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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TRILLIUM ESTATES ON CHEHALEM MOUNTAIN

\_\_\_\_\_, 2014

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
TRILLIUM ESTATES ON CHEHALEM MOUNTAIN**

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by Aitchison Bell Lot 2-7, LLC; Aitchison Bell Lot 3-6, LLC; Aitchison Bell Lot 4-5, LLC; Aitchison Quarry Lot 1, LLC; Aitchison Quarry Lot 2, LLC; Aitchison Quarry Lot 3, LLC; and Aitchison 15495 Quarry, LLC; all Oregon limited liability companies (individually and collectively, "**Original Landowners**").

**ARTICLE 1 DEFINITIONS**

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

1.1 "**ARC**" means the Architectural Review Committee appointed pursuant to Article 6 hereof.

1.2 "**Association**" means the nonprofit corporation to be formed to serve as the association of Owners as provided in Article 7 hereof, and its successors and assigns.

1.3 "**Board**" means the Board of Directors of the Association.

1.4 "**Bylaws**" means the then-current Bylaws of the Association.

1.5 "**County**" means Yamhill County, Oregon.

1.6 "**Common Areas**" means: (a) Trillium Drive; and (b) a strip of land 15 feet in width along the northern boundary of the Project abutting NW Bell Road. Common Areas also include any Improvements constructed on the foregoing property which are intended to be devoted to the common use and enjoyment of the members of the Association.

1.7 "**Declarant**" means (i) Aitchison Investment, Inc., an Oregon corporation, (ii) any Person who succeeds to any special Declarant right and to whom all of Original Landowners' ownership interest in the Project is transferred, or (iii) any Person, other than the Association, to whom has been transferred, for the purposes of resale, all of Original Landowners' ownership interest in the Project.

1.8 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Trillium Estates on Chehalem Mountain, and any subsequent recorded amendment hereto that affects the Project, together with any rules or regulations promulgated thereunder, as the same may be amended or supplemented from time to time.

1.9 "**Existing Easements**" means the Mutual Access Easement and the Utility Easement.

1.10 "**Improvement**" means every temporary or permanent structure or improvement of any kind, including but not limited to a Living Unit, building, fence, wall, driveway, garage, 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.

1.11 "**Living Unit**" means a single family home located or to be located upon a Lot within the Project (whether or not occupied).

1.12 "**Lot**" means a platted or partitioned lot within the Project.

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

1.14 "**Mutual Access Easement**" means that certain Mutual Access Easement Agreement recorded June 25, 2013 as Instrument No. 201309678 and amended by that certain First Amendment to Mutual Access Easement Agreement recorded January \_\_, 2014 as Instrument No. 2014\_\_\_\_\_, Official Records of Yamhill County, Oregon.

1.15 "**Original Landowners**" has the meaning given in the first paragraph of this Declaration.

1.16 "**Owner**" means the Person or Persons, including Original Landowners, 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.

1.17 "**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.

1.18 "**Project**" and "**Trillium Estates on Chehalem Mountain**" mean the real property designated in Section 2.1 of this Declaration.

1.19 "**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.

1.20 "**Trillium Drive**" means the "Easement Area" as described in the Mutual Access Easement. Trillium Drive is a private road providing primary access to the Lots from NW Bell Road.

1.21 "**Utility Easement**" means that certain Utility Easement recorded October 22, 2013 as Instrument No. 201316364, Official Records of Yamhill County, Oregon.

## ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Submission of Project to Declaration.** Original Landowners hereby declare that all that certain real property located in the 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 "Trillium Estates on Chehalem Mountain." The Project is a Class II 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 County ordinances, Declarant may withdraw property from the Project, including Common Areas, only by duly adopted amendment to this Declaration. Such withdrawal shall be executed by Declarant 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 Declarant or one or more Original Landowners may be removed from the Project only as provided in Section 11.1 below. The right of Declarant to withdraw property pursuant to this Section shall expire when the last Lot has been Sold to an Owner other than Declarant or an Original Landowner.

2.4 **Construction of Initial Improvements.** Declarant and the Original Landowners do not agree to build any specific Improvements for the Project, but there shall be no limitation on their right to add Improvements not described herein prior to the conversion of the Class B membership to Class A membership.

## ARTICLE 3 LAND CLASSIFICATIONS

3.1 **Development.** All land within the Project is part of a Lot. Portions of each Lot are also Common Areas.

3.2 **Additional Land Classifications.** Additional land classification and uses may hereafter be established by amendment of this Declaration.

3.3 **Consolidation of Lots.** The Owner of two adjoining Lots, with the approval of the ARC, may elect to consolidate such Lots into one Lot. Subject to any County ordinances, the ARC 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 by the ARC and a description of any restrictions and conditions imposed as a condition of such consent. Thereafter, unless otherwise expressly provided by the ARC, the consolidated Lots shall continue to be considered separate Lots for all purposes pursuant to this Declaration, including voting rights and assessments.

## ARTICLE 4 PROPERTY RIGHTS AND EASEMENTS

4.1 **Assignment of Existing Easements.** Within five (5) days after creation of the Association, Original Landowners shall record an instrument conveying to the Association all of their respective rights, title and interest as grantees of the Existing Easements. The Association shall hold and exercise its rights and obligations under the Existing Easements for benefit of the Association and all its members.

