GREEN HEIGHTS

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION of Covenants and Restrictions is made by Joe Green, Developer.

RECITALS:

A. Developer owns the real property described in Exhibit A, attached hereto and by this reference incorporated herein as though fully set forth.

B. Developer is subdividing and/or partitioning the property.

C. By this Declaration of Covenants and Restrictions, Developer desires to establish a homeowners' association to maintain the wetland area along the Western edge of the development, as required by the land use approval for the subdivision and a procedure for funding the maintenance of the wetland area by the future owners of the property.

D. Because it is not anticipated the combined annual assessments for all lots will exceed $1,000.00, Green Heights shall not be subject to the Oregon Planned Community Act, ORS 94.550, et. seq., and the declarant specifically hereby declares the property not to be subject to such act.

IN CONSIDERATION of the foregoing recitals, which are by this reference incorporated herein, Joe Green, Developer, does hereby declare and establish that the property shall be encumbered and restricted in accordance with the provisions contained herein.

ARTICLE 1
DEFINITIONS

SECTION 1.

Definitions. The following words shall have the meaning hereinafter set forth wherever used in this agreement unless the context clearly requires otherwise.

A) "Association:" The Green Heights Homeowners' Association as established hereunder.

B) "Common Area:" That portion of Tract "A" on the Phase I Plat of Green Heights (or any subsequent Phase of the subdivision) not developed as single family lots through partition.

C) "Declaration:" This Declaration of Covenants and Restrictions.
D) "Lot:" Each designated lot on a subdivision or partition plat encompassing any portion of the property described on Exhibit "A".

E) "Member:" A member of the Association.

F) "Owner:" The person or persons who hold fee simple title to any lot, or the vendee who is purchasing any lot under a land sale contract. Owner shall not include, however, any mortgagee or other party claiming any interest in a lot as collateral for an obligation unless and until such person acquires fee simple title pursuant to foreclosure or some proceeding in lieu of foreclosure.

G) "Developer:" Joe Green, Owner of Green Heights, his successors and assigns.

H) "Property:" The real property described in Exhibit A, attached hereto and by this reference incorporated herein as though fully set forth.

ARTICLE II
HOMEOWNERS' ASSOCIATION

SECTION 1.

Creation. There is hereby created the Green Heights Homeowners’ Association, which shall have the powers and duties and shall be organized and operated in accordance with the terms of this Declaration. The Association is intended to be a real estate management association as defined in and operating in accordance with Section 528 of the Internal Revenue Code of 1986, as from time to time amended.

SECTION 2.

Membership. The Owner of each Lot shall be a member of the Association. All of the individuals who own one Lot shall be collectively considered one single Member.

If an Owner owns more than one Lot, such Owner shall be deemed one single Member, but shall have the number of votes provided in Section 3, below.

SECTION 3.

Voting. Except as otherwise provided herein, all decisions of the Association shall be decided by a majority of the votes cast.

A. Developer Votes. Developer shall have five (5) votes for each Lot which it owns.
B. Other Owners. All Members other than Developer shall have one vote for each Lot which he/she owns.

SECTION 4.

Meetings. Meetings of the Association may be called either by the Board of Directors or upon the concurrence of the Members holding 50% of the Members’ votes. Meetings shall be called by a written notice mailed or personally delivered to each of the Members, at their residence if they reside on a Lot or, if not, at their last known address reflected on Association records, not less than seven days prior to the date of any meeting. All meetings shall be conducted at a location not more than fifteen (15) miles from the Property. The Members may act without meeting upon written concurrence of the Members holding three-fourths (¾ths) of the votes which could be cast at a meeting of the Members if such a meeting were convened on the date of the last signature.

SECTION 5.

Board of Directors. The affairs of the Association shall be managed and conducted by a Board of Directors. Such Board of Directors, shall make all decisions for the Association except those items for which this Declaration requires a vote of the Members. The Members, however, shall have the right to delegate to the Board of Directors matters which would require a vote of the Members, so long as the resolution approving such delegation is approved by the number of Members which would be required for the Association Members to approve the action which is the subject of the delegation.

