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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
ROCK CREEK VILLAGE**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
ROCK CREEK VILLAGE**

THIS DECLARATION is made this 18th day of April, 2006, by Teeny Development LLC, an Oregon limited liability company, and Lincoln Highlands Limited Partnership, an Oregon limited partnership (together, "Declarants").

ARTICLE 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 "Architectural Review Committee" means the Architectural Review Committee appointed pursuant to Article 7 hereof.

1.2 "Association" means the nonprofit corporation to be formed to serve as the association of Owners as provided in Article 8 hereof, and its successors and assigns.

1.3 "City" means the City of Lincoln City, Oregon.

1.4 "Common Areas" means those areas so designated on any Plat or in this Declaration, including without limitation Wildlife Habitat Tracts, Wetland Tracts, Storm Drainage/Water Quality Areas, non-public streets, and Neighborhood Parks, and including any Improvements thereon, and shall also include any Lots converted to Common Areas as provided in Section 3.4 below.

1.5 "Conditions of Approval" means: (a) the Amended Conditions of Approval for the Villages at Cascade Head Preliminary Master Plan, which are attached to City Planning Commission Final Order No. 98-17 as Exhibit A (including exhibits thereto); (b) the Conditions of Approval for Rock Creek Village, which are attached to City Planning Commission Final Order No. 98-17 as Exhibit B (including exhibits thereto); and (c) any additional City conditions of approval made applicable to the Project or any portion thereof subsequent to the recording of this Declaration. City Planning Commission Final Order No. 98-17 is recorded in the Official Records of the County at Book 378, Page 1403 (Instrument No. 6206944).

1.6 "Condominium" means any property in the Project submitted to the Oregon Condominium Act (ORS Chapter 100) in the manner provided therein.

1.7 "County" means Lincoln County, Oregon.

1.8 "Declarants" means all of the parties listed in the preamble to this Declaration, any person who succeeds to any special Declarant right and to whom all of any Declarant's ownership interest in the Project is transferred or any person, other than the

Association, to whom a Declarant has transferred, for the purposes of resale, all of that Declarant's ownership interest in the Project.

1.9 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Rock Creek Village, and any subsequent recorded amendment hereto that affects the Project or annexes property thereto, together with any rules or regulations promulgated thereunder, as the same may be amended or supplemented from time to time.

1.10 "General Common Areas" means all Common Areas that are not Limited Common Areas.

1.11 "Improvement" means every temporary or permanent structure or improvement of any kind, including but not limited to a building, fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to any property within the Project, including landscaping, and every alteration, painting or reconstruction thereof.

1.12 "Initial Plat" means that plat known as Rock Creek Village and approved for recording by the City Planning Commission on or about October 5, 2005.

1.13 "Limited Common Areas" means those Common Areas so designated on any Plat or in this Declaration, including those areas marked on any Plat as a "P.L.C.A.A. Easement," "P.L.C.A. Access Easement," "Private Limited Common Area Access," or a "Private Storm Sewer Easement," the use and benefit of which shall be limited to those Lots adjoining such areas, and the cost of installation and maintenance of which shall be borne solely by such adjoining Lots in accordance with Section 4.7 below.

1.14 "Living Unit" means a building or a portion of a building located or to be located upon a Lot within the Project and designated for separate residential occupancy (whether or not occupied) or ownership, including a house, apartment or dwelling unit within a multiple occupancy building and a Condominium unit. For the purpose of determining when voting rights under Article 8 arise, a Living Unit shall be first deemed to exist when a building permit for the building or portion of the building in which the Living Unit is located has been issued for the construction of such building or portion thereof.

1.15 "Lot" means a platted or partitioned lot, tract or Condominium unit within the Project, but not including any Common Areas.

1.16 "Mortgage" means a mortgage, trust deed, or land trust deed, or the vendor's interest under a land sales contract.

1.17 "Owner" means the person or persons, including Declarants, that own any Lot, including any vendee under a recorded land sales contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest or a person that holds only a security interest in a Lot, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations and other status of being an Owner commence upon

acquisition of the ownership of the Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination. If more than one person owns a single Lot, those persons shall collectively constitute one Owner for purposes of that Lot.

1.18 "Person" means any individual, trustee, corporation, partnership, limited liability company or other entity capable of holding title to real property in the State of Oregon.

1.19 "Plat" and "Plats" mean the Initial Plat and all subsequent recorded subdivision and partition plats affecting all or a portion of the Project.

1.20 "Rock Creek Village" means the real property designated in Section 2.1 of this Declaration.

1.21 "Sale" and "Sold" mean that legal fee title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.22 "The Villages at Cascade Head" and "Project" mean Rock Creek Village and any additional property annexed to the Project pursuant to Section 12.2.

1.23 "VCHERC" means the Villages at Cascade Head Environmental Resource Committee.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 Submission of Rock Creek Village to Declaration. Declarants hereby declare that all that certain real property located in the City and County, and described on the attached Exhibit "A," is owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

2.2 Project Name and Classification. The real property described in Exhibit "A" shall be known as "Rock Creek Village," which is intended to be part of a larger project known as "The Villages at Cascade Head." The Project is a Class I planned community under ORS 94.550 and is subject to the Oregon Planned Community Act, ORS 94.550 to ORS 94.783.

2.3 Withdrawal of Property from Project Prior to Sale. Subject to any applicable City or County ordinances and subject to approval of the City, Declarants may withdraw property from the Project, including Common Area property, only by duly adopted amendment to this Declaration. Such withdrawal shall be executed by Declarants and recorded in the official records of the County. If any portion of the Project is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated by the Association. Property not owned by a Declarant may be removed from the Project only as provided in Section 12.1 below. The right of Declarants to

withdraw property pursuant to this Section 2.2 shall expire when the first Lot in the last phase of the Project has been Sold.

### ARTICLE 3

#### LAND CLASSIFICATIONS

3.1 Development. All land within the Project is included in one or more of the following classifications:

(a) Commercial Lots. Commercial Lots are those Lots used or to be used for nonresidential purposes, including without limitation, retail, service and private membership recreational facilities, and designated as Commercial Lots on any Plat or in this Declaration. At the time this Declaration is first recorded, the Conditions of Approval prohibit commercial uses within the Project but anticipate that one or more Owners may apply for future zone changes which, if granted, would permit commercial uses within the Town Center (as that term is defined in the Conditions of Approval). There are no Commercial Lots on the Initial Plat.

(b) Residential Lots. Residential Lots are all Lots in the Project that are not Commercial Lots.

(c) Wildlife Habitat Tracts. Wildlife Habitat Tracts are those areas identified as Tracts 2, 6, 7 and 10 on the Initial Plat, and any additional areas designated as Wildlife Habitat Tracts on any additional Plats. Wildlife Habitat Tracts are General Common Areas.

(d) Wetland Tracts. Wetland Tracts are those areas identified as Tracts 1, 3, 8, 12 and 14 on the Initial Plat, and any additional areas designated as Wetland Tracts on any additional Plats. Wetland Tracts are General Common Areas. Wildlife Habitat Tracts and Wetland Tracts are referred to collectively in this Declaration as "Wetland/Wildlife Tracts."

(e) Neighborhood Parks. Neighborhood Parks are those areas identified as Tracts 4, 9, 11 and 13 on the Initial Plat, and any additional areas designated as Neighborhood Parks on any additional Plats. Neighborhood Parks are General Common Areas.

(f) Storm Drainage/Water Quality Areas. Storm Drainage/Water Quality Areas are that area identified as Tract 5 on the Initial Plat, and any additional areas designated as Storm Drainage/Water Quality Areas on any additional Plats. Storm Drainage/Water Quality Areas are General Common Areas until they are dedicated to the City pursuant to Section 4.8(c).

(g) Public and Private Streets. As shown on the Plats. Public streets are or will be dedicated to the City. Private streets are Limited Common Areas.

(h) Conservation Easement Areas. Conservation Easement Areas are those portions of Lots and Common Areas that are adjacent to and within 25 feet of the external boundary of any Wetland/Wildlife Tract.

(i) Common Areas. As defined in Section 1.4, and including both General Common Areas as defined in Section 1.10 and Limited Common Areas as defined in Section 1.13.

3.2 Additional Land Classifications. Additional land classification and uses may hereafter be established by amendment of this Declaration, subject to prior approval by the City.

3.3 Reclassification of Certain Limited Common Area. Subject to any applicable City or County ordinances, any re-classification of any Limited Common Area designated as a "P.L.C.A.A. Easement," "P.L.C.A. Access Easement," "Private Limited Common Area Access," or "Private Storm Sewer Easement" shall not be effective unless approved in a declaration signed by the Owners of all Lots adjacent to such area and recorded in the official records of the County.

3.4 Conversion of Residential or Commercial Lots to Common Areas. Subject to any applicable City or County ordinances, Declarants may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the official records of the County. Such declaration shall be executed by the Declarant(s) owning the subject Lots and shall and bear a certificate of the president or secretary of the Association reciting that the holders of a majority of the voting rights in the Association have approved such conversion to Common Areas. No Owner other than a Declarant may convert Lots to Common Areas.