4.2 **Entryway Easement.** Aitchison Bell Lot 2-7, LLC grants to the Association, for the benefit of the Association and all Owners, a perpetual, nonexclusive easement to the portion of the Project described and depicted in Exhibit "B" attached hereto and incorporated herein, upon which the Association shall have the right to construct and maintain entryway signage for the Project, and related Improvements and landscaping. The foregoing easement shall be appurtenant to the Project and each Lot therein.

4.3 **Additional Easements For Benefit of Association.** The Association shall have, for the benefit of the Association and all Owners, the following perpetual, nonexclusive easements:

(a) Construction and Maintenance. An easement over, under and upon all portions of the Project (including both Lots and Common Areas) reasonably necessary for the exercise of the powers and duties of the Association under this Declaration and the Bylaws, including without limitation: (a) installation and maintenance of power, gas, electric, water and other utility and communication lines and services; and (b) construction, maintenance, repair and use of the Common Areas and common facilities thereon, including without limitation roadways, walkways, bike paths, fences, landscaping, tree planting, irrigation systems, entryway structures, lighting, decorative ornamentation and signs.

(b) Use of Utilities. An easement, over, under and upon each Lot to use electricity, water and other utilities serving such Lot in furtherance of the Association's duties and obligations with respect to the Common Areas. The Association shall credit the Owner for the actual cost of utilities used by the Association pursuant to the exercise of its rights under this Section 4.3(b) against assessments due from such Owner pursuant to Article 8.

4.4 **Easement For Benefit of Declarant.** In addition to any other easements to which Declarant may be entitled, Declarant shall have a nonexclusive easement over, under and across the Project as reasonably necessary to carry out development, construction, sales, and other activities necessary or convenient for the development of the Project, the sale of Lots, and for such other purposes as may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights hereunder.

4.5 **Entry Easements.** Original Landowners hereby grant the following easements for the benefit of Declarant 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. Declarant, the ARC 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.

4.6 **Use of Common Areas.** The Common Areas shall be available for the use and enjoyment of the Association and all Owners, and no private use may be made of the Common Areas that interferes with such use and enjoyment without the advance written approval of the Association. This Section 4.6 shall not prevent Declarant or the Association from placing a sign or signs upon the Common Areas for the purpose of identifying the Project or identifying items of interest, provided such signs comply with any applicable County ordinances.

4.7 **Provisions Applicable to 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 4.7(c), pursuant to ORS 94.665 the Association may not by act or omission seek to abandon, partition, subdivide, or encumber the Association's interest in the Common Areas or cause or suffer such interest to be subject to any security interest, nor may the Association sell or transfer the Association's interest in the Common Areas directly or indirectly, unless: (i) the holders of the minimum required percentage of Class A voting rights (as described in Section 7.4(a)), and any then-existing Class B member (as defined in Section 7.4(b)) have given their prior written approval; and (ii) such action complies with any applicable County ordinances. For purposes of the prior sentence, the "minimum required percentage" of Class A voting rights shall be seventy-five percent (75%). A sale, transfer, or encumbrance of the Association's interest in the Common Areas or any portion of the Common Areas in accordance with this Section 4.7(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 the Association's interest in the Common Areas 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 to Public. The Association may dedicate its interest in Common Areas to the County at any time after review and approval by the County and completion of construction of approved public facilities thereon, without the prior approval of the holders of voting rights in the Association. If the County or any other public entity requires that any dedication pursuant to this Section 4.7(c) be of the fee interest in the underlying land, then upon the approval of the Owners of at least five Lots, all Owners with an interest in the land to be dedicated shall, for no additional consideration, execute and deliver to the Association the necessary instruments to complete the dedication to the public.

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

to the right of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration and the Bylaws.

(e) Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, 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, such rights may not be sold, conveyed, assigned or otherwise transferred separately from fee title to the entire Lot to which such rights are appurtenant.

4.8 **Expiration of Declarant's Easements.** All easements granted to Declarant in this Declaration shall terminate as of the date that all Original Landowners no longer own any real property within the Project.

## ARTICLE 5 RESTRICTIONS ON USE

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

5.2 **Structures Permitted.** No Improvements shall be erected, modified or permitted to remain on any Lot except single family residential homes and Improvements normally accessory thereto. All Improvements, including modifications or removal thereof, must be approved by the ARC as provided in Article 6.

5.3 **Residential Use.** Lots shall only be used for residential purposes, or for other uses expressly permitted by this Declaration or any easements granted hereunder. Except with the consent of the Board, and as allowed by applicable County ordinances, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any 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 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 Original Landowners, Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction or for Declarant to use any Living Unit as a sales office or model home; or (c) the right of any occupant 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 shall not approve commercial activities otherwise prohibited by this Section 5.3 unless the Board 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 County ordinances.

5.4 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot or Common Areas, nor shall anything be done or placed on any Lot or Common Areas 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 Areas, and all valid laws, zoning

ordinances, and regulation of all governmental bodies having jurisdiction thereof shall be observed.

5.5 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any 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 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. Notwithstanding all of the foregoing, an Owner or occupant of a Lot may keep a maximum of eight horses, llamas, alpacas, or similar animal per Lot.

5.6 **Maintenance of Structures.** Each Owner shall maintain such Owner's Lot 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.

