VINEYARD HILL

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VINEYARD HILL AT SPRINGBROOK FARM

THE CHARLES J. MCCLURE AND ELLEN R. MCCLURE TRUST, U/I/D OCTOBER 25, 1999

Declarant

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS

FOR VINEYARD HILL AT SPRINGBROOK FARM

THIS DECLARATION is made this ____ day of _____, 20____ by **THE CHARLES J. MCCLURE AND ELLEN R. MCCLURE TRUST, U/I/D OCTOBER 25, 1999** ("**Declarant**").

RECITALS

A. Declarant has recorded the plat of "**Vineyard Hill at Springbrook Farm**" in the plat records of Yamhill County, Oregon.

B. Declarant desires to subject the property described in such plat, except Tract B and a portion of Tract C, to the conditions, restrictions and charges set forth in this instrument for the benefit of such property, and its present and subsequent owners, and to establish such property under the Oregon Planned Community Act, ORS 94.550 to 94.783, as a Class I planned development to be known as "**Vineyard Hill at Springbrook Farm.**"

C. Declarant reserves the right, but not the obligation, to develop adjoining property for any residential or commercial purposes permitted by applicable governmental entities and the right, but not the obligation, to annex such properties to Vineyard Hill at Springbrook Farm.

NOW, THEREFORE, Declarant hereby declares that the property described in Section 2.1 below shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

Article 1

DEFINITIONS

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

1.1 "**Additional Property**" means any land, whether or not owned by Declarant, that is made subject to this Declaration as provided in Section 2.2 below.

1.2 "**Architectural Review Committee" or "the Committee**" means the committee appointed pursuant to Article 7 below.

1.3 "**Assessment Unit**" means a factor assigned to each Lot in accordance with Section 10.3 below for purposes of determining such Lot's pro rata share of Annual

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Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments.

1.4 "**Assessments**" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, the Bylaws of the Association or the provisions of the Oregon Planned Community Act, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 10 below.

1.5 "**Association**" means the nonprofit corporation to be formed to serve as the Owners association as provided in Article 8 below, and its successors and assigns.

1.6 "**Board of Directors" or "the Board**" means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Board of Directors will be elected by the Owners.

1.7 "**Buildable Area**" means that portion of a Lot designed by the Architectural Review Committee as the area upon which structures may be placed.

1.8 "**Bylaws**" means the duly adopted bylaws of the Association set forth in the attached Exhibit A as the same may hereafter be amended or replaced.

1.9 "**Commercial Lot**" means any Lot or portion of a Lot designated as such in any declaration annexing such Lot to Vineyard Hill at Springbrook Farm and which may be used for commercial purposes, including, without limitation, a winery.

1.10 "**Commercial Project**" means any Project consisting of one or more Commercial Lots.

1.11 "**Common Areas**" means those lots or tracts designated as such on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Vineyard Hill at Springbrook Farm, including any Improvements thereon, and shall also include Common Easement Areas, Limited Common Areas and any Lots converted to Common Areas as provided in Section 3.2 below.

1.12 "**Common Easement Areas**" means those easements established for the benefit of all property within Vineyard Hill at Springbrook Farm pursuant to this Declaration or any plat or declaration annexing Additional Property to Vineyard Hill at Springbrook Farm.

1.13 "**Declarant**" means The Charles J. McClure and Ellen R. McClure Trust, U/I/D October 25, 1999, and its successors and assigns if such successor or assignee should acquire Declarant's interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.14 "**Design Guidelines**" means the guidelines adopted from time to time by the Architectural Review Committee pursuant to Article 7 below.

1.15 "**Development Agreement**" means that certain Development Agreement between Declarant and the City of Newberg, Oregon recorded _____, 2007 in the Records of Yamhill County as Document No. _____.

1.16 "**Improvement**" means every structure or improvement of any kind, including, but not limited to, a fence, wall, driveway, swimming pool, storage shelter, mailbox and newspaper receptacles, landscaping or other product of construction efforts on or in respect to the Property.

1.17 "**Initial Property**" means the real property referred to in Section 2.1 below.

1.18 "**Limited Common Areas**" means those areas established for the exclusive use or enjoyment of certain Lots as designated in this Declaration or any declaration annexing property to Vineyard Hill at Springbrook Farm.

1.19 "**Living Unit**" means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy.

1.20 "**Local Jurisdiction**" means Yamhill county, or if the Property is annexed into the City of Newberg, then the City of Newberg.

1.21 "**Lot**" means a platted or partitioned lot or condominium unit within the Property, with the exception of any lot marked on a plat of the Property as being common or open space or so designated in this Declaration or the declaration annexing such property to Vineyard Hill at Springbrook Farm. Lots do not include Common Maintenance Areas or Public Areas.

1.22 "**Mortgage**" means a mortgage or a trust deed, "mortgagee" means a mortgagee or a beneficiary of a trust deed, and "mortgagor" means a mortgagor or a grantor of a trust deed.

1.23 "**Multi-Family Lot**" means any Lot or portion of a Lot used for multi-family residential purposes in which the Living Units are not separately owned, including without limitation, rental apartment projects and retirement facilities.

1.24 "**Non-Buildable Area**" means all portions of a Lot other than the Buildable Area.

1.25 "**Occupant**" means the occupant of a Living Unit who is the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.26 "**Owner**" means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a contract vendor or other person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon

disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.27 "**Project**" means any separately designated and developed portion of the Property and comprised of discrete types of development or use, including, without limitation, duplexes, townhomes or other attached dwellings. Any such Project shall be designated as a Project in the Project Declaration, this Declaration or the declaration annexing such portion of the Property to Vineyard Hill at Springbrook Farm.

1.28 "**Project Assessments**" means assessments levied pursuant to a specific Project Declaration.

1.29 "**Project Association**" means any association established for a specific Project pursuant to a Project Declaration.

1.30 "**Project Common Area**" means the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the owners within the Project and their families, tenants, employees, guests and invitees.

