, electronic mail, facsimile or other form of electronic communication may not be used to give notice of: (i) failure to pay an assessment; (ii) foreclosure of an Association lien under ORS 94.709; or (iii) an action the Association may take against a Member. Additionally, a Member may decline to receive notice by electronic mail, facsimile or other form of electronic communication by giving written notice thereof to the

Board. Notices shall be deemed given on the date the notices are sent in accordance with the procedures outlined herein.

17.5 Right of Enforcement. Except as otherwise provided herein, the Association and each Owner of a Lot shall have the right to enforce any or all of the provisions of this Declaration.

17.6 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

17.7 Joint Owners. If two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of the co-Owners shall constitute the act or consent of the entire ownership interest; provided, however, that if the co-Owners disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any co-Owner may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

17.8 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for ensuring such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

17.9 Non-Waiver. The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right to subsequently enforce such provision.

17.10 Restrictions Construed Together. All of the provisions of this Declaration shall be liberally construed together to promote and effectuate the general plan and scheme of the Property.

17.11 Restrictions Severable. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

17.12 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

17.13 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first written above.

DECLARANT: RED LEAF COTTAGES, L.L.C., a Washington limited liability company

By: PNW HOME BUILDERS SOUTH, L.L.C., a Washington limited liability company
Its: Manager

By: PNW HOME BUILDERS, L.L.C., a Washington limited liability company
Its: Sole Member

By: PNW HOME BUILDERS GROUP, INC., a Washington corporation
Its: Manager

By: Fred Gast
Fred Gast
Its: Assistant Vice President

STATE OF OREGON)
County of Washington) ss.

The foregoing instrument was acknowledged before me on this 24th day of December 2010, by Fred Gast, who is the Assistant Vice President of PNW Home Builders Group, Inc., the Manager of PNW Home Builders, L.L.C., the Sole Member of PNW Home Builders South, L.L.C., the Manager of Red Leaf Cottages, L.L.C., a Washington limited liability company, on behalf of said limited liability company.



Toni M. Stanhope
Notary Public for Oregon
My Commission Expires: OCTOBER 03, 2013

EXHIBIT A

Legal Description of Property

Lots 1 through 54, inclusive, and Tracts A through E, inclusive, of THE COTTAGES AT AUTUMN CREEK, City of Hillsboro, Washington County, Oregon according to the Plat of THE COTTAGES AT AUTUMN CREEK being recorded in the official records of Washington County, Oregon concurrently herewith.

EXHIBIT B

Legal Description of Common Areas

Tracts A, B, C, D and E of THE COTTAGES AT AUTUMN CREEK, City of Hillsboro, Washington County, Oregon according to the Plat of THE COTTAGES AT AUTUMN CREEK being recorded in the official records of Washington County, Oregon concurrently herewith.

EXHIBIT C

Building Maintenance Agreement

(See Attached)

After Recording Return To:
Mike Barnes
Building Department
City of Hillsboro
150 E. Main Street, Fourth Floor
Hillsboro, OR 97123

**DECLARATION OF EASEMENTS AND
BUILDING MAINTENANCE AGREEMENT**

THIS DECLARATION OF EASEMENTS AND BUILDING MAINTENANCE AGREEMENT (this “**Declaration**”) is made and entered into this 15 day of December 2010 by Red Leaf Cottages, L.L.C., a Washington limited liability company (“**Declarant**”).

RECITALS

A. Declarant owns the real property located in the City of Hillsboro, Washington County, Oregon legally described as Lots 1 through 54, inclusive, The Cottages at Autumn Creek, according to the Plat of The Cottages at Autumn Creek recorded in the official records of Washington County, Oregon on December 29, 2010 as Document No. 2010-104905 (the “**Property**”).

B. The Property is a planned community known as The Cottages at Autumn Creek and subject to the Declaration of Covenants, Conditions and Restrictions for The Cottages at Autumn Creek, which re being recorded concurrently herewith (the “**CC&Rs**”).

C. Declarant intends to construct duplexes on the Property.

D. Declarant desires to execute and record this Declaration to establish certain easements necessary for the construction, ownership, use, maintenance, repair, and replacement of the duplexes on the Property and to confirm the respective obligations of the individual owners with respect to the maintenance, repair and replacement of the duplexes.

DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, covenants, conditions, restrictions and charges that, subject to the terms of this Declaration, shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property, or any part thereof, and shall inure to the benefit of each owner thereof.

**ARTICLE 1
DEFINITIONS**

1.1 “**Association**” means The Cottages at Autumn Creek Homeowners Association.

1.2 “**Declaration**” means this Declaration of Easements and Building Maintenance Agreement as the same may be amended from time to time in accordance with the provisions hereof.

1.3 “**Building Structure**” means each building structure situated on the Lots and containing two (2) Homes. Each Building Structure shall be deemed to include all insurable fixtures and improvements included within each Home, including, without limitation, all built-in appliances, but excluding, without limitation, floor, wall and window coverings, stand alone appliances, Owner upgrades or improvements to the Home and all personal property.

1.4 “**Common Home Exteriors**” mean those portions of the exterior of each Building Structure for which the Owners of the Homes located within the Building Structure are jointly responsible for the maintenance, repair and replacement, including all siding, trim, roofing, rain gutters, down spouts, exterior portions of chimneys (if any), flashing and foundation drainage systems as further described in Section 3.1 below.

1.5 “**Home**” means those portions of each Building Structure situated on the Lots designed and intended for use and occupancy as a residence by a single family or household, including the garage portions of the Building Structure. Each Home shall also include the wallboard attached to the interior of the Party Wall which divides the two Homes comprising the Building Structure.

1.6 “**Lots**” mean Lots 1 through 54, inclusive, as depicted on the Plat. “**Lot**” means any one of the Lots.

1.7 “**Occupant**” means the occupant of a Home, whether the Owner, lessee or any other person authorized by the Owner to occupy the Home.

1.8 “**Owner**” means the record Owner, whether one or more persons or entities, of the fee simple title to a Lot or a vendee under a recorded land sale contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest, a person holding only a security interest in a Lot or a vendor under a recorded land sale contract who has surrendered possession.

1.9 “**Party Wall**” means the wall separating two (2) Homes as further described in Section 2.1 below.

1.10 “**Plat**” means the Plat of The Cottages at Autumn Creek, which was recorded in the official records of Washington County, Oregon on December 29, 2010 as Document No. 2010- 104905.

ARTICLE 2 PARTY WALLS

2.1 **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of a Building Structure which divides the Homes, and which is placed on the dividing line between the Lots, shall constitute a Party Wall. A Party Wall shall consist of the studs, blocking, insulation, cement and airspace lying between the wallboard of one Home and the wallboard of the other Home in a Building Structure. A Party Wall does not consist of the wallboard, paneling, sheetrock, tiles, wallpaper and paint on the interior of the Party Wall which shall be considered part of the Home and the maintenance of which shall be the sole responsibility of the Owner of the Home. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls shall apply to each Party Wall.

2.2 **Repair and Replacement.** In the event repair or replacement of a Party Wall or a common foundation of a Building Structure should become necessary or appropriate, then the Owners of the Homes within the Building Structure shall be jointly responsible for the repair and/or replacement and shall share equally in the expense of the repair and/or replacement. If an Owner of a Home determines that repair or replacement of a Party Wall or a common foundation of the Building Structure in which the Owner's Home is located is necessary or appropriate, then the Owner shall notify the Owner of the other Home within the Building Structure of the need to perform the repair or replacement. Upon agreement of the Owners of both Homes within the Building Structure that the repair or replacement is necessary or appropriate, both Owners shall jointly cause the work to be performed and each Owner shall pay an equal portion of the expense of the work. If the Owner of one Home within the Building Structure determines repair or replacement of a Party Wall or a common foundation of the Building Structure in which the Home is located is necessary or appropriate and the Owner of the other Home within the Building Structure does not concur with such determination, then both Owners shall mutually agree upon and retain a professional engineer licensed in the State of Oregon having at least five (5) years experience in such matters to inspect the Party Wall or common foundation at issue and to make a determination as to whether the repair or replacement is required. The determination of the engineer shall be binding on both Owners and all expenses and fees of the engineer and the cost of any repair or replacement work required to be performed, if any, shall be borne equally by both Owners. If the Owners of the Homes within the affected Building Structure cannot agree upon a professional engineer having the required qualifications within a thirty (30) day period, then either Owner may make application to the Architectural Control Committee of the Association, which shall select an engineer having the requisite qualifications. If an Owner of a Home within the affected Building Structure fails to contribute to the payment of the fees and expenses of the designated engineer or the cost of the required repair or replacement (if any) within thirty (30) days after written demand is made by the Owner of the other Home within the affected Building Structure, then the provisions of Article 5 of this Declaration shall apply.