5.7 **Lot Landscaping.** All landscaping of Lots shall require prior approval the ARC. Landscaping shall be substantially complete within six months following the issuance of a certificate of occupancy for any new Living Unit. Each Owner shall thereafter maintain the exterior landscaping of its Lot in a manner consistent with the standard of design and quality as originally established by this Declaration, the ARC and the Association. Maintenance of landscaped areas shall include, but not be limited to, watering, weeding, pruning, fertilization, mowing, and other forms of maintenance. Owners shall keep all Lots free of diseased or dead lawn, ground cover and shrubs. All lawn areas shall be watered, fertilized and neatly mowed.

5.8 **Parking.** No campers, boats, boat trailers, recreational vehicles, commercial vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories shall be kept or stored on any Lot except (a) with ARC's approval, or (b) if fully enclosed within the garage located on such Lot. No vehicle shall be parked on any Lot except in the garage or driveway. No commercial vehicle bearing commercial insignia or names shall be kept or stored on any Lot unless approval of the Board is granted; provided that commercial vehicles bearing commercial insignia or names that are (i) temporarily parked on any Lot for the sole purpose of serving such Lot, or (ii) kept within an Owner's garage at all times are exempt from this restriction. The Board shall not unreasonably withhold consent to park a commercial or passenger vehicle bearing insignia or names where such vehicle is driven by an Owner pursuant to Owner's primary job or home-based business.

5.9 **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 Common Areas 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 by the Association to remove the vehicle, 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. All oil or grease on driveways shall be cleaned up immediately.

5.10 **Signs.** No signs shall be erected or maintained on any Lot except signs which are first approved as to appearance and location by the ARC. The restrictions contained in this Section shall not apply to: (a) the temporary placement of reasonable "for sale" or political signs not exceeding six square feet on any Lot by the Owner thereof; (b) the placement by the Declarant or Declarant's agents of one or more signs identifying the name of the Declarant and/or the location of a sales office or model home, or advertising Lots for sale; and (c) entryway signage within the easement established by Section 4.2.

5.11 **Rubbish and Trash.** No Lot or Common Areas 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, animal-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 wildlife-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 Lots (whether improved or unimproved) shall be kept in a neat and orderly condition. If any breach of this Section 5.11 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 9.2.

5.12 **Completion of Construction.** The construction or remodeling of any Improvement on any Lot, including painting and all exterior finish, shall be completed within one year 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 ARC. The building area shall be kept reasonably clean and in workmanlike order during the construction period. No Living Unit shall be occupied for residential purposes on a temporary or permanent basis until all such construction work thereon has been substantially completed and an occupancy permit has been issued by the appropriate building official.

5.13 **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.

5.14 **Chemicals and Hazardous Materials.** Unless permitted in advance by the ARC, no non-organic agricultural spraying shall occur on any Lot. Dumping or disposal of chemicals, cleaning products, motor oil or any other hazardous materials or substances anywhere on the Project is prohibited. No Owner shall allow any such product or substance to drain into the driveways, streets, sidewalks or drains on the Project and shall properly dispose of all such products or substances in accordance with applicable law.

5.15 **Hedges and Plantings Along Lot Lines.** No fences or boundary hedges shall be installed without prior written approval of the ARC. Any approved fence along property lines on the Lots must include a gate to allow Declarant and Association access pursuant to the

easements granted or reserved by this Declaration. Fences, hedges or other obstructions may not enclose or prohibit free access to any Common Area. Any fencing installed on an Owner's Lot will be Owner's maintenance responsibility. All fences are to be maintained in a condition acceptable to the Board and ARC. Fences along the perimeter boundaries of the Project, if any, will be maintained by the Association. All fence or wall materials, designs, and colors are subject to prior approval of the ARC. In the event Declarant constructs fencing on the Project or any Lot, all adjoining fencing constructed by Owners must match the Declarant-installed fencing in design, height, and color unless specifically approved in writing by the ARC prior to any construction thereof. No chain link fencing is permitted on any Lot except that an Owner may use chain link fencing for dog kennels so long as the kennels are fully and appropriately screened from view from Trillium Drive.

5.16 **Service Facilities.** Service facilities (garbage containers, fuel tanks, clotheslines, HVAC etc.) on Lots shall be completely screened so that the facilities are not visible at any time from Trillium Drive or any adjoining property.

5.17 **Antennas and Satellite Disks.** No television or radio receiving or transmitting antenna, or similar implement or apparatus or equipment shall be installed upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view from Trillium Drive, and no such apparatus shall be erected without the prior written consent of the ARC. Notwithstanding the forgoing, exterior satellite dishes with a surface diameter of eighteen (18) inches or less shall be allowed, subject to ARC approval and in the least noticeable location as is possible. If such placement is not reasonably possible, the ARC may approve a different location subject to the guidelines in this Section.

5.18 **Solar Collectors.** No solar collectors or panels, or similar equipment, will be installed on any Lot without the prior written consent of the ARC. The ARC may promulgate rules regarding the size and location of solar collectors and panels.

5.19 **Exterior Lighting or Noisemaking Devices.** Except with the consent of the ARC, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than security and fire alarms. All security lighting shall be motion-controlled. False alarms of security and fire systems will not be allowed to repeatedly occur. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty days after the celebrated holiday. Entrance and exit lighting, accent lighting, and landscape lighting as approved by the ARC shall be permitted. All exterior lighting shall be downward-directed, except approved landscape lighting. With prior approval of the ARC as to the design, Owners shall be allowed to install a lighted address sign at the entrance to their Lots.