3.5 Consolidation of Lots. The Owner of two adjoining Lots, with the approval of the Architectural Review Committee, may elect to consolidate such Lots into one Lot. Subject to any applicable City or County ordinances, the Architectural Review Committee may impose reasonable conditions or restrictions on the granting of its approval of a Lot consolidation, including, but not limited to conditions or restrictions on use of the Lot. The consolidation shall be effective upon the recording in the official records of the County a declaration of the Owner stating that the two Lots are consolidated, which shall also include a written consent to the consolidation executed on behalf of the Architectural Review Committee by the Chairperson thereof and a description of any restrictions and conditions imposed as a condition of such consent. Thereafter, and except as otherwise provided by the Architectural Review Committee as a condition to its consent, the consolidated Lots shall constitute one Lot for all purposes of this Declaration, including voting rights and assessments.

ARTICLE 4

PROPERTY RIGHTS AND EASEMENTS

4.1 Title to Common Areas. No later than the Sale of the last Lot in any phase of the Project, fee title to the Common Areas in that phase shall be deeded by the fee owner thereof to the Association.

4.2 Conservation Easement Areas. The Conservation Easement Areas shall be landscape buffer areas for the Wetland/Wildlife Tracts. Upon conveyance of fee title of the underlying Lots to any person other than a Declarant or the Association, Declarants and the Association shall have a perpetual, exclusive easement to maintain the Conservation Easement Areas in accordance with the Environmental Management Plan for the Project or as otherwise directed by the City or the Association. No alterations or improvements shall be made to the Conservation Easement Areas of any nature, except with the prior approval of the City and the Association. Under no circumstances will the Owner of any Lot subject to a Conservation Easement Area acquire any rights in the Conservation Easement Area superior to the rights reserved by or granted to the Declarants or the Association herein by any claim of non-use or adverse possession. The Association shall have the right to abate any violation of this Section 4.2 as provided in Section 11.2.

4.3 Easement For Benefit of Association. The Association shall have, for the benefit of the Association and all Owners of Lots within the Project, a perpetual, nonexclusive easement over, under and upon all portions of the Project reasonably necessary for:

(a) Utilities. Installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarants or with the approval of the Board of Directors of the Association; and

(b) Common Area Maintenance. Construction, maintenance, repair and use of the Common Areas and common facilities thereon, including without limitation walkways, bike paths, fences, landscaping, irrigation systems, landscape art, and entry way structures, decorative ornamentation, and signs.

4.4 Easement For Benefit of Declarants. So long as any Declarant owns any Lot, and in addition to any other easements to which Declarants may be entitled, Declarants reserve a nonexclusive easement over, under and across the Project as reasonably necessary to carry out development, construction, sales, and rental activities necessary or convenient for the development of the Project, the sale or rental of Lots, and for such other purposes as may be necessary or convenient for discharging Declarants' obligations or for exercising any of Declarants' rights hereunder.

4.5 Easement for Benefit of City. The City shall have a perpetual, nonexclusive easement over, under and upon the Wetland/Wildlife Tracts and Conservation Easement Areas, including access thereto via the General Common Areas, to inspect the Project for compliance with, and enforce any violation of, the Conditions of Approval and any rights granted to the City in this Declaration applicable to the Wetland/Wildlife Tracts.

4.6 Easement to General Common Areas. Each Owner and such Owner's invitees shall have a right and easement, appurtenant to that Owner's Lot, for the use and enjoyment of the General Common Areas, provided that the General Common Areas shall be available for the use and enjoyment of all Owners, and no private use may be made of the Common Areas without the advance written approval of the Association. This Section 4.6 shall not: (a) permit any person access to any Wetland/Wildlife Tract except on established trails and road crossings; (b) permit the use of any Wetland/Wildlife Tract for any purpose inconsistent with this Declaration or the Conditions of Approval; or (c) prevent Declarants or the Association from placing a sign or signs upon the General Common Areas for the purpose of identifying the Project or any subdivision therein or identifying trails or other items of interest, provided such signs: (i) are first approved by the Architectural Review Committee and comply with any applicable City and County ordinances; and (ii) if placed in a Wetland/Wildlife Tract or Conservation Easement Area, are first approved by the City.

4.7 Easements to Limited Common Areas. The Owner of each Lot adjoining a Limited Common Area (each, an "Adjoining Owner") shall have a perpetual, nonexclusive easement, appurtenant to that Owner's Lot, for the use and enjoyment of the adjoining Limited Common Area, subject to the following rights and obligations:

(a) Access Easements. If the Limited Common Area is designated as a "P.L.C.A.A. Easement," "P.L.C.A. Access Easement," or "Private Limited Common Areas Access," the Adjoining Owners' easement to such Limited Common Area shall be limited to ingress, egress, and utility installation and maintenance purposes.

(b) Storm Sewer Easements. If the Limited Common Area is designated as a "Private Storm Sewer Easement," the Adjoining Owners' easement shall be limited to ingress, egress, installation and maintenance of one or more private storm sewers and appurtenances for foundation and rain drain.

(c) Shared Costs. The cost of installing improvements in a Limited Common Area that benefit more than one Adjoining Owner shall be shared by all benefited Adjoining Owners equally, or in such other proportion as is determined in the Association's reasonable discretion.

(d) Right of Contribution. Each Adjoining Owner may obtain contribution from the other Adjoining Owners to the same Limited Common Area for the reasonable costs of installing shared improvements in all or part of such Limited Common Area if such Owner has, not less than five (5) business days before the work is commenced, given to each affected Adjoining Owner written notice of the installation to be performed, the estimated cost thereof, a reasonable description of the installation and an estimate of each Adjoining Owner's proportionate share thereof.

(e) Lien Rights. Any Adjoining Owner seeking contribution hereunder may record the notice described in Section 4.7(d) in the deed records of the County as a lien against the Lot of any Adjoining Owner from whom contribution is sought (including Lots

owned by Declarants); provided, however, no such notice shall become a lien against any Lot unless such recorded notice includes a statement duly executed by the Association that it has reviewed the estimate of proportionate shares contained in the notice and has found the allocation thereof reasonable.

(f) Payment of Contributions. Contributions hereunder shall be payable at the time the Adjoining Owner seeking contribution is required to pay for the installation for which contribution is sought, or upon completion of such installation, whichever is later. Any claim for contribution against Declarants hereunder may be recorded against the subject Lot as provided in Section 4.7(e) but shall not be due and owing unless and until the Lot is Sold to a party unrelated to Declarants or is occupied for residential or commercial use, as applicable, whichever is first.

(g) Cost of Maintenance. Limited Common Areas shall be maintained and repaired by the Association as provided in Section 9.1, with the cost shared equally by all Adjoining Owners or in such other proportion as is determined in the Association's reasonable discretion, except that each Adjoining Owner shall be wholly responsible for the cost of any maintenance or repair required because of that Adjoining Owner's negligence or intentional misconduct. The Association may collect and enforce the Adjoining Owner's obligation to reimburse the Association for costs hereunder in the manner of assessments as provided in Article 10.

(h) Damage. It shall be the responsibility of each Adjoining Owner to promptly and properly repair, at such Owner's sole expense, damage caused to a Limited Common Area through the negligence or intentional conduct of that Adjoining Owner or its agents, guests, or invitees. If such Adjoining Owner fails to repair damage to the Limited Common Area as required by this paragraph, the Association may cause such repair to be performed and collect and enforce the Adjoining Owner's obligation to reimburse the Association for costs hereunder in the manner of assessments as provided in Article 10.

(i) Obligation of Contribution Runs with the Land. The obligation of contribution hereunder shall be a charge and continuing lien against and run with the Lot to which it applies, and shall also be the personal obligation of the Owner of the Lot at the time an obligation of contribution hereunder arises, except that any Declarant shall not have any personal liability on any contribution claim after conveyance of a Lot subject to a lien for contribution.

(j) Arbitration. In the event of any dispute concerning the use of any Limited Common Area or the allocation of or right to contribution of the costs of installation, maintenance, or repair thereof, the Board of Directors of the Association shall act as arbitrators and their decision shall be final. In their reasonable discretion, the Board of Directors may award costs and attorney fees, if any, to the prevailing party, which may also be included in the lien provided for in Section 4.7(e).

(k) Standards for Allocation. In allocating costs and assessments to an Adjoining Owner, the Association may consider such factors as the relative use and benefit which is derived or may be derived by such Adjoining Owner from the Limited Common Area;



any written agreements by the Adjoining Owners concerning the use or benefit to be derived by such Adjoining Owner; and the relative burden assumed by such Adjoining Owner, including the property contributed by such Adjoining Owner to the Limited Common Area (if any), property tax and other expenses paid in connection with the Limited Common Area by such Adjoining Owner (if any), and any other factors which the Association deems relevant to a determination of establishing fair and equitable allocations. The Association shall not be deemed to have acted unreasonable solely because the Association determines that an Adjoining Owner's allocated share of installation costs and assessment is zero, if the Association has acted in good faith in determining the allocation.

4.8 Additional Provisions Applicable to All Common Areas.

(a) Encroachment and Trespass. The Association shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings.