1.31 "**Project Declaration**" means a declaration of easements, covenants, conditions and restrictions imposing a unified development scheme on a particular Project, which declaration shall have been executed by or bear the written approval of Declarant.

1.32 "**Project Parcel**" means the portion of the Property upon which a Project is located, as indicated, if appropriate, on the plat relating to the Project and as designated in the Project Declaration.

1.33 "**Public Areas**" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the declaration annexing such property to Vineyard Hill at Springbrook Farm.

1.34 "**Residential Lots**" means those Lots designated as such in this Declaration or in the declaration annexing such Lots to Vineyard Hill at Springbrook Farm, but not Multi-Family Lots

1.35 "**Rules and Regulations**" means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.36 "**Sold**" means that legal 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.

1.37 "**The Property**" means Vineyard Hill at Springbrook Farm.

1.38 "**This Declaration**" means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with

the provisions hereof, including the provisions of any supplemental declaration annexing property to Vineyard Hill at Springbrook Farm.

1.39 "**Turnover Meeting**" means the meeting called by Declarant pursuant to Section 8.7 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

1.40 "**Vineyard Hill at Springbrook Farm**" means the Initial Property and any Additional Property annexed to this Declaration.

Article 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Initial Property**. Declarant 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:

> All real property within that certain plat entitled "Vineyard Hill at Springbrook Farm," filed in the plat records of Yamhill County, Oregon, as Document No. _____, except Tract B and that portion of Tract C outside of the Common Use, Drainage and Open Space easement designated on the plat.

2.2 **Annexation of Additional Property**. Declarant may from time to time and in its sole discretion annex to Vineyard Hill at Springbrook Farm as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Vineyard Hill at Springbrook Farm. The annexation of such Additional Property shall be accomplished as follows:

(a) The Owner or Owners of such real property shall record a declaration that shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed; establish land classifications for the Additional Property; establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property; and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The Additional Property included in any such annexation shall thereby become a part of Vineyard Hill at Springbrook Farm and subject to this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

> (1) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such Additional Property as Declarant may deem to be appropriate for the development of the Additional Property.

(2) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots or Living Units that Declarant may create or annex to Vineyard Hill at Springbrook Farm except as may be established by applicable ordinances of the Local Jurisdiction. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the Local Jurisdiction.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Nothing in this Declaration shall establish any duty or obligation on Declarant to annex any property to this Declaration, and no owner of property excluded from this Declaration shall have any right to have such property annexed to this Declaration or Vineyard Hill at Springbrook Farm.

(g) Upon annexation to Vineyard Hill at Springbrook Farm, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(h) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.9 below.

2.3 **Improvements**. Declarant does not agree to build any Improvements on the Property other than as required by the Local Jurisdiction, but may elect, at Declarant's option, to build additional Improvements.

2.4 **Withdrawal of Property.** Property may be withdrawn from Vineyard Hill at Springbrook Farm only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Property or any Additional Property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Lot in the plat of the Initial Property or, in the case of Additional Property, prior to the sale of the first Lot in the property annexed by the supplemental declaration, subject to the prior approval of the Local Jurisdiction. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Yamhill County, Oregon. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.9 below. Such right of withdrawal shall not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

2.5 **Waiver of Right to Object**. Each Owner, by accepting title to such Owner's Lot subject to this Declaration, thereby waives any right to object to, or remonstrate against, annexation of the Property to the City of Newberg or to any future development of the adjoining property currently owned by Declarant, as long as such development is in accordance with all applicable laws and regulations.

2.6 **Sewer Connection**. Pursuant to the Development Agreement, if the Property is annexed into the City of Newberg, all Lots must be connected into the City sewer service within 15 years following installation of the respective Lot's septic tank or private septic system. The Lot Owner will be responsible for payment of all applicable connection fees and charges.

Article 3

LAND CLASSIFICATIONS

3.1 **Land Classifications Within Initial Property**. All land within the Initial Property is included in one or another of the following classifications:

(a) Residential Lots, which shall consist of Lots 1 through 36 of the plat of the Initial Property.

(b) Common Areas, which shall be the area marked as Tract A on the plat of the Initial Property, plus the Common Easement Areas and Limited Common Areas referred to below.

(c) Common Easement Areas, which shall be Open Space and Landscape Easements and Common Use, Drainage, Open Space and Pedestrian Pathway Easements designated on the plat of the Initial Property.

(d) Limited Common Areas, which shall be the area marked as Tract D on the plat of the Initial Property, which shall pertain to and be used for vehicular access to and from Lots 26, 27, 28, 29 and 30.

(e) Public Areas, which shall be the public streets and the tracts within the Open Space Easement Areas.

3.2 **Conversion of Lots to Common Areas**. Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Yamhill County, Oregon. Such declaration shall be executed by Declarant as Owner of the Lots.

Article 4

PROPERTY RIGHTS IN COMMON AREAS

4.1 **Owners' Easements of Enjoyment**. Subject to provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot. The use of Limited Common Areas, however, shall be limited to the Owners and invitees of the Lots designated in the declaration establishing the Limited Common Area.

4.2 **Common Easement Areas**. Common Easement Areas shall be reserved for the purposes designated on the plat. Such areas are to be maintained by the Association, and no changes in landscaping will be permitted within such areas without written authorization by the

Board of Directors. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas, except as may be permitted in the plat, nor may any such areas be used by the owner for stormwater treatment purposes without coordination with the storm water plan and written authorization by the Board of Directors.

4.3 **Title to Common Areas**. Title to the Common Areas, except Common Easement Areas, shall be conveyed to the Association by Declarant AS IS, free and clear of monetary liens, on or before the Turnover Meeting. Title to Common Easement Areas, subject to the easements set forth in this Declaration, shall rest in the Owners of the respective Lots within which such areas are located, or to the public if part of dedicated street rights-of-way.

4.4 **Extent of Owners' Rights**. The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and to all other provisions of this Declaration:

(a) **Association Easements**. Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas:

(1) An easement for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

(2) An easement for construction, maintenance, repair and use of such areas, including any common facilities thereon.