5.20 **Roofs and Exterior Materials.** All roofs and other exterior portions of any structures located on a Lot shall be constructed and painted in a manner that assure harmony of the Improvements with respect to the Project's natural surroundings, as determined by the ARC in its sole discretion. All rooftop mechanical equipment must also be screened from view. No aluminum windows are allowed.

5.21 **Rental of Living Units.** No Lot or Living Unit, or portion thereof, may be leased for less than thirty (30) days. Leases longer than thirty (30) days must be in writing and require prior written approval from the Board. All leases shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the rules and regulations and Bylaws, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. If the Board finds that a lessee or tenant has violated any provision of such documents, the Board may require the Owner to terminate such lease or rental arrangement. The Board shall not approve a lease of any Lot on which unpaid assessments or other charges are due hereunder. Nothing herein shall prohibit any lease between any Original Landowner and Declarant, nor shall Board approval of any such lease be required.

5.22 **Grades, Walls, Slopes, and Drainage.** There shall be no modification to and/or interference with the established grading and/or drainage patterns, walls or other systems over or through any Lot unless properly engineered and permitted by the County, if required, and approved by the ARC. Notwithstanding the foregoing, however, any permitted modifications to the established grading and/or drainage patterns may not adversely affect other Lots. The term "established grading and/or drainage patterns" shall mean any Declarant-installed walls, grading, drainage systems, conduits, inlets and outlets designed and constructed on the Project. Retaining wall or fence locations shall not constitute evidence of the intended location of a Lot line, nor provide grounds for any claim of adverse possession. Except as otherwise provided in this Declaration, each Owner shall be responsible for all costs to repair and maintain any portion of a retaining wall, if any, located within the boundaries of each respective Lot line. No Owner shall take any action to add, construct or place any improvement on the Lot so that it may, in the judgment of the ARC, result in a disturbance of, weakening of, or damage to any retaining walls or existing fencing, increase any engineered load or alter design criteria, or cause damage to any structure or improvement of any kind or to surrounding properties.

5.23 **Damage or Destruction to Living Unit and/or Lot.** If all or any portion of any Improvements to a Lot (excluding Improvements to Common Areas maintained by the Association) is damaged by fire or other casualty, the Owner shall either (a) restore the damaged Improvements or (b) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration or removal work must be commenced within sixty (60) days and completed within six (6) months after the work is approved by the ARC, and any restored Improvements must be in substantially the same condition in which they existed prior to the damage, subject to current governmental regulations and building codes. In the event the Owner fails to commence such work within the six (6)-month period, the Association shall have the right, but not the obligation, to commence such work on behalf of, and for the sole account of, Owner.

## ARTICLE 6 ARCHITECTURAL REVIEW COMMITTEE

6.1 **Architectural Review.** Commencing on the sale of the first Lot in the Project to a Person other than an Original Landowner or Declarant, 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 ARC. 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.

**6.2 Minimum Standards and Design Guidelines.** In all cases which ARC approval or consent is required by this Declaration, the provisions of this Article shall apply, including the following minimum standards. Compliance with the minimum standards does not eliminate the requirement for ARC approval. To the extent the ordinances and regulations of the County (and any other applicable agencies) are more restrictive or provide for a higher or different standard, those ordinances and regulations shall control.

(a) Height and Size. Each Living Unit shall: (i) have a ground floor area of no less than 2,500 square feet, (ii) be no more than 32 feet tall, excluding basement (whether finished, unfinished, or daylight) and (iii) have a total living area of not less than 3,500 square feet.

(b) Garages. Garages are to be maintained primarily for the storage of automobiles or similar vehicles. Garages shall be attached to the Living Unit, shall be sufficient size for at least three standard size automobiles, and shall compliment the architecture, color, and finishing of the associated Living Unit. No garage may be used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door. No carports shall be permitted.

(c) Exterior. The exterior of all structures shall be covered with material specifically approved for use on said structures by the ARC. No paint or finish shall be applied to all or any part of the exterior of any structure without the prior approval of the ARC and after the ARC has received an accurate sample. All reflective metal, chimney stacks or vents, exhaust vents, and plumbing vents must be painted to match or blend with the surrounding materials.

(d) Trees. The Lots are all view lots, and each Owner shall be responsible for ensuring that trees on its Lot do not obstruct the views from other parts of the Project. The ARC shall have the authority to require an Owner, at the expense of the Owner, to remove, trim, or limb trees so as to protect the views from another Lot or the Common Areas.

(e) Mobile Homes. Manufactured Homes or Prefabricated Homes. No mobile home, manufactured home or prefabricated home shall be brought on any Lot or used as a temporary or permanent residence thereon. Temporary buildings, structures or storage units may be placed or erected on a Lot only to facilitate the construction of Improvements thereon, and shall be removed or demolished within thirty (30) days following the completion of construction of the Improvements, unless approval of such structures are approved by the ARC to remain in place after the Improvements are complete.

(f) Utilities. All permanent electrical and other transmission and utility lines are to be installed underground to the extent possible. The location of wells and septic systems must be approved by the ARC. No public water or sewer service is available to the Project. If such service becomes available in the future, all costs to connect any Lot with

such services, including systems development charges, shall be the responsibility of the Owner of the Lot.