(b) Alienation of the Common Areas. Except as provided in Section 4.8(c), the Association may not by act or omission seek to abandon, partition, subdivide, encumber, cause the Common Areas to be subject to any security interest, nor may the Association sell or transfer the Common Areas directly or indirectly, unless: (i) the holders of the minimum required percentage of Class A voting rights (as described in Section 8.4(a)), and all then-existing Class B members (as defined in Section 8.4(b)), if any, have given their prior written approval; and (ii) such action complies with any applicable City or County ordinances. For purposes of the prior sentence, the "minimum required percentage" of Class A voting rights shall be eighty percent (80%) in all cases except for a proposed transfer of General Common Area to a park district or other public body for public open space or recreational use, in which case the minimum required percentage shall be fifty percent (50%). The foregoing notwithstanding, the Association may not abandon, partition, subdivide, encumber, subject to any security interest, sell or transfer all or any part of the Wetland/Wildlife Tracts, Neighborhood Parks, or any other designated open space, park or trail, without the prior approval of the City and prior review by VCHERC. The City shall approve a proposed transfer if it finds that: (i) the proposed transfer is a reasonable means to implement the Conditions of Approval or any final order of the City approving a refined preliminary master plan or final master plan thereunder, or of applicable regulations, or that new information justifies a new approach; (ii) the sale or transfer permits the Association to implement maintenance activities required by this Declaration or the Conditions of Approval in the event of a failure of the transferee to do so; and (iii) the Association has entered into an agreement with the City under which the Association shall at all times remain responsible for maintenance of the transferred area as required by this Declaration and the Conditions of Approval. A sale, transfer, or encumbrance of the Common Areas or any portion of the Common Areas in accordance with this Section 4.8(b) may provide that the Common Areas so conveyed shall be released from any restrictions imposed on such Common Areas by this Declaration. The foregoing notwithstanding, no Sale, transfer, or encumbrance of Common Area shall deprive any Lot of such Lot's right of access or support without the written consent of the Owner of the Lot.

(c) Dedication of Storm Drainage/Water Quality Areas. The Association may dedicate any Storm Drainage/Water Quality Areas to the City at any time after:

(i) review and approval by the City of the Storm Drainage/Water Quality Areas to be dedicated; and (ii) completion of construction of approved public storm drainage and water quality facilities thereon; without the prior approval of the holders of voting rights in the Association.

(d) Restrictions on Use of Common Areas. Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration and the Bylaws of the Association, including, without limitation, the right to require reservations for use of the Common Area or Common Area facilities and the right to impose reasonable fees in connection with such use.

(e) Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, such Owner's right of enjoyment of the Common Areas to the members of such Owner's family or tenants who reside on the Lot. However, the beneficial interest in any easement for use of any Common Area may not be sold, conveyed, assigned or otherwise transferred separately from fee title to the entire Lot to which the easement is appurtenant.

#### 4.9 City Utility Easements.

(a) City Consent. No permanent or temporary surface or underground structures, private or public utility lines, or improvements shall be constructed or located in easements over any portion of the Project granted to the City or to the public for construction, operation, maintenance or repair of service facilities without the written consent of the City Engineer and the City Public Works Director.

(b) Indemnification for Utility Repair in Private Streets. The Association and all Owners shall, jointly and severally, in consideration of the City's approval of private streets within the Project and with full knowledge of the facts and circumstances and as a free and voluntary act, hereby forever release, hold harmless and agree to defend and indemnify the City, its officers, agents and employees from, and waive its rights to all claims, demands, actions and suits, including all attorney fees and costs, that it or they may now or ever have against the City, its officers, agents and employees, for property damage arising in the course of the construction, repair, or maintenance of any City utility within a private street.

(c) Street Repair. If the City should remove the street surface of any private street to conduct repair, maintenance, or replacement work on City utilities, the City will upon completion of its work, provide an asphalt or concrete patch in the paved surface, but all other street resurfacing expenses necessitated by the maintenance and repair of City utilities shall be borne by the Adjoining Owners as a common expense as provided in Section 4.7. Work by the City in unpaved areas will be restored by the City as nearly as reasonable to the condition existing prior to the work.

(d) City Responsibility for Construction or Maintenance of Limited Common Areas. The Association and all Owners acknowledge that the City has no responsibility to establish, construct, or repair Common Areas or Limited Common Areas or any road, driveway, private storm sewer line, or other private improvement ("Private Improvement") located in Common Areas or Limited Common Areas. The Association and all Owners shall, jointly and severally, hold harmless, defend, and indemnify the City and the City's officers, agents and employees against all claims, demands, actions and suits (including all attorney fees and costs), brought against any of them arising from the failure to properly establish, construct, or maintain Common Areas or Limited Common Areas or Private Improvements in connection with Common Areas or Limited Common Areas. This Section 4.9(d) shall not be construed to modify or reduce any obligation of the City in connection with City owned and maintained utilities located in easements granted to the City in Common Areas or Limited Common Areas.

4.10 Expiration of Declarants' Easements. All easements granted to or reserved by Declarants in Article 4 and Article 5 of this Declaration shall terminate as to each Declarant as of the date that such Declarant no longer owns any real property within the Project.

## ARTICLE 5

### PROPERTY RIGHTS IN LOTS

5.1 Use and Occupancy. Except as otherwise expressly provided in this Declaration or in the Plat in which the Lot was platted or partitioned, the Owner of a Lot in the Project shall be entitled to the exclusive use and benefit of such Lot.

5.2 Easements Reserved. In addition to any utility and drainage easements shown on the Plats, Declarants hereby reserve the following easements for the benefit of Declarants and the Association:

(a) Adjacent Common Area. The Association shall have an easement to enter upon any Lot adjacent to any Common Area as reasonably necessary, and with reasonable prior notice to the Owner of the Lot except in case of an emergency, for purposes of maintenance and repair of such Common Area.

(b) Right of Entry. Declarants, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) Utility Easements. In addition to any utility easements reserved on any Plat, Declarants reserve to themselves and the Association easements for installation and maintenance of utilities and drainage facilities over the rear and side five (5) feet of each Lot. Within the easements, no Improvement, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which

may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each Lot and all utility improvements in it shall be maintained continuously by the Owner of the Lot at the Owner's sole expense, except for those improvements for which a public authority or utility company is responsible. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side Lot lines on which a party wall exists (as defined in Section 5.3), or along a Lot line which has been approved for zero lot line development.

5.3 Party Walls. Each wall which is built as a part of the original construction of a Living Unit within the Project and is placed upon the dividing line between two or more Lots or parcels of Common Area shall constitute a "party wall," and the following provisions shall apply:

(a) General Rules of Law to Apply. The general rules of law of the State of Oregon regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all such party walls, to the extent such rules are not inconsistent with the provision of this Section 5.3.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Adjoining Owners in proportion to the linear footage of each Owner's property along the wall. Any Adjoining Owner may cause repairs and maintenance to be performed to the party wall and shall be entitled to contribution from the other Adjoining Owners and shall have lien rights in the same manner as for installation of Limited Common Area improvements under Sections 4.7(d), 4.7(e) and 4.7(f).

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Adjoining Owner may restore the wall and obtain contribution from the other Adjoining Owners as a repair and maintenance cost under Section 5.3(b); without prejudice, however, to the right of any Adjoining Owner to obtain a larger contribution from the other Adjoining Owners under any applicable rule of law regarding liability for negligent or willful acts or omissions.

(d) Damage. It shall be the responsibility of each Adjoining Owner to promptly and properly repair, at such Owner's sole expense, damage caused to a party wall through the negligence or intentional conduct of such Adjoining Owner or its agents, guests, or invitees.

(e) Weatherproofing. Notwithstanding any other provision of this Section 5.3, any Adjoining Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements and the cost of any required repair because of such exposure to the elements.

(f) Obligation of Contribution Runs with the Land. The obligation of contribution hereunder shall be a charge and continuing lien against and run with the property to which it applies, and shall also be the personal obligation of the Owner of the property at the time an obligation of contribution hereunder arises.

(g) Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Section 5.3, the Board of Directors of the Association shall act as arbitrators and their decision shall be final. In their reasonable discretion, the Board of Directors may award costs and attorney fees, if any, to the prevailing party, which may also be included in a lien filed pursuant to Section 5.3(b).

(h) Consolidated Lots. This Section 5.3 shall not apply to any wall which would be a party wall but for the fact that the separate Lots sharing the party wall have been consolidated into one Lot in accordance with Section 3.5 of this Declaration.

## ARTICLE 6

### RESTRICTIONS ON USE

#### 6.1 Structures Permitted.

(a) Type of Improvements. No Improvements shall be erected or permitted to remain on any Residential Lot except Improvements containing Living Units and Improvements normally accessory thereto. The foregoing provision shall not prohibit construction of a private greenhouse, storage unit, swimming pool, or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with applicable City and County ordinances and any applicable provisions of this Declaration, is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee as provided in Article 7.

(b) Cooperative Improvement Finance Agreement. As required by the Cooperative Improvement Finance Agreement between the City and B.A.S.S. Construction Co. dated October 12, 1998, at the time of application to the City for a building permit to construct one or more new Living Units on a Residential Lot, the Owner of the Residential Lot shall pay to the City, in addition to any other amounts that the City lawfully requires to be paid, the sum of \$2,300 for each Living Unit, as adjusted to reflect any increase after October 1994 in the construction price index as published in the weekly construction magazine "Engineering News Record" (for 20 cities, 1913-100). The Owner shall have no right to the requested building permit until the sum has been paid for each Living Unit covered by the building permit application, and the payment requirement shall be a restriction for the benefit of the City on any right the Owner otherwise would have to receive a building permit. The amount of the payment, plus any investment income earned thereon, shall be used to finance traffic improvements to, or in relation to, Highway 101 in the north part of the City, but outside the Project.