(3) An easement for the purpose of making repairs to any existing structures on Common Areas.

(b) **Public and Utility Easements**. The Common Areas, including Limited Common Areas shall be subject to such public and utility easements as may be established in any plat of the Property. In addition, the public is hereby granted access easements over all trails within the Common Use, Drainage and Open Space Easement Areas shown on the plat of the Initial Property. Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(c) **Use of the Common Areas**. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas, except as otherwise provided in this Declaration. No Owner shall place or cause to be placed on the Common Area any trash, structure, equipment, furniture, package or object of any kind. No Owner shall plant,

modify, clear, prune or remove plantings within the Common Area without written authorization by the Board of Directors and Architectural Review Committee. The Owner may remove unwanted invasive and noxious plant material identified as such on the City of Portland's Invasive and Noxious plant list. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying the Property or identifying pathways or items of interest, signs restricting certain uses or warning or directional signs, provided that such signs are approved by the Architectural Review Committee. The Board of Directors 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. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area. In such case, those Owners will not be required to share in the costs of maintaining the facility, as is more particularly described in Section 10.9.

(d) **Alienation of the Common Areas**. The Association may not by act or omission seek to abandon, partition, subdivide, encumber as security for a debt, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least eighty percent (80%) of the Class A Association voting rights and the Class B member (as defined in Section 8.3 below), if any, have given their prior written approval and unless approved by the Local Jurisdiction. The Association shall first offer to dedicate such property to the Local Jurisdiction. Such approvals shall not be required for easements. The Association, upon approval in writing of at least two-thirds of the Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of the Local Jurisdiction, may dedicate or convey any portion of the Common Areas to a park district or other public body. This paragraph shall not apply to Common Easement Areas or Limited Common Areas.

(e) **Driveway Access**. Notwithstanding any other provision of this Declaration to the contrary, Lots 9, 10 and 11 shall have the right to install separate driveways or a collective driveway within the Open Space Common Use Easement Area located on such Lots. As a part of design review, the Architectural Review Committee may require that two or more of such Lots share a common driveway.

(f) **Widening of Right of Way**. Declarant and the Owners of Tracts B and C and any other property adjoining the Property shall have the right to dedicate additional street right-of-way on Tracts B and C and such other property and to widen the street thereon, including the area within the Common Easement Area.

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

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

(2) The right of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration.

4.5 **Delegation of Use**. Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of enjoyment of the Common Areas to family members, tenants, invitees and guests, whose use shall be subject to this Declaration and the Rules and Regulations adopted under this Declaration.

4.6 **Easements Reserved by Declarant**. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots, including advertising and "For Sale" signs. In addition, Declarant hereby reserves to itself and its successors owning any property adjoining the Property a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of such other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner's Lot by that Owner or his or her family, tenants, employees, guests or invitees.

4.7 **Limited Common Areas**. The respective Limited Common Areas shall be subject to a reciprocal access easement for the use by the Owners of the benefited Lots for vehicular access and utilities and communication lines serving such Lots. Such areas shall be operated, maintained, replaced and improved by the Association, but the entire cost thereof, including reserves for future maintenance, repairs and replacements, shall be assessed on an equal basis to the Owners of Lots to which such Limited Common Areas pertain.

Article 5

PROPERTY RIGHTS IN LOTS

5.1 **Use and Occupancy**. The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 6 below, all other provisions of this Declaration and the provisions of any supplement or amendment to this Declaration.

5.2 **Easements Reserved**. In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) **Adjacent Common Area.** The Owner of any Lot that adjoins or blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area. The Owner and Occupant of each Lot shall be responsible for controlling such Owner's or Occupant's pets so as to not harm or otherwise disturb persons performing such maintenance on behalf of the Association.

(b) **Right of Entry**. Declarant, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot (including any Living Unit thereon) for emergency, security, and safety reasons or to perform maintenance and to enter any portion of the Lot other than the Living Unit located thereon for the purpose of determining whether or not the use and/or Improvements of such Lot are then in compliance with this Declaration. Except in the case of emergency threatening life or property, requests for entry shall be made in advance and at a time convenient to the Owner. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) **Utility Easements**. Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat. Within the easements, the Architectural Review Committee will not permit any structure, planting or other material to be placed or permitted to remain on the easement area if such structure, planting, or other material may damage or interfere with the installation or maintenance of utilities, change the direction of flow of drainage channels in the easements, or obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible, and except Common Easement Areas, which will be maintained by the Association.

(d) **Construction on Adjoining Lot**. Declarant hereby reserves for the benefit of Declarant and its assigns a temporary easement over each Lot for access to the adjoining Lot for construction purposes, including temporary placement of ladders or scaffolding. Declarant shall restore the Lot to its condition as it existed prior to such access and shall be responsible for any damage to the Lot.

5.3 **Septic System Easement**. Lots 1 and 2 shall have an easement over the Unbuildable Area of Lots 35 and 34 for the installation, use and maintenance of a septic system on such other lot. The location of the septic system must be approved by the Architectural Review Committee. The Owners of the benefited Lots shall indemnify and hold harmless the owners of the burdened Lots for, from and against any damage or liability resulting from such easements. If the Property is annexed into the City of Newberg, then these easements shall terminate 15 years following installation of the septic tank or construction of the private septic system.

Article 6

GENERAL USE RESTRICTIONS FOR RESIDENTIAL LOTS

The following restrictions shall apply to all Residential Lots:

6.1 **Further Subdivision**. No Residential Lot may be further subdivided or partitioned.

6.2 **Structures Permitted**. No structures shall be erected or permitted to remain on any Residential Lot except structures containing a single detached Living Unit and structures

normally accessory thereto, all of which shall have first been approved by the Architectural Review Committee pursuant to Article 7 below. Such provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool or structure for the storage of a boat and/or camping trailer for personal use, provided that the location of such structure is in conformity with the applicable regulations of the Local Jurisdiction is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee. The Living Unit, exclusive of garage, shall contain a maximum of 5,000 square feet.