(g) Driveways. All driveways shall be hard-surfaced. No gravel driveways are permitted.

(h) Security. The Association is not responsible for security of the Project or any Living Units. The Owners are exclusively responsible for security of their Living Unit and Lot.

### 6.3 **Committee Decision.**

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

(b) Timing. The ARC shall render its decision on an application for approval or consent within fifteen (15) working days after the application has been deemed complete. If the ARC fails to render approval or disapproval of such application within thirty (30) working days after the application has been deemed complete, 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.

(c) Fee. The ARC may charge a reasonable fee to cover the cost of processing applications.

6.4 **Committee Discretion.** The ARC 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 ARC 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 ARC reasonably believes to be relevant to the application.

6.5 **Membership; Appointment and Removal.** Until the turnover meeting, the Declarant or its appointee shall serve as the ARC. Thereafter, the ARC shall consist of any odd number of individuals, but not less than three (3), as the Board may from time to time appoint. The Board may appoint Board members to the ARC provided that Board members do not constitute a majority of the ARC. The Declarant or Board, as the case may be, may remove any member of the ARC 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(s) of the ARC. The foregoing notwithstanding, the Declarant's right to

appoint members shall expire no later than the conversion of the Declarant's Class B membership in the Association to Class membership as provided in Section 7.4, and the Board shall assume responsibility for appointment and removal of members of the ARC no later than the date on which there is no longer any Class B member.

6.6 **Majority Action.** Except as otherwise provided herein, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting, provided that good faith efforts are made to give reasonable advance notice and an opportunity to participate to the remaining members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto. ARC consent to any proposed work shall automatically be revoked three (3) months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the ARC in writing.

6.7 **Liability.** The scope of the ARC's review is not intended to include any review or analysis of structural, geophysical, engineering, or other similar considerations, and any approval by the ARC of any work shall not constitute any representation or warranty whatsoever by the ARC that the work is safe, properly designed or meets applicable governmental regulations applicable thereto. Neither the Declarant, the Association, the ARC 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 ARC or a member thereof, provided only that the ARC has, in accordance with the actual knowledge possessed by the ARC or by its members, acted in good faith.

6.8 **Nonwaiver.** Approval by the ARC 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.

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

6.10 **Estoppel Certificate.** Within fifteen (15) working days after written request therefor is delivered to the ARC by any Owner, and upon payment to the ARC of a reasonable fee, if any, fixed by the ARC to cover costs, the ARC shall provide such Owner with an estoppel certificate 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 other applicable guidelines, rules or regulations; or (b) such Improvements do not so comply, and identifying the noncomplying Improvements and setting 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 Declarant, the ARC, the Association and all Owners, and such purchaser or mortgagee.

## ARTICLE 7 ASSOCIATION

7.1 **Name.** As set forth in this Article, Declarant shall organize an association of all of the Owners within the Project. Such Association shall be organized under the name "Trillium Estates on Chehalem Mountain Homeowners Association, Inc." or such similar name as Declarant 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.

7.2 **Organization.** Declarant shall, before the first Lot in the Project is conveyed to an Owner other than an Original Landowner, 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 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 (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.

7.3 **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.

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

(a) Class A. Class A members shall be all Owners. Class A members who own Lots shall be entitled to one vote for each Lot owned, except that any Original Landowner shall not have voting rights until the Class B membership has been converted to Class A membership.

(b) Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three votes for each Lot owned by Declarant or an Original Landowner.

(c) Conversion of Class B to Class A. The Class B membership shall be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier: (i) when seventy-five percent (75%) of the Lots have been Sold and

conveyed to Owners other than Declarant or an Original Landowner; or (ii) a such earlier time as Declarant may elect in writing.

7.5 **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 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 7.4 above.

7.6 **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 of the Association or the Bylaws.

(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 Bylaws made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

7.7 **Liability.** Neither the Association nor any officer or member of its Board 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, provided only that the Association, officer or Board member has acted in good faith based upon actual knowledge.

7.8 **Interim Board; Turnover Meeting.** Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of the Association until either replaced by Declarant, or their successors have been elected by the Owners at the turnover meeting described in this Section. Declarant shall call the turnover meeting by giving notice to each Owner as provided in the Bylaws 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 Lots have been Sold and conveyed to Owners other than Declarant or an Original Landowner. Notwithstanding the preceding sentence, Declarant must call the turnover meeting no later than ninety (90) days after the Class B voting membership is converted to Class A voting membership. If Declarant does not call the meeting required by this Section within the required time, 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.

7.9 **Declarant Control After Turnover.** After the turnover meeting described in Section 7.8, but prior to conversion of the Class B membership to Class A membership, the Class B member shall select a majority of the Board, with the balance of the Board elected by the Class A members. After conversion of the Class B membership to Class A membership, all directors shall be elected by the Class A members.

7.10 **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.

7.11 **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. Declarant or the Association shall have control over the design and shall be responsible for the operation and maintenance of all Improvements on the Common Areas, including exterior lighting. 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 County standards, and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended.

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

## ARTICLE 8 ASSESSMENTS

8.1 **Annual Budgets.** The Board 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 over- or under-assessment and any common profits of the Association. The budget may provide for such reserve or contingency funds as the Board 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.