6.2 Residential Use. Residential Lots shall only be used for residential purposes. Except with the consent of the Association, and as allowed by applicable City or County ordinances, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Residential Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Residential Lot. Nothing in this Section shall be deemed to prohibit: (a) activities relating to

the rental or sale of Lots or Living Units; (b) the right of Declarants or any contractor or homebuilder to construct Living Units on any Residential Lot, to store construction materials and equipment on such Lots in the normal course of construction or to use any Living Unit as a sales or rental office or model home or apartment for purpose of sales or rentals; and (c) the right of any Owner of a Residential Lot to maintain its professional or personal library, keep its personal business or professional records or accounts, handle its personal business or professional telephone calls or confer with business or professional associates, clients or customers, in its Living Unit. The Board of Directors of the Association shall not approve commercial activities otherwise prohibited by this Section 6.2 unless the Board of Directors first determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable City or County ordinances.

6.3 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the enjoyment of the Lots or the Common Areas by those entitled thereto, or which is a source of annoyance to residents of the Project. No unlawful use shall be made of a Lot or Common Area, and all valid laws, zoning ordinances, and regulation of all governmental bodies having jurisdiction thereof shall be observed. Without limiting the generality of the foregoing, no heat pump or other heating, ventilating, or air conditioning equipment, the operation of which produces noise at a level higher than eighty (80) decibels, as measured at the Lot line, shall be allowed on any Residential Lot or Living Unit.

6.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Residential Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the Owner of the Lot on which such animals reside. No domestic animal of any type shall be permitted to roam the Project unattended at any time, and all animals shall be kept on a leash or otherwise restrained while outside the Residential Lot on which they reside. The Association may require the removal of an animal or prohibit a person, including an Owner, from keeping any animals on the Project upon the third notice in writing to the person of the violation of any law, ordinance, rule, regulation or restriction governing animals.

6.5 Maintenance of Structures. Each Owner shall maintain such Owner's Lot and Living Unit, and Improvements thereon, in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, exterior improvements and glass surfaces. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be repaired within a reasonable period of time.

6.6 Lot Landscaping. Each Owner shall maintain the exterior landscaping of such Owner's Lot in the condition and appearance in existence at the time the Owner acquired the Lot, except that nothing in this sentence shall be construed to permit an Owner to landscape or otherwise alter any Conservation Easement Area in violation of Section 4.2. No changes to the existing landscaping of any Lot are permitted without the prior approval of the Architectural

Review Committee as provided in Article 7, and any approved changes must be consistent with the Environmental Management Plan for the Project unless otherwise directed by the City and the Association. Among other things, the Environmental Management Plan prohibits lawns within the Project and bars the use of herbicides, pesticides or fertilizers without the advance approval or supervision by VCHERC or the Project's Environmental Compliance Officer.

6.7 Parking. Parking of boats, trailers, motorcycles, trucks, truck campers, or other recreational vehicle or equipment, and vehicles in excess of 8,000 pounds gross vehicle weight, shall not be allowed on any part of the Project nor on public streets adjacent thereto, excepting only: (a) areas designated for such purposes by the Association; or (b) wholly within the confines of an enclosed garage or screened area, the plans for which comply with applicable City and County ordinances and which first shall have been reviewed and approved by the Architectural Review Committee prior to construction.

6.8 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an inoperable condition to be abandoned or to remain parked upon any Lot or on the Common Area or on any public or private street for a period in excess of forty-eight (48) hours. Should any Owner fail to remove such vehicle within five (5) days following the date of mailing of notice to remove the vehicle by the Association, the Association may have the vehicle removed from the Project and assess the expense of such removal to the Owner as an assessment under Article 10.

6.9 Signs. No signs shall be erected or maintained on any Lot except signs which are first approved as to appearance and location by the Architectural Review Committee. The restrictions contained in this Section shall not apply to:

(a) Political Signs. The temporary placement of reasonable political signs on any Residential Lot by the Owner thereof; and

(b) Declarants' Sales Office and Model Home Signs. The placement by the Declarants or Declarants' agents of one or more signs identifying the name of the Declarants and/or the location of a sales office or model home.

6.10 Rubbish and Trash. No Lot or part of any Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept indoors in locked, bear-proof containers and shall not be set out for collection more than 24 hours prior to the scheduled collection time. Compost piles and feed materials may be kept outdoors, but must be stored in bear-proof containers and kept out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, Common Areas, or on any Lots. All unimproved Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and vegetation thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard, except as provided in Section 4.2. If any breach of this Section 6.10 is not remedied within five (5) days after mailing of written notice of such default by the Association, the Association shall have, in addition to any other rights under this Declaration, or at law or in equity, the right to remedy the breach in the manner provided in Section 11.2.

6.11 Burning. Under no circumstances shall any open burning of any materials whatsoever be permitted on any Lot or Common Area. The Association shall have the right to enter onto any Lot immediately and without notice to abate any violation of this Section 6.11.

6.12 Completion of Construction. The construction of any Improvement on any Lot, including painting and all exterior finish, shall be completed within eight (8) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this period may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period.

6.13 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

6.14 Hedges and Plantings Along Lot Lines. No hedges or plantings along Lot lines shall be installed without prior approval to the Architectural Review Committee.

6.15 Tree Removal. No trees with a diameter of eight (8) inches or more, measured at a height of four-and-one-half (4.5) feet above the base of the trunk on the uphill side, may be removed without the prior written approval of the Architectural Review Committee and the City. Such approval shall not be unreasonably withheld or delayed when the request applies to inventoried trees that are to be removed for the purpose of construction of Living Units and associated Improvements, or for safety reasons.

6.16 Service Yards. Service yards (garbage, fuel tanks, clotheslines, etc.) shall be completely screened so that the elements screened are not visible at any time from the street or any adjoining property.

6.17 Antennas and Satellite Disks. Exterior antennas shall not be permitted to be placed upon any Lot except as approved by the Architectural Review Committee. Exterior satellite receiver and transmission disks are prohibited except as provided in Section 12.13 of this Declaration.

6.18 Setback, Maximum Height and Minimum Yard Requirements. Each Lot shall be subject to: (a) the setback, maximum height, and minimum yard requirements shown on the recorded Plat on which such Lot is created, or which are established by the City or other governmental entity with jurisdiction over each such Lot; and (b) any land use review procedure established by the City or other government entity with jurisdiction over such Lot for review and approval of variances from such requirements. In addition, all Lots are subject to any and all more restrictive setback, maximum height, or minimum yard requirements as may be established from time to time by the Architectural Review Committee. No Improvement shall be constructed or maintained in violation of any setback maximum height, or minimum yard requirement, except with the written consent of the Architectural Review Committee and the



City or County, if applicable. Nothing in this Section 6.18 shall affect or modify the rights and obligations applicable to the Conservation Easement Areas.

6.19 Erosion and Sediment Control. All Owners shall comply with any standards regarding erosion and sediment control established by the Unified Sewerage Agency of Lincoln County, and, if applicable, obtain an NPDES permit from the Oregon Department of Environmental Quality prior to commencing construction. All vegetation removal will be strictly limited to areas being actively developed. All sediment barriers will in place before excavation or ground disturbance begins. Erosion and sediment control plans should include a timetable for permanent stabilization of disturbed sites.

6.20 Roofs and Exterior Materials. All roofs and other exterior portions of any structures located on a Lot shall be constructed of materials that assure harmony of the Improvements with respect to the Project's natural surroundings, as determined by the Architectural Review Committee in its sole discretion. All roofing materials shall be cedar, tile, composition, or slate, unless otherwise approved by the Architectural Review Committee. Flat roof applications must not be highly visible from other houses, and all rooftop mechanical equipment must also be screened from view. Fire-resistant roof materials shall be used in areas designated as fire-sensitive by the City Fire Marshal.

6.21 Hunting. Hunting is prohibited anywhere within the Project at all times.

6.22 Private Streets. Private streets may not be gated.

6.23 Mailboxes. Curbside mailboxes on any Lot shall be located a minimum of five feet from the curb, regardless of whether a sidewalk exists between the mailbox and the curb.

6.24 Conservation Easement Areas. Under no circumstances may Conservation Easement Areas, whether part of the Common Area or a Lot, be used in a manner inconsistent with the Environmental Management Plan or the Conditions of Approval, including without limitation Environmental Conditions 1 through 6 of Exhibit A to City Planning Commission Final Order No. 98-17 (including exhibits thereto). Persons considering purchase of a Lot that includes Conservation Easement Areas are strongly encouraged to review the Environmental Management Plan and the Conditions of Approval before purchase.

6.25 Wildlife. All Owners and occupants of Lots or Living Units, including their guests and invitees, shall at all times while present on the Project adhere to the wildlife protection measures identified in the Environmental Management Plan.

## ARTICLE 7

### ARCHITECTURAL REVIEW COMMITTEE

7.1 Architectural Review. No Improvement shall be commenced, erected, placed, altered, or maintained on any Lot until the design plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been

submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials, and to assure harmony of external design with existing Improvements and location of the Improvements with respect to topography and finished grade elevations.

7.2 Procedure. In all cases which Architectural Review Committee approval or consent is required by this Declaration, the provisions of this Article shall apply. The procedures and specific requirements for application for Architectural Review Committee approval or consent may be set forth in Design Guidelines or other rules adopted from time to time by the Architectural Review Committee. The Architectural Review Committee may charge a reasonable fee to cover the cost of processing applications.

7.3 Committee Decision.

(a) Completeness of Application. An application for Architectural Review Committee approval or consent shall be complete if it specifies the approval or consent requested and is accompanied by all materials reasonably required for the Architectural Review Committee to make an informed decision on such application. Any application shall be deemed complete unless the Architectural Review Committee provides written notice of incompleteness to the applicant within fifteen (15) working days after the application is filed, specifying with reasonable specificity the materials needed to make the application complete.