6.3 **Residential Use**. Residential Lots shall only be used for residential purposes. Except with the consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Residential Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the sale of Living Units; (b) the right of Declarant or any contractor or home builder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use one or more Living Units as sales offices or model homes staffed by employees of Declarant or any licensed real estate sales persons for purposes of sales in Vineyard Hill at Springbrook Farm; and (c) the right of the Owner of a Lot to maintain his or her professional personal library, keep his or her personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Living Unit by appointment only. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors 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 law.

6.4 **Offensive or Unlawful Activities**. No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property that interferes with or jeopardizes the enjoyment of the Property, or that is a source of annoyance to Owners or Occupants. Occupants shall use extreme care about creating disturbances, making noises or using musical instruments, radios, televisions, amplifiers and audio equipment that may disturb other Occupants. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Owners and other Occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, Occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

6.5 **Animals**. No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Residential Lot other than a reasonable number of household pets that are not kept, bred or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective Owners. No animal shall be permitted to roam the Property unattended, and each dog shall be kept on a leash while outside a Lot or within a

Common Easement Area. An Owner or Occupant may be required to remove a pet upon receipt of the third written notice from the Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

6.6 **Maintenance of Structures**. Each Owner shall maintain the Owner's Residential Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting or staining, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and perimeter fences and other exterior Improvements and glass surfaces. All repainting or restaining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Architectural Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

6.7 **Maintenance of Landscape**. Each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Lot (other than Common Easement Areas) neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material.

6.8 **Parking**. Except as may otherwise be provided in the Rules and Regulations of the Association, parking in excess of twenty-four (24) hours of boats, trailers, motorcycles, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and any other vehicles with a gross vehicle weight in excess of 9,000 pounds shall not be allowed on any Residential Lot, excepting only within areas designated for such purposes by the Board of Directors or within the confines of an enclosed garage or screened area, the plans of which shall have been reviewed and approved by the Architectural Review Committee before construction, and which must be constructed behind the front building line of the dwelling. No portion of the vehicle may project beyond the screened area. If there is no rear fencing and the vehicle could be seen from the outside the Lot other than from the front road, the vehicle must also be screened from view from that direction. Vehicles may not be used for storage of materials for more than forty-eight (48) hours without approval from the Architectural Review Committee. Each Owner shall provide adequate off-street parking on such Owner's Lot for parking of vehicles owned by such Owner and for guests and shall not park the Owner's vehicles on adjacent roads or streets, except in areas designated for such purposes. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 11.1(c) below.

6.9 **Vehicles in Disrepair**. No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Residential Lot (unless screened from view) or on the Common Area or any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the Occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him or her by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 11.1(c) below.

6.10 **Signs**. No signs shall be erected or maintained on any Residential Lot except that not more than one "For Sale" sign placed by the Owner, Declarant, or a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed within the front yard of any Lot, and two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot. "For Rent" and "For Lease" signs are prohibited. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner, subject to reasonable regulations adopted by the Architectural Review Committee relating to size and length of display.

6.11 **Rubbish and Trash**. No part of the Property shall be used as a dumping ground for trash, compost or rubbish of any kind, and no rubbish, refuse or garbage shall be allowed to accumulate. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view, except during garbage pickup days. Yard rakings, compost, dirt and other material resulting from landscaping work shall not be dumped onto streets or Common Areas. Compost areas within Lots must comply with the requirements of the Design Guidelines. Should any Owner or Occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or Occupant by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner.

6.12 **Construction**. The construction of any building on any Residential Lot, including painting and all exterior finish, shall be completed within eight (8) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to strikes, fires, national emergency or natural calamities, this provision may be extended for a reasonable length of time upon approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage can or other garbage disposal facility on the site during such period. Debris may not be deposited on any other Lot. All construction debris, stumps, trees, etc. must be periodically removed from each Lot by the builder or Owner, and such debris shall not be dumped in any area within the Property unless approved by the Architectural Review Committee. Construction activities shall not take place before noon on Sundays and holidays. Radios and pets are not allowed on construction sites. If construction has not commenced upon any Lot within one (1) year after acquisition thereof by an Owner other than Declarant or an affiliate of Declarant, the Owner shall install the sidewalk and landscape the area within twenty (20) feet from the curb. The Owner shall irrigate and maintain this area. The Architectural Review Committee may waive this requirement if it determines that construction will commence within a reasonable time. In any case, all unimproved or unoccupied Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

6.13 **Landscape**. All landscaping (including front and rear yards and parking strips) shall be completed within six (6) months from the date of occupancy of the Living Unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon approval of the Architectural Review

Committee. Landscaping must comply with the Concept Landscape Plan and Design Guidelines; any deviation from the Concept Landscape Plan will require prior written authorization by the Board of Directors and Architectural Review Committee. Landscape plans shall be submitted to the Architectural Review Committee for approval. Landscaping shall not be changed without the approval of the Architectural Review Committee.

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

6.15 **Recreational Equipment**. No playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, shall be placed, installed or utilized on any Lot in view from any street, sidewalk or Common Area within the Property, except when installed on the Common Area by Declarant or the Association.

6.16 **Fences, Hedges and Walls**. No fence, hedge, structure, wall, or retaining wall shall be constructed or exist anywhere on any Lot without prior approval of the Architectural Review Committee and in accordance with its Design Guidelines. No planting or structure obstructing vision at driveways or intersections shall be permissible or maintained. Installation and maintenance of retaining walls that are required and approved by the Architectural Review Committee due to topographic conditions of individual Lots are the sole and absolute responsibility of the individual Lot Owner and are to be aesthetically incorporated into the landscaping of the Lot and are not the responsibility of the Association.

6.17 **Service Facilities**. Service facilities (garbage containers, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property. All telephone, power, natural gas, cable television and other communication lines shall be placed underground, except as otherwise mandated by local jurisdictions or public utility companies.

6.18 **Antennas and Satellite Dishes**. Exterior antennas, satellite receiver and transmission dishes and other communication devices shall not be permitted to be placed upon any Residential Lot except in accordance with rules established by the Architectural Review Committee in accordance with Section 7.3.