8.2 **General Assessments.** All Lots shall be subject to annual General Assessments necessary to fund the budget, in equal shares.

8.3 **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, including but not limited to paying costs associated with the Association's duties and obligations under this Declaration and the Bylaws, operation of the Association, insurance, taxes, and 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.

**8.4 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 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 in equal shares. 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 \$5,000, unless approved by the vote or written consent of the then-existing Class B member, 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.

**8.5 Special Assessments.** The Association may, at any time and from time to time, levy special assessments for any purpose reasonably related to the Project and the exercise of the Association's rights and obligations under this Declaration and/or the Bylaws, including without limitation special assessments to correct operating deficits, to collect amounts due, or to make unanticipated repairs or replacements of Common Areas and Association property. No special assessment may be imposed under this Section which in the aggregate exceeds \$25,000, unless approved by the vote or written consent of the then-existing Class B member, 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 special assessment.

**8.6 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. The Association may approve the payment of Capital Improvement Assessments or special assessments in installments.

**8.7 Creation of Lien; Personal Obligation of Assessments.** Original Landowners do hereby covenant, and each Owner of any Lot 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 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 9.6, 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 Person(s) who were the Owner of any 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 9 below.

## ARTICLE 9 ENFORCEMENT

9.1 **Use of Project.** In the event any Owner shall violate any provision of this Declaration, the Bylaws 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 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 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.

9.2 **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.

9.3 **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 9.6. 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 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 9.4 and the Association may exercise the remedies therein stated.

#### 9.4 **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 8. 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 any 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 9.4(a). 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.

9.5 **Subordination of Lien to Mortgages.** Any lien of the Association against a Lot pursuant to Section 9.4 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.

9.6 **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 Newberg, 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 by resolution of the Board not to 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.

9.7 **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.

## ARTICLE 10 INSURANCE

10.1 **Insurance For the Association.** The Association shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability insurance with respect to the Common Areas in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including coverage for death or injury to persons and property damage, whether caused by the negligence of the Association or otherwise; provided, however, that such policy(ies) shall not be for an amount of less than One Million Dollars (\$1,000,000) per occurrence. The named insureds on the policy(ies) shall be the Association and the Owners. The Association shall not purchase fire or other casualty coverage for Lots or Living Units. The Association may obtain such other and further policies of insurance as it deems advisable, including without limitation errors and omissions coverage for or on behalf of any individual who is or was a director, officer, employee, or agent of the Association. The policy, premiums, and any deductible amount shall be paid by the Owners via general assessments.

10.2 **Insurance by Owners.** Owners are required to maintain all-hazard insurance in an amount reasonably necessary to protect the Owner's Lot and the Improvements thereon (other than Improvements on Common Areas maintained by the Association).

10.3 **Insurance Required by Bylaws.** The insurance requirements of this Article 10 are in addition to the insurance requirements set forth in the Bylaws.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 **Amendment and Repeal.** 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 member, 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. However, in no event shall an amendment under this Section create, limit or diminish any rights of the Declarant without the Declarant's 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.

11.2 **Regulatory Amendments.** Notwithstanding the provisions of Section 11.1, until termination of the Class B membership, the then-existing Class B member shall have the right to amend this Declaration or the Bylaws 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.

11.3 **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 member, if any; and (c) the holders of first Mortgages on two-thirds of the Lots subject to Mortgages. Any such termination shall become effective only if prior to the intended termination date, 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. 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.

11.4 **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 first-priority 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 11.4 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.

**11.5 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 Persons owning the Lot, disregard any vote or right of consent purported to be exercised on behalf of that Lot for any purpose hereunder.

**11.6 Lessees and Other Invitees.** Lessees, invitees, contractors, family members and other individuals 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 individuals in the same manner and to the same extent as if the failure had been committed by the Owner.

**11.7 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.

**11.8 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.

**11.9 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.

**11.10 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.

**11.11 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. All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:

If to an Owner other than an Original Landowner, then to the last address for such Owner shown in the Association's records.

If to Declarant, any Original Landowner or to the Association, then to:

Aitchison Investment, Inc.  
1628 NW 32nd Avenue  
Portland, OR 97210-1908

With a copy to:

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

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.

*NOTHING FURTHER ON THIS PAGE*

IN WITNESS WHEREOF, Original Landowners and Declarant have executed this Declaration as of the date first set forth above.

AITCHISON BELL LOT 2-7, LLC, an Oregon limited liability company

By: Aitchison Investment, Inc.  
Its: Member

By: \_\_\_\_\_  
Valerie A. Aitchison  
President

AITCHISON BELL LOT 3-6, LLC, an Oregon limited liability company

By: Aitchison Investment, Inc.  
Its: Member

By: \_\_\_\_\_  
Valerie A. Aitchison  
President

AITCHISON BELL LOT 4-5, LLC, an Oregon limited liability company

By: Aitchison Investment, Inc.  
Its: Member

By: \_\_\_\_\_  
Valerie A. Aitchison  
President

AITCHISON QUARRY LOT 1, LLC, an Oregon limited liability company

By: Aitchison Investment, Inc.  
Its: Member

By: \_\_\_\_\_  
Valerie A. Aitchison  
President

AITCHISON QUARRY LOT 2, LLC, an Oregon limited liability company

By: Aitchison Investment, Inc.  
Its: Member

By: \_\_\_\_\_  
Valerie A. Aitchison  
President

AITCHISON QUARRY LOT 3, LLC, an Oregon limited liability company

By: Aitchison Investment, Inc.  
Its: Member

By: \_\_\_\_\_  
Valerie A. Aitchison  
President

AITCHISON 15495 QUARRY, LLC, an Oregon limited liability company

By: Aitchison Investment, Inc.  
Its: Member

By: \_\_\_\_\_  
Valerie A. Aitchison  
President

AITCHISON INVESTMENT, INC.