(b) Timing. The Architectural Review Committee shall render its decision on an application for approval or consent within fifteen (15) working days after it has received a complete written application therefor. If the Architectural Review Committee fails to render approval or disapproval of such application within thirty (30) working days after the Architectural Review Committee has received a complete application, or if no suit to enforce this Article has been commenced within one (1) year after completion of construction of the Improvement, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.4 Committee Discretion. The Architectural Review Committee may, in its sole discretion, impose conditions on any approval or consent that are reasonably necessary to make the proposal appropriate for the particular Lot or compatible with the applicable design standards for the Project. In making its decision, the Architectural Review Committee may consider issues of siting, shape, size, color, design, solar access, impairment of the view from other property within the Project, disturbance of existing terrain and vegetation, or any other impact on the enjoyment of other property within the Project, and any other factors which the Architectural Review Committee reasonably believes to be relevant to the application.

7.5 Membership; Appointment and Removal. The Architectural Review Committee shall consist of any odd number of persons, but not less than three (3), as the Declarants may from time to time appoint. The Declarants may remove any member of the Architectural Review Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the member of the Architectural Review Committee. Declarants may at any time delegate to the Board of Directors of the Association the right appoint or remove members

of the Architectural Review Committee. If Declarants delegates to the Board of Directors the right to appoint or remove members of the Architectural Review Committee, or if Declarants fails to appoint an Architectural Review Committee or a sufficient number of members thereof, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee. If the Board of Directors has assumed the responsibility for appointment of the members of the Architectural Review Committee and fails to make such appointments, the Board of Directors shall itself serve as the Architectural Review Committee. The foregoing notwithstanding, each Declarant's right to appoint members shall expire no later than the conversion of that Declarant's Class B membership in the Association to Class A, as provided in Section 8.4, and the Association shall assume responsibility for appointment and removal of members of the Architectural Review Committee no later than the date on which there are no longer any Class B members.

7.6 Majority Action. Except as otherwise provided herein, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee, without the necessity of a meeting, provided that good faith efforts are made to give reasonable advance notice and an opportunity to participate to the remaining members of the Architectural Review Committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

7.7 Liability. The scope of the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, or other similar considerations. Neither the Declarants, the Association, the Architectural Review Committee or any member thereof shall be liable to any Owner, occupant, builder, or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Architectural Review Committee or a member thereof, provided only that the Architectural Review Committee has, in accordance with the actual knowledge possessed by the Architectural Review Committee or by its members, acted in good faith.

7.8 Nonwaiver. Approval by the Architectural Review Committee of any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for approval.

7.9 Appeal. Any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing with ten (10) days of the Architectural Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. Any action of the Architectural Review Committee not appealed within such ten days shall be final. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such appeal.

7.10 Estoppel Certificate. Within fifteen (15) working days after written request therefor is delivered to the Architectural Review Committee by any Owner, and upon payment to the Architectural Review Committee of a reasonable fee, if any, fixed by the

Architectural Review Committee to cover costs, the Architectural Review Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration and any applicable design guidelines; or (b) such Improvements do not so comply. If the estoppel certificate states that the Improvements do not comply, such certificate shall also identify the noncomplying Improvements and set forth with reasonable particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarants, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.11 Construction by Declarants. Improvements constructed by Declarants on any property within the Project owned by Declarants are subject to the requirements of this Article 7.

## ARTICLE 8

### ASSOCIATION

8.1 Name. As set forth in this Article, Declarants shall organize an association of all of the Owners within the Project. Such Association shall be organized under the name "The Villages At Cascade Head Homeowners Association, Inc." or such similar name as Declarants shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Project and all Owners of property located therein.

8.2 Organization. Teeny Development LLC or its successor-in-interest ("Teeny") shall, before the first Lot in the Project is conveyed to an Owner other than Declarants, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. As required by ORS 94.625, the initial Bylaws of the Association shall be recorded in the office of the County Recorder. The Articles of Incorporation of the Association shall provide for its 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 incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the original Articles of Incorporation and Bylaws of the Association (as the same may be amended from time to time), as if they had been drafted to constitute the governing documents of the unincorporated association.

8.3 Membership. Every Owner of one or more Lots within the Project shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Project, 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. Membership in the Association may

not be disclaimed nor rejected, nor may membership be transferred except in conjunction with transfer of ownership of the Lot on which membership is based.

8.4 Voting Rights. The Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all Owners with the exception of the Declarants (except that Declarants shall later become Class A members as provided in this Section). Class A members who own Residential Lots shall be entitled to one vote for each Lot owned, except that any Residential Lot containing multifamily structures shall be allocated one vote for every ten (10) Living Units located on such Lot. Any fractional vote shall be rounded up to another whole vote (for example, a Residential Lot containing 11 to 19 Living Units shall have two votes). Each Owner of a Condominium unit shall have one vote for each unit owned. Votes for Commercial Lots shall be allocated as set forth in an amendment to this Declaration recorded in connection with the creation or annexation of such Commercial Lots.

(b) Class B. The Class B members shall be the Declarants. Each Class B member shall be entitled to three votes for each Lot owned by such Class B member.

(c) Conversion of Class B to Class A (Lincoln Highlands). The Class B membership of Lincoln Highlands Limited Partnership shall be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When eighty percent (80%) of the Lots in the portion of the Project subject to the Initial Plat have been Sold and conveyed to Owners other than Declarants; or

(ii) At such earlier time as Lincoln Highlands Limited Partnership may elect in writing.

(d) Conversion of Class B to Class A (Teeny Development). The Class B membership of Teeny Development LLC shall be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When eighty percent (80%) of the Lots in the final phase of development of the Project have been Sold and conveyed to Owners other than Declarants; or

(ii) At such earlier time as Teeny Development LLC may elect in writing.

8.5 Multiple Owners. When more than one person holds an interest in any Lot, all such persons shall be members of the Association, but the vote(s) for such Lot shall be exercised as such persons among themselves determine. In no event shall more votes be cast with respect to any Lot than is determined as set forth in Section 8.4 above.

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

(a) Declaration. The powers, duties and obligations granted to the Association by this Declaration, the Articles of Incorporation or the Bylaws of the Association.

(b) Statutory Powers. The powers, duties, and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon and of a homeowners association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time.

(c) 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 or otherwise promoting the general benefit of the Owners within the Project.

(d) Amendment and Repeal. The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

8.7 Liability. Neither the Association nor any officer or member of its Board of Directors shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board of Directors, provided only that the Association, officer or Board member has acted in good faith based upon actual knowledge.

8.8 Interim Board; Turnover Meeting. Teeny shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until either replaced by Teeny or their successors have been elected by the Owners at the turnover meeting described in this Section. Teeny shall call the turnover meeting by giving notice to each Owner as provided in the Bylaws of the Association for the purpose of turning over administrative responsibility for the Project to the Association not later than one hundred twenty (120) days after Lots representing seventy-five percent (75%) of the votes in all phases of the Project (computed in accordance with Section 8.4) have been Sold and conveyed to Owners other than Declarants. Notwithstanding the preceding sentence, Teeny must call the turnover meeting no later than ninety (90) days after Teeny's Class B voting membership is converted to Class A voting membership. If Teeny does not call the meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 8.9 below or any Owner may call the meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners as provided in this Declaration and the Bylaws of the Association.

8.9 Transitional Advisory Committee.

(a) Formation. Teeny and the Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition of administrative responsibility for the Project from the Declarants to the Association. Teeny shall call a meeting to form the Transitional Advisory Committee no later than the sixtieth (60th) day after Lots representing fifty percent (50%) of the votes of all phases in the Project (computed in accordance with Section 8.4) have been Sold and conveyed to Owners other than Declarants. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than the Declarants, shall select two or more members. Teeny shall select no more than one member. The Transitional Advisory Committee shall thereafter have reasonable access to all information and documents which the Declarants are required to turn over to the Association under ORS 94.616.

(b) Declarant's Failure to Call Meeting. Any Owner may call the meeting to form the Transitional Advisory Committee if Teeny fails to do so as provided above.

(c) Owners' Failure to Select Members. Notwithstanding the foregoing, if the formational meeting is held and the Owners do not select at least two members for the Transitional Advisory Committee as described above, Teeny shall have no further obligation to form the Transitional Advisory Committee.

(d) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 8.8 above has been held.

8.10 Declarants Control After Turnover. After the turnover meeting described in Section 8.8 above, but prior to conversion of the last of the Class B memberships to Class A memberships, the then-existing Class B members shall select a majority of the Board of Directors of the Association, with the balance of the Board of Directors elected by the Class A members. After conversion of the last Class B membership, all directors shall be elected by the Class A members.

8.11 Subassociations. Nothing in this Declaration shall be construed as prohibiting the formation of subassociations of Owners.

8.12 Association Rules and Regulations. The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Project. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association 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 and regulations shall be as provided in the Bylaws of the Association.

## ARTICLE 9

### MAINTENANCE, UTILITIES AND SERVICES

9.1 Maintenance and Lighting of Common Areas. The Association shall perform all maintenance upon, and where the Association deems appropriate provide exterior lighting for, the Common Areas. Declarants or the Association shall have control over the design of any exterior lighting for Common Areas and streets, public or private. The Association shall further be responsible for landscaping within such areas and dedicated rights of way, including but not limited to walks, private roads, entrance gates and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a safe condition in conformance with applicable City standards, and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association and all Owners shall, jointly and severally, hold harmless, defend, and indemnify the City and its officers, agents and employees against all claims, demand, actions and suits (including all attorneys' fees and costs) arising from any failure to properly establish, construct, or maintain such areas.