A. Size. The number of Directors shall be equal to the lesser of the total Members of the Association, or three.

B. Election. Developer shall appoint the members of the Board of Directors until there are fifteen (15) Members. Thereafter, the Members shall elect the members of the Board of Directors. The first election shall be held within ninety (90) days after the date on which the Association acquires the fifteenth (15th) Member. Each Director shall serve from the date of election until the date of death, resignation or removal of such person by the Members. A Director who is appointed by the Developer may be removed by the Developer. A Director elected by the Members may be removed by a vote of the Members.

C. Officer. The Board of Directors shall elect officers comprised of a President and a Secretary. The President shall preside over all meetings of the Board of Directors and the Members and the Secretary shall be responsible for the maintenance of the records of the Association. If the Board of Directors desire, it may also elect a Vice-President and a Treasurer, who shall have such duties as the Board may delegate to them. All documents requiring approval of the

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Association shall be executed by two (2) individuals who are either officers or members of the Board of Directors.

D. Quorum. A Majority of the Directors shall constitute a quorum for the purposes of conducting business. All decisions of the Board of Directors shall be made by a majority vote of those Directors present at any meeting. The Board may act without a meeting upon the written consent to the action by all of the Directors.

E. Meetings. Meetings of the Board of Directors shall be convened at the call of the President, Secretary or any two (2) Directors. Notice of each meeting shall be given to each Director at least forty-eight (48) hours in advance of the meeting. Meetings shall be held within fifteen (15) miles of the Property.

SECTION 6.

Association Powers. The Association shall have the authority to enforce any and all of the provisions of this Declaration and carry out any and all other lawful activities necessary and proper for the Association to maintain the wetland area long the Western edge of the property. Such powers shall include but not be limited to:

A. Imposing assessments on the Members to fund Association activities. The Association may file and foreclose liens against the lot of any Member who fails to pay assessments imposed by the Association.

B. Initiation of litigation to enforce compliance with the obligations hereunder.

C. Providing for the maintenance and improvement of the Common Area.

D. Established reserves or sinking funds for repair or replacement of Common Area improvements and landscaping.

E. Purchasing liability and casualty insurance.

F. Paying property taxes on the Common Area, if any.

The association’s sole responsibility shall be maintenance of the wetland tract along the Western edge of the property. The association shall have no other powers, and this declaration can not be amended to grant the association any power other than those related to maintenance of the wetland tract.
ARTICLE III
MAINTENANCE OBLIGATIONS

(1) Unless and until a third party governmental entity agrees to accept maintenance responsibility for the Common Area, the Association shall be responsible for maintenance of the Common Area. If a third party agrees to accept responsibility for maintenance of the Common Area, it shall accept title to the property, and shall record an appropriate notice of their acceptance of maintenance responsibility as outlined herein. Upon recording of such notice, the Association and owners of Lots shall have no further responsibility for maintenance of the common area or liability associated with it. Unless and until such notice is recorded, the owners shall be responsible for maintenance as provided for herein.

(2) The Common Area shall be maintained to a standard appropriate for a Common Area, and shall be kept free of erosion, litter, debris, noxious weeds and blackberries as outlined herein or as required by the latest revisions of the City of Lafayette Public Works Standards as well as any requirement imposed by the local Fire Chief, which may include the mowing of a Fire Break Strip along the Eastern boundary of the Common Area. No portion of the Common Area shall be used for dumping of trash, rubbish or debris of any kind (i.e. yard rakings, clippings, dirt and other material resulting from landscaping work or construction shall not be dumped on any portion of Tract “A”). No structures, fences or other improvements shall be placed or permitted within the Common Area which may obstruct the drainage flow from upstream properties.

(3) The costs of Common Area maintenance and repairs shall be apportioned equally among the affected owners on a per lot basis regardless of frontage, location, or improvements. If an individual owner shall cause the Common Area improvements to be damaged or require maintenance, that owner shall be solely responsible for the entire cost of repairing the Common Area to the satisfaction of the Association within thirty calendar days of the damage.

(4) The Board shall be empowered to borrow monies where necessary to complete Common Area maintenance and to pay interest at a reasonable rate for such sums as are borrowed.