6.19 **Exterior Lighting or Noisemaking Devices**. Except with the consent of the Architectural Review Committee, no exterior lighting or noisemaking devices shall be installed or maintained on any Residential Lot, other than as originally installed by the builder of the home and security alarms and fire alarms. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Rules and Regulations and if installed not more than thirty (30) days before and removed within thirty (30) days after the celebrated holiday. The Architectural Review Committee may regulate the shielding or hours of use of lighting in order to reduce annoyance to neighboring properties. The location of any air conditioning compressors, other than those originally installed by Declarant, must be approved by the Architectural Review Committee prior to installation.

6.20 **Pest Control**. No Owner shall permit any thing or condition to exist upon any portion of the Property that will induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

6.21 **Setback, Maximum Height and Minimum Yard Requirements**. Each Residential Lot shall be subject to the setback, maximum height and minimum yard requirements set by the Design Guidelines and the Local Jurisdiction, which may be modified by an approved variance by the Local Jurisdiction, and by the prior approval of the Architectural Review Committee. The Living Unit must be placed within the Buildable Area. No Lot may be subdivided or partitioned, nor may its Lot lines be adjusted, without the approval of the Local Jurisdiction and the Architectural Review Committee.

6.22 **Grades, Slopes and Drainage**. Each Owner of a Residential Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the prior approval of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken that may damage or interfere with established slope ratios, create erosion or sliding problems, or obstruct, change the direction of, or retard the flow of water through drainage channels.

6.23 **Garages**. All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage and shall not be used as office or living space without the prior approval of the Architectural Review Committee.

6.24 **Windows, Decks, Porches and Outside Walls**. To preserve the attractive appearance of the Property, the Association may regulate the nature of items that may be placed in or on windows, decks, porches, and the outside walls so as to be visible from the street or Common Areas, including, without limitation, window air conditioners and fans. Window coverings, curtains, shutters, drapes or blinds, other than those of commercially produced quality, shall not be permitted to be visible from any public or private street, pathway, Common Area or adjacent property. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks.

6.25 **Leasing and Rental of Living Units**. No Owner may lease or rent his or her Living Unit for a period of less than thirty (30) days. All leases or rentals shall be by written lease agreement, which 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, Articles of Incorporation and Bylaws of the Association, 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 of Directors finds that a lessee or tenant has violated any provision of such documents or the Rules and Regulations, the Board may require the Owner to terminate such lease or rental agreement. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent his or her Living Unit.

6.26 **Rules and Regulations**. In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory Rules and Regulations governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate to ensure 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 of Directors promptly to each Owner. The Rules and Regulations may be adopted by the Board of Directors, except as may be otherwise provided in the Bylaws of the Association.

Article 7

ARCHITECTURAL REVIEW COMMITTEE

7.1 **Architectural Review**. No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee, except that construction by Declarant or any affiliate of Declarant shall be presumed to have been approved and is thereby exempt from this review. The building plans to be submitted shall consist of three complete sets of plans and specifications in the usual form showing insofar as appropriate, (i) the size and dimensions of the Improvements, (ii) the exterior design; (iii) approximate exterior color scheme; (iv) location of Improvements on the Lot, including setbacks, driveway and parking areas; and (v) location of existing trees to be removed. These plans and specifications shall be left with the Committee until sixty (60) days after notice of completion has been received by the Committee. This is for the purpose of determining whether, after inspection by the Committee, the Improvement complies substantially with the plans and specifications that were submitted and approved. The Architectural Review Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing an application. In all cases in which the Architectural Review Committee's consent is required by this Declaration, the provisions of this Article shall apply, except that this Article shall not apply to construction by Declarant or any affiliate of Declarant.

7.2 **Committee Decision**. The Architectural Review Committee shall render its decision with respect to a construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.3 **Committee Discretion**. The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work

would be inappropriate for the particular Lot or incompatible with the Design Guidelines or design standards that the Committee intends for Vineyard Hill at Springbrook Farm. It is the intent and purpose of this Declaration to ensure quality of workmanship and materials, to ensure harmony of external design with the existing Improvements and with respect to topography and finished grade elevations and to ensure compliance with the setback requirements contained in the conditions of approval of the Local Jurisdiction. Considerations such as siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation, and any other factors that the Committee reasonably believes to be relevant may be taken into account by the Committee in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any applicable Federal Communications Commission rules.

7.4 **Membership: Appointment and Removal**. The Architectural Review Committee shall consist of as many persons as Declarant may from time to time appoint. Declarant, at its discretion, may appoint a single person to serve as the Committee and may remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the members of the Architectural Review Committee shall be appointed by, and serve on behalf of, the Board of Directors, or if the Board of Directors fails to appoint such members, then the Board of Directors shall serve as the Architectural Review Committee. The terms of office for each member appointed by the Board of Directors shall be for one (1) year unless lengthened by the Board at the time of appointment or unless the Board serves as the Committee, in which case the terms of the members shall be the same as their terms as Board members. The Board of Directors may appoint any or all of its members to the Committee and is not required to appoint non-Board members. The Board may appoint one or more members to the Committee who are not Owners, but who have special expertise regarding the matters that come before the Committee. In the sole discretion of the Board, such non-Owner members of the Committee may be paid for such services, the cost of which may be paid by the applicants or treated as a common expense, as determined by the Board.

7.5 **Majority Action**. Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

7.6 **Liability**. Neither the Architectural Review Committee nor 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 Committee or a member of the Committee, and the Association shall indemnify the Committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

7.7 **Nonwaiver**. Consent by the Architectural Review Committee to 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 consent.

7.8 **Appeal**. At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors pursuant to Section 7.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board of Directors is already acting as the Architectural Review Committee, the appeal shall be treated as a request for a rehearing, in which case the Board shall meet and receive evidence and argument on the matter. A final, conclusive decision shall be made by the Board of Directors within fifteen (15) working days after receipt of such notification.