9.2 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities with Common Areas, such as sanitary sewer service lines, domestic water service lines, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. The Association also shall be responsible for all operation of street lights on private streets, and for maintenance, repair and replacement of street lights on public streets, within the Project. The Association and all Owners shall, jointly and severally, hold harmless, defend, and indemnify the City and its officers, agents and employees against all claims, demand, actions and suits (including all attorneys' fees and costs) arising from any failure to properly establish, construct, operate or maintain such areas.

9.3 Services. The Association may provide or contract for such other services as the Board of Directors may reasonably deem to be of benefit to the Project, including without limitation garbage and trash removal for Common Areas, and security services.

9.4 Maintenance of Wetland/Wildlife Tracts and Conservation Easement Areas.

(a) Landscaping. Except as permitted by the Association and the City pursuant to Section 9.4(b), the Association shall perform all landscaping within Wetland/Wildlife Tracts or Conservation Easement Areas. Such landscaping shall utilize only native vegetation. Improvements other than landscaping shall be limited to pathways, road crossings, utilities and similar improvements approved by the City. Any pathways shall be permeable and constructed of natural materials. Trail crossings over waterways shall be minimized to the extent feasible and shall be designed to minimize the need for excavation. Vegetation shall not be disturbed except as necessary for construction and maintenance of approved improvements. Any tree removal shall require preparation of a tree protection plan and the prior approval of the Project's Environmental Compliance Officer and the City.



(b) Other Alterations and Improvements. No Owner or other person shall make any alterations or improvements to the Wetland/Wildlife Tracts or Conservation Easement Areas of any nature, including without limitation landscape design or construction of any building, wall, fence, paving, landscaping or construction of any type, except with the advance written approval of the Association and the City. The Association shall have the right to abate any violation of this Section 9.4(b) as provided in Section 11.2.

## ARTICLE 10

### ASSESSMENTS

10.1 Annual Budgets. The Association Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board of Directors deems necessary or desirable or as may be required by law. The method of adoption of the budget shall be as provided in the Bylaws of the Association.

10.2 General Assessments. All Lots and Living Units shall be subject to annual General Assessments as follows:

(a) Commercial Lots. General Assessments for all Commercial Lots (if any) shall be calculated by multiplying: (a) the ratio of the true cash value of each Commercial Lot, as shown on the records of the County Assessor, to the true cash value of all Lots within the Project, as shown on such records; (b) the total annual budget of the Association; and (c) 1.5.

(b) Living Units and Unimproved Residential Lots. General Assessments for all Living Units (including for purposes of this paragraph all multi-family Living Units, single-family Living Units, Condominium units and unimproved Residential Lots) shall be calculated by dividing the balance of the annual budget after reduction for the amount assessable to Commercial Lots, if any, by the total number of Living Units.

10.3 Use of General Assessments. The Association shall establish a fund to be known as the "Maintenance and Operations Fund," into which all General Assessments and other funds collected from the Owners by the Association, not otherwise allocated to a separate account in this Declaration or by action of the Association, shall be deposited. The Association shall use the Maintenance and Operations Fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Project, and the improvement, maintenance, and operation of properties, services and facilities devoted to this purpose, including but not limited to:

(a) Maintenance, Utilities, and Services. Payment of the cost of maintenance, utilities, and services as described in Article 9, including the costs of the operation of the Association.

(b) Insurance. Payment of the cost of insurance as described in the Bylaws of the Association.

(c) Taxes. Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) Environmental. Adequate funding of VCHERC and for implementation and enforcement of the Environmental Management Plan and the rights and obligations set forth in this Declaration and the Conditions of Approval related to environmental issues.

(e) Reserves. Establishment for reserves to meet extraordinary expense or such other amounts which are reasonably related to the purpose of the Maintenance and Operations Fund.

(f) Other. Payment of the cost of other projects, expenditures and services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

10.4 Capital Improvement Assessments. The Association may purchase, construct or otherwise acquire additional equipment, facilities or other capital improvements for the general use and benefit of the Project or all the members of the Association, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment." Any such assessment shall be assessed to the Lots and Living Units on the same formula as set forth in Section 10.2. No new Capital Improvement Assessment may be imposed under this Section which, for any one purchase, construction or other acquisition, or group of related purchases, constructions or other acquisitions, in the aggregate exceeds \$25,000, unless approved by the vote or written consent of the then-existing Class B members, if any, and by no less than seventy-five percent (75%) of the Class A votes cast, whether in person, by absentee ballot or by proxy, at a meeting duly called for the purpose of approving the Capital Improvement Assessment. To the extent that the additional equipment, facilities, or other capital improvements acquired or constructed by the Association shall include items of Common Property (as hereinafter defined) which will normally require replacement, in whole or in part, in more than three and less than thirty (30) years, such Capital Improvement Assessment shall be accompanied by a corresponding Common Property Reserve Account Assessment, as required by Section 10.5 below.

10.5 Reserve Account for Replacing Common Property.

(a) Creation of Account. Concurrently with the commencement of General Assessments, the Declarants shall establish a reserve account which shall be called the "Common Property Reserve Account," and which will be kept separate and apart from all other funds of the Association. Except as provided in Section 10.5(c) below, the Common Property Reserve Account shall be used for the maintenance, repair and replacement of items of Common Property which will normally require replacement, in whole or in part, in more than three and less than thirty (30) years. "Common Property" shall mean any real property or interest in real

property within the Project, including Improvements thereon, which is owned or leased by the Association or designated as such on any Plat or in this Declaration.

(b) Special Reserve Assessment. Not less often than annually, the Association shall conduct a reserve study. The reserve study shall inventory all items of Common Property and shall estimate the remaining useful life of each item of Common Property and the current estimated cost of maintenance, repair or replacement of each item at the end of its useful life. The reserve study shall include a 30-year plan for the maintenance, repair and replacement of Common Property with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves. The Association shall, within 30 days of performing the reserve study, provide every Owner a written summary thereof and of any revisions to the 30-year plan adopted as a result of the study. For the purpose of funding the Common Property Reserve Account, the Association shall impose an assessment to be called the "Common Property Reserve Account Assessment" against each Lot and Living Unit within the Project on the same formula as set forth in Section 10.2. The total Common Property Reserve Account Assessment shall be equal to the sum of the estimated replacement cost of each item of Common Property, divided by the estimated number of years of life for such item of Common Property (not the estimated years of life remaining). No Lot owned by Declarants shall be subject to any assessment under this Section 10.5 until such date as the Lot is Sold or conveyed to an unaffiliated party in an arms length transaction.

(c) Loan From Common Property Reserve Account. After the turnover meeting described Section 8.8 above, the Board of Directors of the Association may borrow funds from the Common Property Reserve Account to meet high seasonal demand on the Association's regular operating fund or to meet other temporary expenses. Funds borrowed under this authority must be repaid from the Maintenance and Operations Fund within six (6) months of the date such funds are borrowed.

(d) Increase, Reduction, or Elimination of Common Property Reserve Account Assessments. At any time after the second anniversary of the turnover meeting described in Section 8.8 above, future assessments for the Common Property Reserve Account may be increased, reduced or eliminated by the vote of Owners of Lots representing seventy-five (75%) of the votes computed in accordance with Section 8.4 above.

10.6 Payment of Assessments. The Association shall, not less than annually, provide notice to the Owner of each Lot of the amount of all assessments for such Lot calculated in accordance with this Article. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws of the Association.

10.7 Creation of Lien; Personal Obligation of Assessments. Declarants do hereby covenant, and each Owner of any Lot or Living Unit by acceptance of a conveyance thereof shall be deemed to covenant, to pay to the Association all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws, whether or not so expressed in the instrument of

conveyance. Such assessments and charges, together with any interest, expenses or attorneys' fees, imposed pursuant to Section 11.6, shall be a charge on the land and a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges and other costs shall also be the personal obligation of the persons (other than Declarants) who were the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

## ARTICLE 11

### ENFORCEMENT

11.1 Use of Common Areas. In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Lots or Common Areas, then the Association may notify the Owner in writing that the violation exists and that such Owner is responsible for it, and may, after a reasonable opportunity for the Owner to be heard, do any or all of the following:

(a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violation remains unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations; (b) impose reasonable fines upon the Owner, in the manner and amount the Board of Directors deems appropriate in relation to the violation, which fines shall be paid into the Maintenance and Operations Fund; and (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this Section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Lot.

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association may notify the Owner in writing of any such specific violations and may require the Owner to remedy or abate the same. If the Owner does not comply with the Association's specific directives for remedy or abatement within the time specified in the notice, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, then the Association, after a reasonable opportunity for the Owner to be heard within sixty (60) days of the above-described notice to the Owner, may (in addition to any other rights or remedies provided in this Declaration, at law or in equity) do any or all of the following:

(a) Fines. Impose reasonable fines against such Owner in the manner and amount the Association deems appropriate in relation to the violation.

(b) Remove Cause of Violation. Enter onto the Owner's Lot, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Owner shall reimburse the Association for the entire cost of the work done, plus 10% as an administrative fee, which amount shall be payable to the Maintenance and Operations Fund. The Association may implement the remedy provided in this paragraph without prior notice to the Owner and an

opportunity to be heard, if the Association reasonably determines that an emergency exists or that irreparable harm is likely to result from any delay.