By: \_\_\_\_\_  
Valerie A. Aitchison  
President



## **Exhibit "A"**

### **Description of the Project**

#### **Parcel 1:**

PARCEL 1, PARTITION PLAT NUMBER 2013-013, A DULY RECORDED PARTITION PLAT IN THE WEST HALF OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON.

#### **Parcel 2:**

PARCEL 2, PARTITION PLAT NUMBER 2013-013, A DULY RECORDED PARTITION PLAT IN THE EAST HALF OF SECTION 9 AND THE WEST HALF OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON.

#### **Parcel 3:**

PARCEL 3, PARTITION PLAT NUMBER 2013-013, A DULY RECORDED PARTITION PLAT IN THE EAST HALF OF SECTION 9 AND THE WEST HALF OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON.

#### **Parcel 4:**

LOTS 2 AND 7 "CHEHALEM HILL" A DULY RECORDED SUBDIVISION PLAT IN THE NORTHWEST QUARTER, OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON.

#### **Parcel 5:**

LOTS 3 AND 6 "CHEHALEM HILL" A DULY RECORDED SUBDIVISION PLAT IN THE NORTHWEST QUARTER, OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON.

#### **Parcel 6:**

LOTS 4 AND 5 "CHEHALEM HILL" A DULY RECORDED SUBDIVISION PLAT IN THE NORTHWEST QUARTER, OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON.

#### **Parcel 7:**

A TRACT OF LAND BEING A PORTION OF PARCEL 1 "PARTITION PLAT 95-38", A DULY RECORDED PLAT IN YAMHILL COUNTY PLAT RECORDS, IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST, OF THE WILLAMETTE MERIDIAN, YAMHILL COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS DISK MARKING THE NORTHEAST CORNER OF THE BENJAMIN HEATER DONATION LAND CLAIM #50; THENCE S89°55'36"W, ALONG THE NORTH LINE OF SAID DONATION LAND CLAIM, A DISTANCE OF 1382.09 FEET TO A 5/8 INCH IRON ROD WITH A YELLOW PLASTIC CAP INSCRIBED

“HERTEL PLS 1896”; THENCE S00°23'56"W, A DISTANCE OF 706.28 FEET TO A 5/8 INCH IRON ROD WITH A YELLOW PLASTIC CAP INSCRIBED “HERTEL PLS 1896” MARKING A POINT ON THE MOST EASTERLY SOUTH LINE OF SAID PARCEL 1 “PARTITION PLAT 95-38”; THENCE N89°52'13"W, ALONG THE MOST EASTERLY SOUTH LINE OF SAID PARCEL 1, A DISTANCE OF 114.75 TO A 5/8 INCH IRON ROD WITH A YELLOW PLASTIC CAP INSCRIBED “HERTEL PLS 1896” MARKING THE RE-ENTRANT CORNER OF SAID PARCEL 1; THENCE S00°00'09"W, ALONG THE MOST SOUTHERLY EAST LINE OF SAID PARCEL 1, A DISTANCE OF 47.25 FEET TO A 5/8 INCH IRON ROD WITH A YELLOW PLASTIC CAP INSCRIBED “HERTEL PLS 1896”; THENCE N89°52'13"W, PARALLEL TO THE MOST EASTERLY SOUTH LINE OF SAID PARCEL 1, A DISTANCE OF 720.31 FEET TO A 5/8 INCH IRON ROD WITH A YELLOW PLASTIC CAP INSCRIBED “HERTEL PLS 1896”; THENCE N44°52'38"W, A DISTANCE OF 694.90 FEET TO A 5/8 INCH IRON ROD WITH A YELLOW PLASTIC CAP INSCRIBED “HERTEL PLS 1896”; THENCE N00°04'24"W, PERPENDICULAR TO THE NORTH LINE OF SAID HEATER DONATION LAND CLAIM, A DISTANCE OF 257.49 FEET TO A 5/8 INCH IRON ROD WITH A YELLOW PLASTIC CAP INSCRIBED “HERTEL PLS 1896” MARKING A POINT ON THE NORTH LINE OF SAID DONATION LAND CLAIM; THENCE N89°55'36"E, ALONG THE NORTH LINE OF SAID DONATION LAND CLAIM, A DISTANCE OF 1330.62 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 20.01 ACRES, MORE OR LESS.

