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DESCHUTES COUNTY CLERK

CERTIFICATE PAGE



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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
LEWIS AND CLARK TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LEWIS AND CLARK TOWNHOMES (this "Declaration") is made and entered into effective this 10th day of MARCH, 2004, by Vernon C. Palmer, Inc., an Oregon corporation ("Declarant").

Recital:

West Bend Property Company LLC, an Oregon limited partnership ("WBPC"), owns that real property in Deschutes County, Oregon legally described on the attached Exhibit A. WBPC consents to the terms and conditions of this Declaration and to its recordation.

1. DEFINITIONS

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

- 1.1 **Articles.** "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.
- 1.2 **Assessment.** "Assessment" shall mean any assessment levied against one or more Owners by the Association for payment of expenses relating to the Property and shall include Regular, Special, and Limited Assessments as those terms are defined herein.
- 1.3 **NorthWest Crossing Architectural Review Committee.** "NorthWest Crossing Architectural Review Committee" shall mean the architectural committee appointed pursuant to NorthWest Crossing Covenants Conditions and Restrictions.
- 1.4 **Association.** "Association" shall mean the non-profit corporation formed or to be formed to serve as the NorthWest Crossing Townhome Association of Owners as provided in this Declaration and such corporation's successors and assigns.
- 1.5 **Board.** "Board" shall mean the duly elected Board of Directors of the Association.
- 1.6 **Building Lot.** "Building Lot" shall mean a platted or partitioned lot within the Property.
- 1.7 **Building Structure.** "Building Structure" shall mean a building structure which is comprised of one or more contiguous dwelling units constructed and located on Building Lots, including, without limitation, garage structures located on the same Building Lots, whether attached to or detached from the Building Structure.
- 1.8 **Bylaws.** "Bylaws" shall mean the Bylaws of the Association, as amended from time to time.
- 1.9 **Declarant.** "Declarant" shall mean Vernon C. Palmer, Inc., an Oregon corporation company, and its successors and assigns if such successor or assign should acquire all of Declarant's rights under the Declaration pursuant to a recorded instrument executed by Declarant. In no event shall WBPC be deemed to be, or have liability hereunder, as Declarant.
- 1.10 **Improvement.** "Improvement" shall mean every structure or improvement of any kind, including but not limited to a wall, driveway, storage shelter, patio, deck, or other product of construction efforts on or in respect to a Building Lot.
- 1.11 **Landscaped Areas.** "Landscaped Areas" shall mean all portions of a Building Lot other than those portions (i) occupied by a Building Structure or (ii) containing paved driveways or walkways.

1.12 Limited Assessment. "Limited Assessment" shall mean an assessment levied against an Owner by the Association for costs and expenses incurred by the Association for corrective action performed pursuant to this Declaration, which is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's tenants, guests, contractors, or invitees

1.13 Master CC&Rs. "Master CC&Rs" shall mean that certain Master Declaration of Covenants, Conditions, and Restrictions for Northwest Crossing, dated effective as of December 20, 2001, recorded in the Official Records of Deschutes County, Oregon under No. 2001-63854 on December 27, 2001, as amended from time to time.

1.14 Owner. Except as expressly set forth in the final sentence of this subsection, "Owner" shall mean any person or entity, including the Declarant, at any time owning a Building Lot, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Building Lot. Notwithstanding to the foregoing sentence, for all purposes under this Declaration, Declarant shall be deemed to be the Owner of any Building Lot owned by WBPC and WBPC shall not be deemed to be an "Owner".

1.15 Plat. "Plat" shall mean the plat of Northwest Crossing Phase V, recorded in the Official Records of Deschutes County, Oregon.

1.16 Property. "Property" shall mean the real property in Deschutes County, Oregon described in Article 2.

1.17 WBPC. "WBPC" shall have the meaning given in the Recital and shall also mean any successor or assignee of WBPC that obtains all of WBPC's interest in the Property. WBPC is signing this instrument as the current owner. WBPC is not, however, the developer or Declarant hereunder and WBPC shall have no liability therefore.

1.18 Regular Assessment. "Regular Assessment" shall mean an assessment by the Association against all Owners to provide for the payment of all estimated normal expenses of the Association for the performance of the Association's duties as provided in this Declaration.