7.9 **Effective Period of Consent**. The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been substantially commenced in the judgment of the Architectural Review Committee and thereafter diligently pursued, or unless the Owner has applied for and received an extension of time from the Committee.

7.10 **Estoppel Certificate**. Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with 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 Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.11 **Enforcement**. If during or after the construction the Architectural Review Committee finds that the work was not performed in substantial conformance with the approval granted, or that the required approval was not obtained, the Committee shall notify the Owner in writing of the noncompliance, specifying the particulars of the noncompliance. The Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 7.8, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth in Section 11.1 below.

Article 8

ASSOCIATION

Declarant has organized or before conveyance of the first Lot shall organize, an association of all of the Owners within Vineyard Hill at Springbrook Farm. Such Association, and its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name "**Vineyard Hill at Springbrook Farm Owners Association**," and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

8.1 **Organization**. Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. 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. In that event, the assets of the Association shall be dedicated to a public body, or 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, and such vesting shall thereafter 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 of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 **Membership**. Every Owner of one or more Lots within the Property 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 Property, 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.

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

(a) **Residential Lots, Multi-Family and Commercial Lots**. Residential Lots, Multi-Family Lots and Commercial Lots shall be allocated voting rights equal to the Assessment Units allocated to each such Lot.

(b) **Classes of Voting Membership**. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to voting rights for each Lot owned computed in accordance with Section (a) above. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among

themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be Declarant and shall be entitled to three time the voting rights computed under Section (a) for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When all of the Lots in the final phase of development of Vineyard Hill at Springbrook Farm have been sold and conveyed to Owners other than a successor Declarant; or

(2) At such earlier time as Declarant may elect in writing to terminate Class B membership.

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

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

(c) The powers, duties and obligations of a homeowner's association pursuant to the Oregon Planned Community Act.

(d) 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 its provisions, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

8.5 **Specific Powers and Duties**. The powers and duties of the Association shall include, without limitation, all of the following:

(a) **Maintenance and Services**. The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) **Insurance**. The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking**. The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 6.26 of this Declaration.

(d) **Assessments**. The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) **Enforcement**. The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) **Employment of Agents, Advisers and Contractors**. The Association, through its Board of Directors, may employ the services of any person or corporation as managers; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur legal fees in excess of $5,000 for any specific litigation or claim matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by $500 on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money, Hold Title and Make Conveyances**. The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration, and subject to Section 4.4(d) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including, but not limited to, easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within Vineyard Hill at Springbrook Farm conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Common Area**. Except as otherwise provided in Section 4.4(d) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) **Create Classes of Service and Make Appropriate Charges**. The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including, but not limited to, reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other Rules and Regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to

discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(j) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

8.6 **Liability**. Neither a member of the Board of Directors nor an officer of the Association or member of the Architectural Review Committee or any other committee established by the Board of Directors shall be liable to the Association, any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer or committee member of the Association is threatened with or made a party to any proceeding because the individual was or is a director, officer or committee member of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third party on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

8.7 **Interim Board; Turnover Meeting**. Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the Turnover Meeting following termination of Class B membership. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership in accordance with Section 8.3 above. At the Turnover Meeting the interim directors shall resign and their successors shall be elected by the Owners, as provided in this Declaration and in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.8 **Contracts Entered into by Declarant or Before Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

8.9 **Project Associations**. Nothing in this Declaration shall be construed as prohibiting the formation of Project Associations within Vineyard Hill at Springbrook Farm. The Board of Directors of the Association shall assist the Project Associations in the performance of their duties and obligations under their respective Project Declarations, if any, and the Association shall cooperate with each Project Association so that each of those entities can most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time either the Association or a Project Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for the particular Project or by an item in the Project Association's budget which shall be collected through Project Assessments and remitted to the Association. If a Project Association fails or is unable to perform a duty or obligation required by its Project Declaration, then the Association at its option may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Association may charge the Project Association or the Owners within the Project a reasonable fee for the performance of such functions.

8.10 **Bylaws**. The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Yamhill County, Oregon. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as Exhibit A to this Declaration.

Article 9

MAINTENANCE, UTILITIES AND SERVICES

9.1 **Maintenance and Lighting of Common Areas**. The Association may provide exterior lighting for and shall perform all maintenance upon the Common Areas, including Limited Common Areas and Common Easement Areas, including, but not limited to, landscaping, irrigation, walks, private roads, entrance monuments, gates, fences, walls, signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. The Association shall also maintain and irrigate the area of the street right-of-way between the curb and the sidewalk. Such areas shall be maintained in attractive condition and in a good and workmanlike manner to render them fit for the purposes for which they are intended.

9.2 **Maintenance of Utilities**. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. The Association shall not be liable for any interruption or failure of such services. Each Owner shall be responsible for maintaining utility lines within his Lot.

9.3 **Security**. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. **Neither the Association, any managing agent retained by the**

Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefor.

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

9.5 **Owner's Responsibility**. Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and Improvements thereon as provided in Section 6.6 above shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a neat and attractive condition in accordance with the community-wide standard of Vineyard Hill at Springbrook Farm. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming such maintenance responsibilities, the Board of Directors shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within fifteen (15) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 11.5 below. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 10.8 and 11.1 below.

9.6 **Damage Liability**. Any damage to any Common Area by Owners, their children, agents, visitors, friends, relatives, tenants, Occupants or service personnel, to the extent not covered by the Association's insurance (including any deductible), shall be assessed to the Owner as an Individual Assessment.

9.7 **Maintenance Plan**. Declarant shall initially prepare and thereafter the Board of Directors shall implement, review and update a maintenance plan (the "**Maintenance Plan**") for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration or the Bylaws or the Oregon Planned Community Act. The Maintenance Plan shall describe the maintenance, repair or replacement to be conducted, include a schedule for maintenance, repair or replacement, be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association and address issues that include, but are not limited to, warranties and the useful life of the items of which the Association has maintenance, repair or

replacement responsibility. The Board of Directors shall review and update the Maintenance Plan as necessary. Changes or updates to the Maintenance Plan shall be based on advice of competent experts or consultants. For a period of 10 years following recording of the Declaration, any changes to the Maintenance Plan without the approval of the Declarant and the original general contractor may void any applicable warranty and will release them from liability for any damage resulting from such change.