2.3 **Destruction by Fire or Other Casualty.** If a Party Wall or a common foundation of a Building Structure is destroyed or damaged by fire or other casualty, the provisions of Article 8 of this Declaration shall apply with regard to the reconstruction of the Party Wall or common foundation.

2.4 **Structural Integrity of Building Structures.** No Owner shall alter, tamper, modify, or affect the structural elements of a Building Structure necessary for lateral stability, including, without limitation, horizontal or vertical strapping, foundation tie downs, and plywood sheathing, without (i) the prior analysis and approval of a structural engineer registered and licensed in the State of Oregon, (ii) the prior written approval of the Owner of the other Home within the Building Structure of the plans and specifications prepared by the Owner performing the work or the Owner's professional, and (iii) a permit issued by the local jurisdictional authority.

ARTICLE 3 COMMON HOME EXTERIORS

3.1 **Maintenance and Repair of Common Home Exteriors.** Each Owner shall provide reasonable notice to the Owner of the other Home within the same Building Structure prior to performing any maintenance, repairs, alterations or other work on the Common Home Exteriors. All such work shall be agreed to by the Owners of both Homes within the Building Structure prior to the commencement of the work and shall conform to the terms, conditions and provisions of the CC&Rs and the rules and regulations of the Architectural Control Committee of the Association. Maintenance of the Common Home Exteriors shall include (a) the painting, staining, maintenance, repair and replacement of all exterior siding and trim of the Building Structure and (b) the maintenance, repair and replacement of all roofs, roof overhangs, rain gutters, down spouts, flashing and common foundation drainage systems of the Building Structure. The roof of an entire Building Structure must be replaced at one time and the cost of the roof replacement shall be shared equally by the Owners of the Homes within the Building Structure.

3.2 **Right to Maintain, Repair or Reconstruct Without Consent.** Any painting, staining, repair, reconstruction or other maintenance of the Common Home Exteriors which reasonably needs to be done and the Owner of the other Home within the Building Structure refuses to consent to the required work, may be completed by the Owner of the other Home within the Building Structure with the cost apportioned between both Owners as set forth in Article 5 below.

3.3 **Exclusions From Common Home Exteriors.** The Owners' joint responsibility for the maintenance, repair and replacement of the Common Home Exteriors described in Section 3.1 above specifically does not include the following duties which are the sole responsibility of each Owner with respect to that portion of a Building Structure situated on the Owner's Lot and shall be performed at each Owner's sole cost and expense: maintaining, repairing, replacing, restoring and cleaning of (a) windows, window screens, window casements, sashes and frames; (b) exterior doors, garage doors, door frames and door screens; (c) patios, decks, sidewalks and driveways that exclusively serve the Owner's Home; (d) electrical and mechanical doorbells, lights and door knockers and other similar hardware; and (e) air conditioning and heating equipment and devices to the extent that such equipment and devices (including heat pumps) exclusively serve the Owner's Home. Each Owner shall also be responsible for maintaining, repairing and replacing the interiors of their respective Homes, including without limitation, maintaining, repairing, replacing electrical wiring and fixtures, plumbing pipes and conduits, all fixtures and appliances (whether built-in or free-standing), air

conditioning, heating, sewage disposal and interior fire protection systems and all amenities and hardware located within the interiors of the Homes. An Owner may perform the work described in this Section 3.3 without notice to the other Owner and without the consent of the other Owner provided that all such work conforms to the terms, conditions and provisions of the CC&Rs and the rules and regulations of the Architectural Control Committee of the Association and is performed in such a manner as to maintain the harmony of the exterior design of the Building Structure in which the Home is located and the overall community in general.