1.19 Special Assessment. "Special Assessment" shall mean an assessment against all Owners in the event that the Regular Assessment for any particular year is or will become inadequate to meet the expenses of the Association.

2. DECLARATION

2.1 Property Covered. Declarant (and, by its consent hereto, WBPC) hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration:

2.1.1 All that certain real property located in the City of Bend, Deschutes County, Oregon, legally described on the attached Exhibit A.

2.2 Purpose. The purpose of this Declaration is to provide for the exterior maintenance of the Building Structures to be constructed upon the Property, to provide for maintenance and repair of Landscaped Areas, to establish a Lewis and Clark Townhomes Homeowners' Association, and to set forth other terms and conditions governing the use and enjoyment of the Property.

2.3 Declaration. Declarant hereby declares that the Property and all lots, parcels and portions thereof made subject to all of the conditions, covenants, restrictions, and provisions contained in this Declaration.

2.4 Limitations on Improvements. Declarant does not elect to limit Declarant's rights to add Improvements not described in this Declaration.

2.5 Easements for the Benefit of the Property. There is hereby reserved to Declarant, its employees, agents, representatives and assigns, an easement for access, construction, placement, maintenance and improvement of utilities and drainage over, under and across any portion of the Property, together with easements in roadways and utility lines specified or established within the Property.

2.6 Master CC&Rs. The property is subject to the Northwest Crossing Master CC&Rs.

3. THE ASSOCIATION

3.1 Organization. Declarant shall, before the first Building Lot is conveyed to an Owner other than Declarant, organize the Association as a nonprofit corporation under the Oregon Nonprofit Corporation Act under the name "Lewis and Clark Townhomes Homeowners Association, Inc." or such similar name as Declarant shall designate. The Articles shall provide for the Association's perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall therefore be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles and Bylaws as if they had been drafted to constitute the governing documents of the unincorporated association.

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

3.3 Voting Rights. Voting rights within the Association shall be allocated as follows:

3.3.1 Members. Members shall be entitled to one (1) vote for each Building Lot owned by the Member with respect to all matters upon which Owners are entitled to vote.

3.3.2 Declarant. Notwithstanding paragraph 3.3.1, Declarant reserves the right to vote on behalf of all Members of the Association, until one hundred eighty (180) days after Declarant has sold eighty-five (85%) of the Building Lots in the Property or until Declarant terminates this reservation of special Declarant rights by notice in writing to the Association.

3.3.3 Building Lot. When more than one (1) person or entity owns a Building Lot, the vote for such Building Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractionalized or split votes shall be disregarded, except for purposes of determining a quorum.

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

3.4.1 Declaration. The powers, duties and obligations granted to the Association by this Declaration.

3.4.2 Statutory Powers. The powers and obligations of a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act 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.

3.4.3 General. Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property. 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 or Bylaws made in accordance with such instruments and with the Oregon Nonprofit Corporation Act.

3.5 Liability. Neither the Association nor any officer or member of the 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 the Board, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him or her.

3.6 Interim Board and Officers. Declarant reserves administrative control of the Association until one hundred eighty (180) days after Declarant has sold eighty-five percent (85%) of the Building Lots in the Property or until Declarant terminates the reservation of special Declarant rights by notice in writing to the Association. Declarant, in his or her sole discretion, shall have the right to appoint and remove Members of a three-Member Interim Board of Directors, which shall manage the affairs of the Association, and which shall be invested with all powers and rights of the Board of Directors. Notwithstanding the provisions of this Section, at the Turnover Meeting at least one (1) Director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all Directors.

3.7 Transitional Advisory Committee. Declarant shall form a Transitional Advisory Committee to provide for the transition of administrative control of the Association from Declarant to the Owners. Not later than the sixtieth (60th) day after Declarant has conveyed Building Lots representing fifty percent (50%) or more of the Building Lots in the first phase of the planned community other than to a successor to Declarant.

3.7.1 Declarant Failure to Call Meeting. Any Owner may call a meeting of Owners to select the Transitional Advisory Committee if Declarant fails to do so as provided above.