Article 10

ASSESSMENTS

10.1 **Purpose of Assessments**. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants of the Property and for the improvement, operation and maintenance of the Common Areas.

10.2 **Types of Assessments**. The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments, all as more particularly described below.

10.3 **Apportionment of Assessments**.

(a) **Lots Owned by Declarant**. Lots owned by Declarant shall not be subject to Annual Assessments (including assessments for reserves), Special Assessments, Limited Common Area Assessments or Emergency Assessments.

(b) **Other Lots**. All other Lots shall be subject to assessment and shall pay a pro rata share of the Annual Assessments, Special Assessments and Emergency Assessments commencing upon the date they are conveyed by Declarant. Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any or the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner

(c) **Pro rata Share**. The pro rata share shall be based upon the total amount to be assessed divided by the total number of Assessment Units of Lots subject to assessment, times the number of Assessment Units assigned to such Lots as follows:

(1) **Residential Lots**. Each Residential Lot (including Condominium Units) shall be assigned one Assessment Unit for each Living Unit located on the Lot.

(2) **Multi-Family Lots**. Each Multi-Family Lot shall be assigned Assessment Units for such Lot on such basis as may be determined in the declaration annexing the Multi-Family Lot to Vineyard Hill at Springbrook Farm.

(3) **Commercial Lots**. Each Commercial Lot shall be assigned Assessment Units for such Lot on such basis as may be determined in the declaration annexing the Commercial Lot to Vineyard Hill at Springbrook Farm.

Notwithstanding the provisions of this section, however, a supplemental declaration annexing a specific Common Area facility may specify a special allocation of assessing the costs of operating and maintaining the facility on such Common Area in order to more fairly allocate such cost, taking into account the extent of use or other factors.

10.4 **Annual Assessments**. The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.11 below. Annual Assessments for such operating expenses and reserves ("**Annual Assessments**") shall then be apportioned among the Lots as provided in Section 10.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.5 **Special Assessments**. In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("**Special Assessment**"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

10.6 **Emergency Assessments**. If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a

supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("**Emergency Assessment**"). Emergency Assessments shall be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.

10.7 **Limited Common Area Assessments**. Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or Improvements to Limited Common Areas ("**Limited Common Area Assessments**") shall be assessed exclusively and on an equal basis to the Lots having the right to use such Limited Common Areas.

10.8 **Individual Assessments**. Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("**Individual Assessment**"). Individual Assessments include, without limitation, charges for services provided under Sections 8.5(i) and 9.5 and any common expense that the Board of Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

10.9 **Annexation of Additional Property**. When Additional Properties are annexed to Vineyard Hill at Springbrook Farm, the Lots included therein shall become subject to Assessments from the date of such annexation to the extent provided in Section 10.3. The Board of Directors, however, at its option may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recompute Annual Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

10.10 **Operations Fund**. The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.11, separate and apart from its other funds, in a bank account in the name of the Association to be known as the "**Operations Fund**." All expenses of the Association shall be paid from the Operations Fund or from the Reserve Fund referred to in Section 10.11. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article 9.

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

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

(d) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including, but not limited to, accounting, legal and secretarial services.

10.11 **Reserve Fund.**

(a) **Establishment of Account**. Declarant, on behalf of the Association, shall conduct an initial reserve study as described in paragraph (c) of this section and establish a bank account in the name of the Association (the "**Reserve Fund**") to fund major maintenance, repair or replacement of any common properties that will normally require replacement in whole or in part in more than one (1) and less than thirty (30) years, for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items, including items required by the Maintenance Plan established pursuant to Section 9.7. The Reserve Fund need not include those items that can reasonably be funded from the general budget or other funds of the Association or for those items for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund**. If required, the Reserve Fund shall be funded by Assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Lot. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) **Reserve Studies**. The reserve portion of the initial Assessment determined by Declarant shall be based on a reserve study described in this paragraph (c) or other sources of information. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board of Directors, in its discretion, may deem appropriate. The reserve study shall:

(1) Identify all items for which reserves are to be established;

(2) Include the estimated remaining useful life of each item as of the date of the reserve study;

(3) Include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of its useful life;

(d) **Use of Reserve Fund**. If required, the Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund. In addition to the authority of the Board of Directors under paragraph (c) of this section, following the second year after the Turnover Meeting, the Association may elect to reduce or increase future Assessments for the Reserve Fund by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association and may, on an annual basis by a unanimous vote, elect not to fund the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.12 **Creation of Lien and Personal Obligation of Assessments**. Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any 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 Association Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Section 11.5, shall be a charge on the land and shall be 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 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 11 below.

10.13 **Voluntary Conveyance**. In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner's agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

Article 11

ENFORCEMENT

11.1 **Violation of General Protective Covenants.** In the event that any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or violates any provisions of this Declaration, the Bylaws, or the Rules and Regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard as provided in the Bylaws and within fourteen (14) days after issuing written notice to the Owner, then the Association acting through its Board of Directors shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or of the Rules and Regulations to be towed and impounded at the Owner's expense;

(d) Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Living Unit; and

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

11.2 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic

installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

(b) The Association shall have a lien in accordance with ORS 94.709 against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot and may foreclose such lien in the manner provided in ORS 94.709.

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

(d) The Association shall have any other remedy available to it by law or in equity.

11.3 **Reports to First Mortgagees**. The Board of Directors will send notice of any default in performance of this Declaration by a Lot Owner that is not cured within sixty (60) days to any first mortgagee of such Lot who has given written notice to the Association requesting notices of defaults

11.4 **Subordination of Lien to Mortgages**. The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot, which was made in good faith and for value and that was recorded before the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot that is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or non-judicial foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment, notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

11.5 **Interest, Late Charges and Expenses**. 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 that is the greater of eighteen percent (18%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, 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 of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). 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 resolution of the Board of Directors.

