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Washington County, Oregon
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2010-104909



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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

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



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

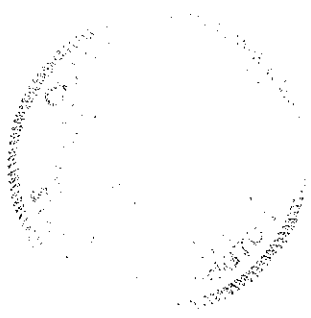
By: PNW HOME BUILDERS GROUP, INC., a Washington corporation
Its: Manager

By: Fred Gast
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