(c) Suit or Action. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

11.3 Default in Payment of Assessments. If an assessment, fine, reimbursement or other charge due and payable by an Owner to the Association under this Declaration is not paid within thirty (30) days of its due date, the sum due shall become delinquent and shall bear interest from the due date until paid at the rate set forth below in Section 11.6. In addition, the Association may (in addition to any other rights or remedies provided in this Declaration, at law or in equity) exercise any or all of the following remedies:

(a) Suspension of Rights. The Association may suspend such Owner's voting rights and right to use the Common Areas until such sum, plus any other amounts then owing under this Declaration, are paid in full.

(b) Acceleration. The Association may declare all remaining periodic installments of any annual assessment or any other amounts owed or to be owed by such Owner to the Association in the same fiscal year immediately due and payable.

(c) Lien Rights. Any unpaid sum shall be subject to the Association's lien as provided in Section 11.4 and the Association may exercise the remedies therein stated.

#### 11.4 Enforcement of Lien.

(a) Existence of Lien. The Association shall have a lien against each Lot in the Project for all unpaid assessments, fines, reimbursements and other charges due under this Declaration, including without limitation assessments under Article 10, fines under Section 11.2(a), and reimbursements due under Sections 4.7(g), 4.7(h) and 11.2(b). The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.352 to 87.382 shall apply to the Association's liens. The liens may be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgagee and convey the Lot. If any assessment, fine, reimbursement or other charge is payable in installments, the full amount is a lien from the date the first installment of the payment becomes due.

(b) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments, fines, reimbursements and charges under this Declaration without foreclosing or waiving the lien described in Section 11.4(a) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(c) Notice Fees. In the event the Association shall file 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 the Association.

11.5 Subordination of Lien to Mortgages. Any lien of the Association against a Lot pursuant to Section 11.4 shall be subordinate to tax and assessment liens and any prior first Mortgage of record. Where the purchaser or mortgagee of a Lot obtains title to the Lot as a result of foreclosure of a first Mortgage, such purchaser or mortgagee, its successors and assigns, shall not be liable for any of the assessments, fines, reimbursements or other charges chargeable to such Lot which became due prior to the acquisition of title to such Lot by such purchaser or mortgagee. Such unpaid share of assessments shall be a common expense and reallocated on a pro rata basis for all Lots, including the mortgaged Lot. The purchaser or mortgagee shall not be relieved of the obligation to pay further assessments.

11.6 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 three (3) percentage points per annum above the prevailing Lincoln City, Oregon prime rate at the time, or such other rate as may be established by the Association, 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 resolution of the Board of Directors of the Association not exceed thirty percent (30%) of such assessment. In the event the Association shall bring any suit or action to enforce this Declaration, to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it 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.

11.7 Nonexclusiveness and Accumulation of Remedies. An election by the Association to pursue any remedy provided in this Declaration shall not prevent concurrent or subsequent exercise of another 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, 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.

11.8 Enforcement by City. The provisions of this Declaration providing for a right of approval or enforcement by the City shall be deemed to be for the benefit of the City as well as the Association and Owners, and the City may, but shall not be required to, enforce such provisions by appropriate proceeding at law or in equity. In addition, Declarants, the Association and all subsequent Owners acknowledge the City's ability to enforce the Conditions of Approval and any other land use approvals applicable to the Project, now or in the future, in the manner provided by applicable state and local law.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

12.1 Amendment and Repeal.

(a) Procedure. Subject to Sections 12.1(b) and (c), this Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Project, may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Class A votes, together with the vote or written consent of the then-existing Class B members, if any. Any such amendment or repeal shall become effective only upon recordation in the official records of the County of a certificate of the president or secretary of the Association setting forth in full the amendment or repeal and certifying that it has been approved in the manner required by this Declaration.

(b) Other Approvals Required. Any amendment or repeal of this Declaration or any provision thereof must also be reviewed and voted on by VCHERC, and approved by the City. All proposed amendments shall be transmitted to the City Planning Director with documentation that they have been reviewed by VCHERC, including any comments by VCHERC and the results of VCHERC's vote on the proposed amendments. As to minor amendments, if a majority of VCHERC voted to approve the proposed amendments, then the Planning Director may act on the City's behalf in reviewing and approving, approving with modifications, or disapproving the proposed amendments. As to major amendments, or if a majority of VCHERC did not vote to approve proposed minor amendments, or if the Planning Director otherwise elects to refer proposed minor amendments to the Planning Commission for review, then the Planning Commission shall act on the City's behalf in reviewing and approving, approving with modifications, or disapproving the proposed amendments. The actions of the Planning Director and the Planning Commission shall be subject to applicable appeal procedures, if any, established by the City zoning code. For purposes of this paragraph, a "minor amendment" is an amendment that will not have public visibility and: (i) does not increase densities; (ii) does not change boundaries; (iii) does not change any use, specific or general, described in any approved preliminary master plan, refined preliminary master plan or final master plan; and (iv) does not change the location or amount of land devoted to specific land uses. The Planning Director or the Planning Commission shall approve a proposed amendment if it finds that the proposed amendment is a reasonable way to implement the intent of any applicable refined preliminary master plan or final master plan approval, or applicable regulations, or that new information justifies a new approach; provided, however, that any conditions of any preliminary master plan approval, refined preliminary master plan approval, or final master plan approval incorporated into this Declaration may not be amended unless the relevant preliminary master plan, refined preliminary master plan or final master plan has first been amended to modify the conditions of approval.

(c) Declarants' Rights. In no event shall an amendment under this Section 12.1 create, limit or diminish any rights of the Declarants without the Declarants' written consent, nor shall any amendment change the boundaries of any Lot or any restrictions on use of a Lot unless the Owners of the affected Lots unanimously consent to the amendment.

## 12.2 Annexation of Additional Property.

(a) Method and Approval. Notwithstanding the provisions of Section 12.1, Declarants reserve the right to expand the Project by annexing additional land, Lots and/or common property to the Project and to this Declaration. Annexation of additional property to the Project shall not require the approval of the holders of the Class A votes or

VCHERC; however, it shall require the approval of the City as a major amendment pursuant to Section 12.1(b).

(b) Maximum Lots. There is no limit on the number of Lots in the Project; however, the total number of Living Units in the Project shall not exceed 1,829. Any annexed property shall comply with the requirements of the underlying City zoning relative to the overall density approved for the Project.

(c) Annexation of Common Property. There are no limitations on the right of Declarants to annex Common Areas to the Project.

(d) Reallocation of Votes. All Owners of Lots annexed to the Project pursuant to this Section 12.2, except for Declarants, shall be Class A members and shall be allocated votes as provided in Section 8.4(a). The right of such Owners to vote shall become effective upon recordation of the final subdivision plat creating the Lots.

(e) Reallocation of Common Expenses. Lots annexed to the Project pursuant to this Section 12.2 shall become subject to all assessments set forth in Article 10 upon recordation of the final subdivision plat creating the Lots. If any Lots become subject to assessments on a date other than the first day of the Association's fiscal year, then the Association shall prorate assessments for that year so that newly annexed Lots shall be assessed their pro-rata share of assessments only for the portion of the fiscal year occurring after the date the Lots first become subject to assessments.

12.3 Regulatory Amendments. Notwithstanding the provisions of Section 12.1 above, until termination of the last Class B membership, the then-existing Class B members shall have the right to amend this Declaration or the Bylaws of the Association as reasonably necessary to comply with the requirements of any applicable statute, ordinance, or regulation of the Federal Housing Administration, the Veterans Administration, the Farmers Home Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States, the State of Oregon or municipality thereof, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

12.4 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in the Project and Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in the Project and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of: (a) Owners owning not less than seventy-five percent (75%) of the Class A



votes; (b) the then-existing Class B members, if any; and (c) the holders of first Mortgages on two-thirds of the Lots subject to First Mortgages. Any such termination shall become effective only if prior to the intended termination date: (i) a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the official records of the County; and (ii) such termination has been approved by an order or resolution of the City and a copy of such order or resolution of the City has been recorded in the official records of the County. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

12.5 Right of First Mortgagees Relating to Maintenance. At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Project, then the record mortgagee of any Lot, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of that Lot as a member of the Association to vote, in lieu of the Owner, at all regular and special meetings of the members of the Association for a period of one (1) year following the date of such notice. During this one (1) year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee shall cite this Section 12.5 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

12.6 Joint Owners. In any case in which 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 joint and several, and the act or consent of any one or more of such persons shall constitute that act or consent of the entire ownership interest; provided, however, that in the event such persons 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 such person may deliver written notice of such disagreement to the Association, and the Association shall, until further written notice signed by all the persons owning the Lot, disregard any vote or right of consent purported to be exercised on behalf of that Lot for any purpose hereunder.

12.7 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Project under rights derived from an Owner shall comply with all of the provisions of this Declaration. The Owner shall be responsible for obtaining 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.

12.8 Nonwaiver. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.9 Construction; Severability. This Declaration shall be liberally construed to accomplish its purposes. Nevertheless, each provision of this Declaration shall be deemed

independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

12.10 Number. As used herein, the singular shall include the plural and the plural the singular, and any gender-specific reference shall each include the masculine, feminine and neuter, as the context requires.

12.11 Captions. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

12.12 Notices and Other Documents. All notices and other communications under this Declaration shall be writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three (3) business days after delivery to the United States mail, certified registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 12.12.

(a) Addresses. All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:

(i) If to an Owner, then to the last address for such Owner shown in the Association's records.