ARTICLE 4 EASEMENTS

4.1 **Utility Easements.** An easement is hereby granted and reserved in favor of each Owner and his or her successors, assigns, contractors and agents through the Party Wall separating the Owner's Home from another Home for the purpose of installing, repairing, replacing or maintaining utility lines, wires, pipes and conduits. An easement is also hereby granted and reserved in favor of each Owner and his or her successors, assigns, contractors and agents over, across and under those portions of each Lot not occupied by a Building Structure for the installation, maintenance, repair, replacement and use of power, gas, electric, water and other utility and communication lines and for meters measuring such services serving the Owner's Home and installed by Declarant or with the approval of the Architectural Control Committee of the Association.

4.2 **Maintenance Easements.** An easement is hereby granted and reserved in favor of each Owner and his or her respective successors, assigns, contractors and agents over, across, upon and under each adjoining Lot and the exterior portions of the Building Structure in which an Owner's Home is located as necessary or appropriate for purposes of accomplishing the maintenance, repair and replacement obligations described in this Declaration.

4.3 **Encroachments.** If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any improvements located on a Lot, an easement for the encroachment shall exist. An easement shall continue for the purpose of maintaining the encroachment so long as the encroachment exists. Nothing in this Section shall relieve an Owner from liability in the case of an Owner's willful misconduct.

ARTICLE 5 COVENANTS FOR REPAIR AND MAINTENANCE COSTS AND EXPENSES

5.1 **Sharing of Repair and Maintenance Costs and Expenses.** The cost of maintenance, repair and replacement of a Party Wall or a common foundation of each Building Structure shall be shared equally by the Owners of the Homes that are divided by the Party Wall or that share the common foundation. The cost of the roof replacement for each Building Structure shall be shared equally by the Owners of the Homes located within the Building Structure. The cost of any other maintenance, repair or replacement work to the Common Home Exteriors of each Building Structure shall be apportioned between the Owners of the Homes located within the Building Structure in proportion to the benefit to their Homes. There shall be

a rebuttable presumption that all such maintenance, repair and replacement work (including painting, staining and roof repairs) benefits the Homes equally.

5.2 Creation of the Lien and Personal Obligation for Expenses. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay his or her share of all costs and expenses required to be paid under this Declaration, including the cost of repair and maintenance of the Party Wall, common foundations and Common Home Exteriors. If an Owner of a Lot fails to pay his or her share of the required costs and expenses within fifteen (15) days after written demand for reimbursement by the other Owner who paid more than his or her share of the costs, then the reimbursement amount shall become an automatic charge and lien against the non-paying Owner's Lot, which may be foreclosed in the manner provided in Chapter 88 of the Oregon Revised Statutes (or any successor statute) for the foreclosure of liens generally. In addition, any unreimbursed amounts shall bear interest at the rate of twelve percent (12%) per annum from the date of written demand for reimbursement until paid in full. The Owner of the Lot upon which a lien is imposed shall also be personally liable for any deficiency remaining unpaid after any foreclosure of the foregoing lien. Additionally, either Owner may bring an action at law against the Owner personally obligated to pay the same. No such action or a judgment entered therein shall be a waiver of the lien rights of an Owner. No Owner may waive or otherwise claim an exemption from liability for the maintenance costs and expenses provided for herein by non-use of a Party Wall or abandonment of his or her Lot or Home.

5.3 Damage Caused By Owner. Notwithstanding any other provision of this Declaration, an Owner shall bear the whole cost of repairing any damage to a Party Wall, common foundation, Common Home Exterior or any other component or element of a Building Structure to the extent that such damage is caused by the negligent or willful act of the Owner, the Occupant of the Owner's Home, or any of their respective family members, invitees, and/or guests.

5.4 Right to Contribution Runs With Land. This Declaration shall continue in perpetuity and the right of any Owner to contribution from any other Owner under this Declaration, together with the obligations of such other Owners to contribute to the costs and expenses related to the maintenance and repair of a Party Wall, common foundation and/or Common Home Exteriors, or as otherwise required by this Declaration, shall be appurtenant to the land and shall pass to each Owner's successors in title.