## **Exhibit "B"**

### **Entryway Easement**

A TRACT OF LAND BEING A PORTION OF LOT 7 "CHEHALEM HILL", A DULY RECORDED PLAT IN YAMHILL COUNTY PLAT RECORDS, LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST OF THE WILLAMETTE MERIDIAN, YAMHILL COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD WITH A YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896" MARKING THE NORTHWEST CORNER OF SAID LOT 7; THENCE N89°16'01E, ALONG THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 98.14 FEET; THENCE 39.27 FEET ALONG THE ARC OF A 25.00 FOOT NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 90°00'00", AND A LONG CHORD WHICH BEARS S45°43'59"E 35.36 FEET; THENCE S00°43'59"E, A DISTANCE OF 25.00 FEET; THENCE 72.67 FEET ALONG THE ARC OF A 92.50 FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45°00'57", AND A LONG CHORD WHICH BEARS S21°46'29"W 70.82 FEET; THENCE S44°16'58"W, A DISTANCE OF 116.57 FEET; THENCE 20.69 FEET ALONG THE ARC OF A 157.50 FOOT RADIUS CURVE TO THE LEFT TO A POINT ON THE WEST LINE OF SAID LOT 7; THENCE N00°43'02"W, ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 213.74 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 18,195 SQUARE FEET, MORE OR LESS. REFERENCE IS MADE TO A SURVEY BY ALBERT HERTEL, DATED MAY 28, 2013 AND RECORDED AS YAMHILL COUNTY PARTITION PLAT 2013-13 AND BY SAID REFERENCE IS MADE A PART HEREOF.

# EXHIBIT MAP

IN LOT 7 "CHEHALEM HILLS"  
 IN THE NW 1/4 OF SEC.10,  
 T. 3 S, R. 2 W, W.M.  
 YAMHILL COUNTY, OREGON  
 SCALE: 1"=50' JANUARY 20, 2013

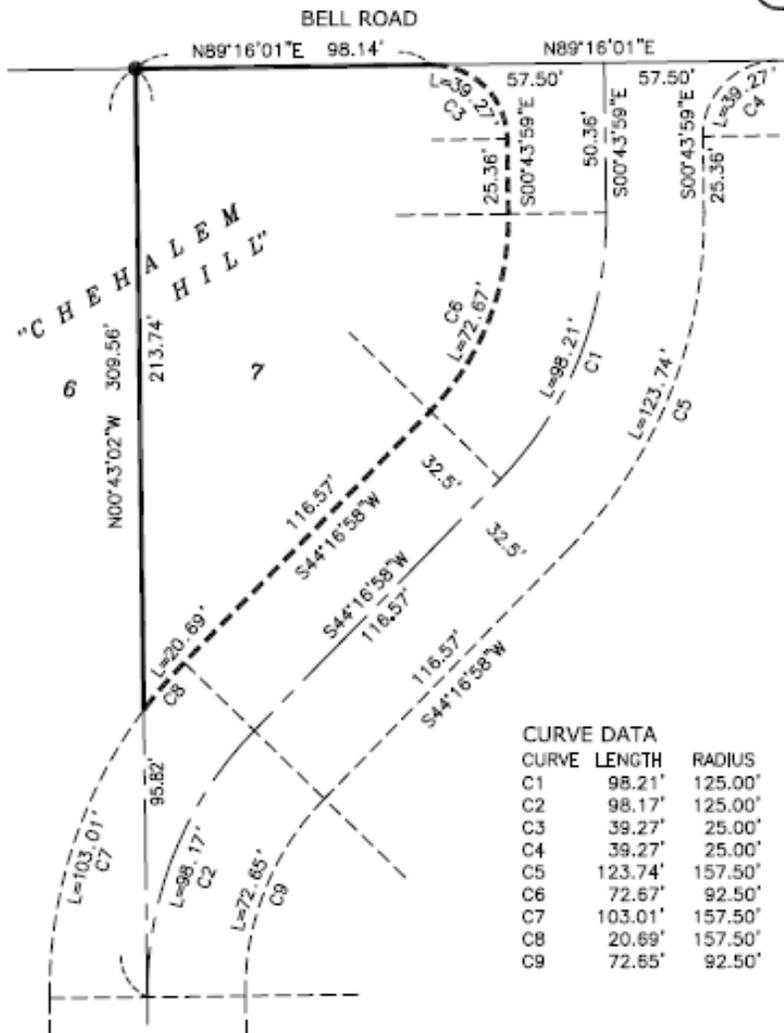


REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

**CASWELL/  
 HERTEL**  
 SURVEYORS INC.  
 6150 S.W. 124th AVE.  
 BEAVERTON, OREGON 97008  
 (503) 644-3179

OREGON  
 JULY 18, 1980  
 ALBERT HERTEL  
 1896

RENEWS: 6/30/2015



CURVE	LENGTH	RADIUS	DELTA	CHORD
C1	98.21'	125.00'	45°00'57"	S21°46'29"W 95.70'
C2	98.17'	125.00'	45°00'00"	S21°46'58"W 95.67'
C3	39.27'	25.00'	90°00'00"	S45°43'59"E 35.36'
C4	39.27'	25.00'	90°00'00"	S44°16'01"W 35.36'
C5	123.74'	157.50'	45°00'57"	S21°46'29"W 120.59'
C6	72.67'	92.50'	45°00'57"	S21°46'29"W 70.82'
C7	103.01'	157.50'	37°28'19"	N18°01'07"E 101.18'
C8	20.69'	157.50'	07°31'41"	S40°31'07"W 20.68'
C9	72.65'	92.50'	45°00'00"	S21°46'58"W 70.80'

JOB NO. 8121