11.6 **Costs and Attorneys' Fees**. In the event of any suit or action to enforce this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act, or to collect any money due hereunder or to foreclose a lien, the prevailing party in such suit or action shall be entitled to recover all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

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

11.8 **Enforcement by the Local Jurisdiction**. The provisions of this Declaration relating to preservation and maintenance of Common Areas shall be deemed to be for the benefit of the Local Jurisdiction as well as the Association and Owners of Lots, and the Local Jurisdiction may enforce such provisions by appropriate proceedings at law or in equity, or may cause such maintenance to be performed, the costs of which shall become a lien upon the Property.

Article 12

DISPUTE RESOLUTION

12.1 **Mediation**.

(a) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Yamhill County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(b) If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(c) If a qualified dispute resolution program exists within Yamhill County, Oregon and an offer to use the program is not made as required under paragraph (a) of this section, then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(d) Unless a stay has been granted under paragraph (c) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

12.2 **Arbitration**. Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association, the Architectural Review Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 12.1 above or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 12. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Newberg, Oregon, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

12.3 **Selection of Arbitrator**. The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the presiding judge of the Circuit Court of Yamhill County, Oregon shall designate the arbitrator.

12.4 **Consolidated Arbitration**. Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of this Article, in the event any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In

such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

12.5 **Discovery**. The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Yamhill County Circuit Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including, without limitation, award against a party for failure to comply with any order.

12.6 **Evidence**. The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except when any of the parties is absent in default or has waived its right to be present.

12.7 **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 12 (but shall be subject to the applicable provisions of Section 12.8 below): (a) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 12. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 12.

12.8 **Costs and Attorneys' Fees**. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations, to rescind this Declaration, or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin

arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

12.9 **Survival**. The mediation and arbitration agreement set forth in this Article 12 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

Article 13

MORTGAGEES

13.1 **Reimbursement of First Mortgagees.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association, to the extent the same was the responsibility of the Association.

13.2 **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 Property for security purposes, then the record mortgagee, upon giving written notice as provided in this paragraph, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-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 under this section shall quote this Section 13.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last-known address of each.

Article 14

AMENDMENT AND REPEAL

14.1 **How Proposed**. Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

14.2 **Approval Required**. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Lots, based upon one vote for each such Lot, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant

rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the zoning administrator of the Local Jurisdiction.

14.3 **Recordation**. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Yamhill County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

14.4 **Regulatory Amendments**. Notwithstanding the provisions of Section 14.2 above, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration; the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

Article 15

MISCELLANEOUS PROVISIONS

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

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

15.3 **Construction; Severability; Number; Captions**. This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory paragraphs hereof. 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.

As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

15.4 **Notices**. All notices to the Association or to the Board of Directors shall be sent care of the manager, or if there is no manager, to the principal office of the Association or to such other address as the Board of Directors may designate from time to time. All notices to any Owner shall be sent to such address as may have been designated by such Owner from time to time, in writing, to the Board of Directors, or, if no address has been designated, then to the Owner's Lot. In the discretion of the Board of Directors, any notice, information or other written material required to be given to an Owner or director under this Declaration or the Bylaws or pursuant to the Oregon Planned Community Act, may be given by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, except for the following notices: failure to pay an assessment; foreclosure of an association lien under ORS 94.709; or an action the Association may take against an Owner. An Owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the Board of Directors to provide notice in any other manner permitted under this Declaration or the Bylaws or the Oregon Planned Community Act.

15.5 **Private Agreement**. This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Vineyard Hill at Springbrook Farm. This Declaration does not restrict the Local Jurisdiction's authority to adopt or amend its development regulations. It is the duty of every person engaged in development or remodeling of a Lot and/or Improvement in Vineyard Hill at Springbrook Farm to know the requirements of this Declaration and the covenants and agreements contained herein. There may be conflicting requirements between this Declaration and regulations of the Local Jurisdiction. In the event there is a conflict between a regulation of the Local Jurisdiction and this Declaration, any question regarding which provision controls shall be directed to the Architectural Review Committee. In each case, the Local Jurisdiction will limit its review of a development application to the requirements of its regulations and will not be liable for any approvals or permits that are granted in compliance with the regulations of the Local Jurisdiction, the State of Oregon or any other jurisdiction, but that are not in compliance with this Declaration. Declarant, the Architectural Review Committee and/or the Association will not be liable for any approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of the Local Jurisdiction, the State of Oregon or any other jurisdiction.

15.6 **Development Agreement**. In the event of any conflict between this Declaration and the Development Agreement, the Development Agreement shall control.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date set forth above.

THE CHARLES J. MCCLURE AND ELLEN R. MCCLURE TRUST, U/I/D OCTOBER 25, 1999,

By: Charles J. McClure, Trustee
Charles J. McClure, Trustee

By: Ellen R McClure, Trustee
Ellen R. McClure, Trustee

STATE OF OREGON)
)ss.
County of Washington)

The foregoing instrument was acknowledged before me this 15th day of October, 2007, by Charles J. McClure, Trustee of The Charles J. McClure and Ellen R. McClure Trust, U/I/D/ October 25, 1999, on its behalf.

OFFICIAL SEAL
KIMBERLY A BODLEY
NOTARY PUBLIC-OREGON
COMMISSION NO. 408479
MY COMMISSION EXPIRES JULY 18, 2010

Kimberly A. Bodley
Notary Public for Oregon
My commission expires: July 18, 2007

STATE OF OREGON)
)ss.
County of Washington)

The foregoing instrument was acknowledged before me this 15th day of October, 2007, by Ellen R. McClure, Trustee of The Charles J. McClure and Ellen R. McClure Trust, U/I/D/ October 25, 1999, on its behalf.

OFFICIAL SEAL
KIMBERLY A BODLEY
NOTARY PUBLIC-OREGON
COMMISSION NO. 408479
MY COMMISSION EXPIRES JULY 18, 2010

Kimberly A. Bodley
Notary Public for Oregon
My commission expires: July 18, 2007