ARTICLE 6 CONDEMNATION

If all or any portion of a Building Structure, including without limitation a Party Wall, is appropriated as the result of condemnation or threat or imminence thereof, the following rules and guidelines shall apply:

6.1 Allocation of Condemnation Award. Any condemnation award received by the Owners with respect to the Building Structure shall be allocated to the Owners in proportion to the diminution in fair market value incurred by them with respect to their respective Lots and Homes as a result of said condemnation.

6.2 **Repair and Restoration.** Any such condemnation award shall be used to repair and restore the Building Structure and/or Lot if such restoration or repair is feasible.

6.3 **Retention of Rights.** No provision of this Article shall be construed as negating the right of an individual Owner to pursue such incidental relief as the law may provide as a result of the condemnation of the Building Structure in which the Owner's Home is located or any portion thereof, and/or the Owner's Lot or any portion thereof.

ARTICLE 7 INSURANCE OF HOMES

Each Owner of a Lot shall purchase and maintain casualty insurance sufficient to cover any loss relating to the Owner's Lot and the Home thereon, including extended coverage for full replacement value of such property. Each Owner shall also purchase and maintain casualty insurance covering his or her interest in all Party Walls and common foundations. Copies of such policies or other appropriate evidence of such insurance coverage shall be forwarded to the Owner of the other Home located in the same Building Structure at least ten (10) days before the expiration of all previous insurance coverage or otherwise upon request. If an Owner fails to furnish a copy of an appropriate insurance policy or evidence thereof within the time required, the other Owner may procure such policy in his or her own or both names and charge the defaulting Owner the cost of the premium.

ARTICLE 8 DAMAGE AND DESTRUCTION

8.1 **Insurance and Proceeds Sufficient to Cover Loss.** In case of fire, casualty or any other damage or destruction to a Building Structure, the insurance proceeds from the policies of the Owners of the Homes within the Building Structure, if sufficient to reconstruct the Building Structure, shall be applied to such reconstruction.

8.2 **Insurance Proceeds Insufficient to Cover Loss.** Subject to the other provisions of this Section, if available insurance proceeds are insufficient to reconstruct or repair the damaged or destroyed Building Structure, it shall, nonetheless, be promptly repaired. Any insurance policies of the Owners covered by such policies shall be contributed to the repair or reconstruction costs of the Home so insured, and each Owner shall be liable for his or her share of any deficiency for such repair or reconstruction not paid from insurance proceeds. Provided, however, if three-fourths or more in value of the Building Structure is destroyed or substantially damaged and if either Owner wishes, and all mortgagees, trust deed beneficiaries and land sale contract vendors agree, and the insurers who have issued policies on the Building Structure allow, the Building Structure shall not be reconstructed or repaired. In such case, insurance proceeds will be paid to the covered Owner after the expenses of demolition, debris removal, and Lot restoration are paid.

8.3 **Architectural Changes After Damage or Destruction.** Reconstruction of the damaged or destroyed Building Structure as used in this Article means restoring the Building Structure to substantially the same condition in which it existed prior to the fire, casualty or disaster unless other action is agreed to by the Owners of the Homes within the Building

Structure and first trust deed holders, and/or land sale contract vendors. In any event, any architectural changes shall conform to the CC&Rs and the rules and regulations of the Architectural Control Committee of the Association.

**ARTICLE 9
ARBITRATION**

In the event of any dispute between two (2) or more Owners, other than the obligations of Article 5, arises concerning a Party Wall, Common Home Exteriors, the Lots, a Building Structure, or concerning the obligations of the Owners pursuant to the provisions of this Declaration, the Owners shall choose an arbitrator, and the dispute shall be resolved by the arbitrator. If the parties cannot agree upon an arbitrator, either may apply to an appropriate court having jurisdiction for the appointment of an arbitrator. The decision of the arbitrator shall be final and unappealable. The arbitrator’s decision or award may be entered in the appropriate court and shall have the same effect as any other final unappealable judgment or decree.

**ARTICLE 10
ENFORCEMENT**

Each Owner or the holder of any first mortgage, trust deed or land sale contract of any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may pertain specifically to such parties or Owners. Failure by any Owner or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event arbitration is requested by an Owner or suit or action is brought by an Owner to collect another Owner’s share of expenses payable hereunder, the prevailing Owner shall be entitled to reasonable attorney fees in such arbitration, suit or action and in any appeal therefrom.