3.7.2 Owners' Failure to Select Members. Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.

3.7.3 Turnover Meeting. Declarant shall call a meeting for the purpose of turning over administrative control of the Association from Declarant to the Owners within ninety (90) days after the expiration of the period of Declarant control. Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If Declarant does not call the meeting required under this Section, any Owner may do so.

3.8 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 use of Building Lots, as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and occupants of all Building Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws.

3.9 Special Duties of the Association. Without limiting the generality of the general powers and duties of the Association set forth in Section 3, the Association shall have the power and obligation to conduct and perform the following duties, the costs of which shall be borne as provided in Article 4.

3.9.1 Maintenance of Building Exteriors and Landscaped Areas.

(a) By the Association. The Association shall be responsible for maintenance of the exteriors of all Building Structures; maintenance and repair of all Landscaped Areas, excluding the area within the fenced yards; and maintenance of the fences. Maintenance of the exteriors of Building Structures shall include the painting, staining, restaining, repairing, and replacing of all exterior surfaces, including roofs (but excluding the repair and replacing of exterior doors); painting or staining of exterior window casements, sashes, frames; maintaining, repairing and replacing exterior lighting fixtures, the exterior portions of chimneys, rain gutters, down spouts, and sprinkler timing devices. The Association shall also be responsible for snow removal of walkways and driveways. Maintenance of the Landscaped Areas shall include, among other things, maintaining, repairing, and replacing grass, sod, trees, shrubs, and bushes in a neat, clean and attractive condition, as well as the maintenance

and repair of all underground sprinkler systems to the extent damaged by an act or omission of the Association or its agents or employees. Maintenance of the fences shall include staining of the fencing and repair to the extent damaged by events or others than the Owners. The decision as to the nature and extent of maintenance that is required for a particular Building Structure and the timing of such maintenance shall be solely within the discretion of the Board.

(b) By the Owners. The maintenance responsibilities described in Section 3.9.1(a) specifically do not include the following duties, which are the sole responsibility of the Owners of the Building Lots: repairing, replacing, restoring or cleaning of: glass; exterior items of hardware not specifically described in Section 3.9.1(a) (including replacing and repairing exterior doors); exterior window casements, sashes and frames (other than painting and staining of the same); window screens; walkways and driveways; electrical and mechanical doorbells and knockers; and air conditioning and heating equipment and devices. The Owners of Building Lots shall also be responsible for maintaining, repairing, and replacing the interiors of their respective dwelling units within the Building Structures, including without limitation, maintaining, repairing, and replacing electrical wiring and fixtures, plumbing pipes and conduits, all fixtures and appliances (whether built-in or free-standing), air conditioning, heating, sewage disposal, and interior fire protection systems and all amenities and hardware located within the interiors of the Building Structures. The Owners of the Building Lots are also responsible for any necessary repairs or replacements of the underground sprinkler systems on such Owner's Building Lot except to the extent such repairs or replacements are necessary due to an act or omission of the Association or its agents or employees. The maintenance of the landscaping and underground sprinkler systems within the interior of the fenced yards are the sole responsibility of the Owners of the Building Lots.

4. ASSESSMENTS

4.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Building Lot owned by it or WBPC within the Property, does hereby covenant, and each Owner of any Building Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, 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. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 8.5, shall be a charge on the land and shall be a continuing lien upon the Building 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 who was 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 8 below. No Owner may avoid such personal obligation by abandonment of Owner's Building Lot.

4.2 Regular Assessments.

4.2.1 Commencement. Regular Assessments against a Building Lot shall commence on a date selected by the Board of Directors, provided that the Board shall provide the Owner of the Building Lot first becoming subject to Regular Assessments thirty (30) day advance notice of the date on which Regular Assessments commence for that Building Lot.

4.2.2 Amount of Annual Regular Assessment. The total annual Regular Assessment against all Building Lots shall be based upon an annual budget prepared by the Board with respect to projected expenses of the Association, including, without limitation, the following:

- (a) maintenance, repair and operation of the Building Structures (to the extent provided in Section 3.9), and Landscaped Areas;
- (b) premiums for all insurance policies which the Association is required or permitted to maintain pursuant to this Declaration;
- (c) professional management fees and expenses, employee salaries, and legal and accounting costs;
- (d) any deficits remaining from the previous fiscal year of the Association;