(ii) If to Declarants or to the Association, then to:

The Villages at Cascade Head  
4355 NW Highway 101, Suite A  
Lincoln City, OR 97367

With a copy to:

Tonkon Torp LLP  
1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204  
Attn: David J. Petersen

(b) Change of Address. Any party hereto may change the address to which notices shall be directed by giving ten (10) days written notice of such change delivered as provided herein.

12.13 Cable and Telephone Systems. Declarants hereby reserve the right (but not the obligation) to erect, repair, and maintain or grant to a third party or third parties the right to erect, repair, and maintain on, under, or over portions of the Project: (a) one or more satellite receivers and/or transmission disks and other equipment for the purpose of providing cable television service to the Project and other neighboring properties; and (b) equipment and structures connected with providing telephone systems (private or otherwise) and services, and

security systems and services, to the Project and other neighboring properties, so long as such equipment and structures comply with all applicable City, state and federal laws and regulations. Declarants hereby reserve and may grant to a third party or parties an easement over all or such parts of the Common Area as are reasonably required to accomplish such purposes. It is the intention of Declarants that any business or businesses operated by Declarants or a third party or parties in accordance with this Section 12.13 shall be owned and operated for Declarants' or such third party's or parties' commercial advantage, and to this end Declarants or such third party or third parties shall be considered as, and shall be entitled the rights and easements granted hereunder to, other utility companies or service providers. Nothing this Declaration shall be construed to mean that the ownership of such equipment and structure and benefits of such business or businesses shall belong to the Association or to any Owner or Owners.

12.14 Private Agreement. This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of the Project and the City is under no obligation to enforce any of its provisions. This Declaration does not restrict the City's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and the City's regulations. The parties hereto acknowledge that the City will limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot or an Improvement in the Project to know the requirements of this Declaration and the covenant and agreements contained herein. In the event of conflict between a City regulation and this Declaration, any question regarding which provision controls shall be directed to the Architectural Review Committee. The City will not be liable for any approvals or permits which are granted in compliance with City regulations, but which are not in compliance with this Declaration.

12.15 Conditions of Approval. Anything to the contrary in this Declaration notwithstanding, no portion of the Project shall be used, operated or maintained in violation of the Conditions of Approval. The Association shall have the right to enforce any violation of the Conditions of Approval in the manner provided in Article 11, and the City may (but shall not have the obligation to) enforce any violation of the Conditions of Approval by any remedy available to it, at law or equity.

IN WITNESS WHEREOF, Declarants have executed this Declaration as of the date first set forth above.

TEENY DEVELOPMENT LLC, an Oregon limited liability company  By: _____ Jeffrey W. Teeny Member	LINCOLN HIGHLANDS LIMITED PARTNERSHIP, an Oregon limited partnership  By: _____ Marjorie M. Boyd General Partner
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STATE OF OREGON                    )  
                                          ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2006, by Jeffrey W. Teeny, Member of Teeny Development LLC.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF HAWAII                    )  
                                          ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2006, by Marjorie M. Boyd, General Partner of Lincoln Highlands Limited Partnership.

\_\_\_\_\_  
Notary Public for Hawaii  
My Commission Expires: \_\_\_\_\_

033005\00001\647731 V008

IN WITNESS WHEREOF, Declarants have executed this Declaration as of the date first set forth above.

TEENY DEVELOPMENT LLC, an Oregon limited liability company	LINCOLN HIGHLANDS LIMITED PARTNERSHIP, an Oregon limited partnership
By: <u>Jeffrey W. Teeny</u> Member	By: <u>Marjorie M. Boyd</u> General Partner

STATE OF OREGON )  
County of Linn ) ss.

The foregoing instrument was acknowledged before me on this 30 day of March, 2006, by Jeffrey W. Teeny, Member of Teeny Development LLC.

Kathryn A Baker



Notary Public for Oregon  
My Commission Expires: 28 May 2007

STATE OF HAWAII )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2006, by Marjorie M. Boyd, General Partner of Lincoln Highlands Limited Partnership.

Notary Public for Hawaii  
My Commission Expires: \_\_\_\_\_

03300500001647731 V007

IN WITNESS WHEREOF, Declarants have executed this Declaration as of the date first set forth above.

TEENY DEVELOPMENT LLC, an Oregon limited liability company  By: _____ Jeffrey W. Teeny Member	LINCOLN HIGHLANDS LIMITED PARTNERSHIP, an Oregon limited partnership  By: <u>Marjorie M. Boyd</u> Marjorie M. Boyd General Partner
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STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2006, by Jeffrey W. Teeny, Member of Teeny Development LLC.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) ss.  
County of Honolulu )

The foregoing instrument was acknowledged before me on this 21 day of March, 2006, by Marjorie M. Boyd, General Partner of Lincoln Highlands Limited Partnership.

L.S.

Phillip Olson  
\_\_\_\_\_  
Notary Public for Hawaii Phillip Olson  
My Commission Expires: 08/29/08

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**Exhibit "A"**

Real property in the County of Lincoln, State of Oregon, described as follows:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 35, TOWNSHIP 6 SOUTH, RANGE 11 WEST, WILLAMETTE MERIDIAN, POINT BEING MARKED BY A 1-INCH IRON ROD WITH A 3-1/4" BRASS CAP, THENCE NORTH 0°32'51" WEST, 2668.50' TO A 3-1/4" BRASS CAP MARKING THE CENTER OF SECTION 35, THENCE SOUTH 89°53'12" WEST 1785.10' TO A 5/8" IRON ROD MARKING THE SOUTHEAST CORNER OF THE PLAT OF SAL LA SEA, SAID POINT ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF SAL LA SEA DRIVE, THENCE N31°13'21"E 744.61', THENCE 51.50' ALONG A 685.52' RADIUS CURVE RIGHT WITH A CHORD BEARING N33°22'29"E 51.49', THENCE S68°54'54"E 93.26', THENCE N53°25'20"E 94.46', THENCE N04°43'27"E 44.46', THENCE N54°50'35"E 237.41', THENCE N09°09'08"E 52.28', THENCE N72°47'33"E 166.71', THENCE N32°21'26"E 47.30', THENCE N87°53'46"E 201.25', THENCE N37°36'22"E 136.51', THENCE N63°16'15"E 256.02', THENCE S13°20'10"E 124.77', THENCE S38°32'50"W 83.25', THENCE S73°51'45"E 152.45', THENCE S10°23'59"E 38.95', THENCE S39°31'27"E 66.42', THENCE S49°51'39"E 99.38, THENCE N50°51'47"E 117.63', THENCE 277.16' ALONG A 475' RADIUS CURVE LEFT WITH A CHORD BEARING N34°08'50"E 273.24', THENCE N17°25'53"E 185.60', THENCE 250.86' ALONG A 233' RADIUS CURVE RIGHT WITH A CHORD BEARING N48°16'33"E 238.92', THENCE N79°07'13"E 142.41, THENCE 88.63' ALONG A 167' RADIUS CURVE LEFT WITH A CHORD BEARING N63°54'59"E 87.59', THENCE N48°42'45"E 196.76', THENCE 154.89' ALONG A 233' RADIUS CURVE RIGHT WITH A CHORD BEARING N67°45'24"E 152.05', THENCE N86°48'03"E 129.36', THENCE S00°01'22"E 458.59' TO THE NORTH LINE OF U.S. LOT 14 IN SAID SECTION 35, THENCE N89°59'53"W 412.50' ALONG SAID NORTH LINE TO A 1" IRON ROD WITH AN ALUMINUM CAP, THENCE S00°27'13"E 1304.78' ALONG THE WEST LINE OF SAID LOT 14 TO A 1" IRON ROD WITH ALUMINUM CAP MARKING THE NORTHWEST CORNER OF U.S. LOT 19, THENCE N89°50'21"E 50.99' ALONG SAID NORTH LINE OF U.S. LOT 19; THENCE S11°08'10"W 49.91'; THENCE 32.26' ALONG A 22.00' RADIUS CURVE LEFT WITH A CHORD BEARING S30°52'16"E 29.45'; THENCE 272.59' ALONG A 295.00' RADIUS CURVE RIGHT WITH A CHORD BEARING S46°24'25"E 262.99'; THENCE N50°15'35"E 40.31'; THENCE S36°33'31"E 228.13'; THENCE S75°11'42"E 46.66'; THENCE S09°32'22"E 104.78'; THENCE S49°42'02"W 48.43'; THENCE S13°35'13"W 109.28'; THENCE S30°22'17"E 116.90'; THENCE S06°01'43"W 51.82'; THENCE S22°25'26"W 217.16'; THENCE S16°52'46"W 131.52'; THENCE S28°01'11"W 106.76'; THENCE S02°10'03"W 93.18' TO A POINT ON THE NORTH LINE OF US GOVERNMENT LOT 30; THENCE S23°45'56"W 104.45'; THENCE S08°28'11"W 90.33'; THENCE S89°06'12"W 233.92'; THENCE 386.24' ALONG A NON-TANGENT 217' RADIUS CURVE TO THE RIGHT WHOSE CHORD BEARS S18°03'53"E 337.24; THENCE S12°20'33"E 130.42'; THENCE S06°10'04"E 96.45'; THENCE S03°55'45"W 165.92'; THENCE S11°49'55"W 212.07'; THENCE S19°43'42"W 140.43'; THENCE S39°44'15"W 126.84' TO A POINT ON THE SOUTH LINE OF SECTION 35; THENCE ALONG SAID SOUTH LINE S89°41'29"W 594.58' TO THE POINT OF BEGINNING.

Tax Parcel Number: R365580 and R367887 and R370309 and R509726 and R374977

*First American Title*