**ARTICLE 11
MISCELLANEOUS**

11.1 **Approval.** Sections 2.2, 2.4, 3.1 and 11.1 of this Declaration shall not be amended without the prior written consent of the City of Hillsboro, Oregon. The Owners shall hold harmless, defend and indemnify City of Hillsboro, its elected and appointed officials, officers, agents, employees and volunteers (collectively, the “Indemnified Parties”) against all claims, demands, actions and suits (including reasonable attorneys’ fees and costs) brought against the Indemnified Parties arising out of the failure to properly design, locate, construct, repair or maintain those portions of the Lots referred to in Sections 2.2, 2.4 and 3.1 of this Declaration.

11.2 **Notices.** Any notice, demand, or report required under this Declaration shall be sent to an Owner in care of the street address of the Owner’s Home, or in the event the Owner does not reside at the Home, in care of the current property tax notification address of the Owner’s Home; provided, however, that an Owner may change his or her notification address by written notice to the Owner of the other Home within the same Building Structure. Any required

notice or demand shall be made by hand delivery or certified mail, and shall be deemed received on actual receipt or two (2) days after being mailed, whichever first occurs.

11.3 Entire Agreement. This Declaration constitutes the complete agreement and understanding with respect to this matter. There are no terms, obligations, covenants or conditions other than those contained herein regarding the Party Walls or any of the other matters addressed in this Declaration.

11.4 Modification or Termination. No Owner of a Lot may withdraw from, modify or dissolve this Declaration except with the prior written approval and consent of all of the Owners of the Lots, as evidenced by a written instrument recorded in the official records of Washington County, Oregon. Additionally, Sections 2.2, 2.4, 3.1 and 11.1 of this Declaration shall not be amended, modified or terminated without the prior written consent of the City of Hillsboro, Oregon.

*(Remainder of Page Intentionally Left Blank;
Signature Page Follows)*

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first written above.

DECLARANT: RED LEAF COTTAGES, L.L.C., a Washington limited liability company

By: PNW HOME BUILDERS SOUTH, L.L.C., a Washington limited liability company
Its: Manager

By: PNW HOME BUILDERS, L.L.C., a Washington limited liability company
Its: Sole Member

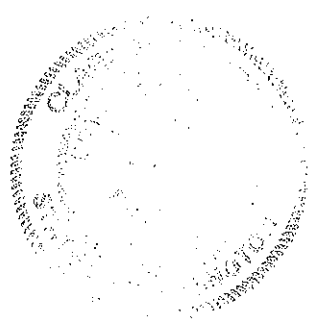
By: PNW HOME BUILDERS GROUP, INC., a Washington corporation
Its: Manager

By: [Signature]
Fred Gast
Its: Assistant Vice President

STATE OF Washington)
County of Clark) ss.

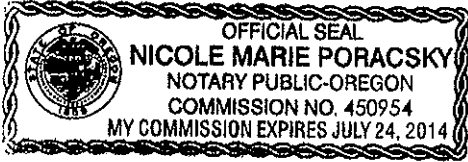
The foregoing instrument was acknowledged before me on this 15 day of December 2010, by Fred Gast, who is the Assistant Vice President of PNW Home Builders Group, Inc., the Manager of PNW Home Builders, L.L.C., the Sole Member of PNW Home Builders South, L.L.C., the Manager of Red Leaf Cottages, L.L.C., a Washington limited liability company, on behalf of said limited liability company.

[Signature]
Notary Public for Washington
My Commission Expires: 5/9/12



The City of Hillsboro, Oregon, an Oregon municipality, hereby approves the foregoing Declaration in accordance with the Oregon Residential Specialty Code Section R317.2.1.

THE CITY OF HILLSBORO, OREGON, an Oregon municipality



By: Michael G. Barnes
Its: Plans Examiner
Dated: 12-20-10

STATE OF Oregon)
County of Washington) ss.

The foregoing instrument was acknowledged before me on this 20 day of December 2010, by Michael G. Barnes, in his/her capacity as Plans Examiner of the City of Hillsboro, Oregon, on behalf of the City.

Chase M Poracsky
Notary Public for City of Hillsboro
My Commission Expires: July 24, 2010
2014