(5) The Board shall send a written notice to each affected owner setting forth their share of the annual estimated cost of maintenance. The amount billed shall be due and payable within thirty days thereafter, and if not so paid the Board may prepare a notice entitled "Lien Notice" setting forth the legal description of the property for which an assessment has not been paid, name of owners or reputed owners, the date of the assessment, and the amount thereof. Said Lien Notice, over the President's signature, shall then be recorded in the lien notices in Yamhill County and shall constitute a lien on the described premises. The President shall make charges for interest on any amounts unpaid under this Agreement at the rate of 1-1/2% per month or pro-ration thereof) or at the maximum

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rate permitted under any applicable law for past-due' obligations, whichever is less.

(6) The Common Area over which the storm drainage easement runs, is delineated as a jurisdictional wetland. No excavation or fill work may be performed within the wetland boundary without approval from appropriate state and federal agencies.

(7) In the event the Association defaults in its obligation to perform required maintenance, the City of Lafayette shall be authorized to take any required maintenance steps, and assess the costs of such maintenance against the Association. Prior to performing any non-emergency maintenance, the City of Lafayette shall provide ten (10) days prior written notice to the Association. The notice shall set forth the actions required to cure the default. If the Association does not perform the maintenance within the ten (10) days, or if the maintenance can not be performed within the ten (10) day period, begin performance within the ten (10) day period and provide adequate assurances performance will be completed within a reasonable time frame, the City may proceed with the maintenance and charge the cost of the work against the Association. In the event any emergency maintenance is required, no written notice shall be required to the Association prior to the City performing the maintenance. Upon completion of any such maintenance, the City may make demand upon the Association for the costs thereof. If the Association does not reimburse the City for the costs incurred in the maintenance within 60 days of demand, the City shall have the right without further notice to the lot owners, to post on the City lien docket a lien against each lot subject to this declaration equal to its prorata share of the costs of maintenance, plus the City's cost to collect and post the liens.

ARTICLE IV
ASSESSMENTS

SECTION 1.

Imposition of Assessments. Each Member shall pay to the Association the sums set forth below to pay for the necessary and proper expenses of the Association in carrying on its activities.

A. Annual Assessment. Each Member shall be required to pay to the Association an annual assessment on or before January 1 of each calendar year, commencing with the calendar year 2006. The Board of Directors shall establish the amount of the annual assessment which shall be sufficient to cover the anticipated annual maintenance costs. The Board of Directors may provide for the payment of assessments in installments during the year.

B. Allocation of Assessment. The annual assessment shall be divided by the number of Lots owned by Members on November 30 of the prior year, and
the quotient shall be the assessment levied on each Lot.

C. Limitations. Notwithstanding the foregoing, the assessment against all Members for any year shall not exceed one percent (1%) of the estimated value of all lots.

SECTION 2.

Lien. The Association shall have a lien on each Lot for all assessments payable to the Association by the Owner of such Lot. The lien for an assessments shall be superior to any and all liens against such Lot, except for the liens for each property ad valorem taxes and except for liens against the lots to secure repayment of financing for the construction of improvements of such lots or purchase of improvements, but only to the extent that such liens are (a) perfected prior to the accrual of the assessment in question and (b) the subordination shall only be to the extent that the financing is actually used for the construction of improvements on the Lot in question or purchase thereof. In the event Yamhill County acquires ownership of any of the Property through foreclosure of its ad valorem tax lien against such property, no assessment accruing thereafter against the foreclosed Property shall be due but a lien for the assessment shall accrue during the term of the county’s ownership. The lien shall be due and payable by the purchaser after sale by the county.

SECTION 3.

Ownership of Common Area. Developer shall deed the Common Area to the Association as part of the recording of the plat of Phase I, II or III of Green Heights, as the developer may elect. Nothing shall prevent the developer from deeding the common areas to the Association sooner. Following the date of the conveyance all maintenance responsibility for the Common Area plus all real property taxes thereon shall be the responsibility of the Association. Until conveyed to the Association, the Developer shall be responsible for maintenance as provided for herein. If the Developer does not perform the maintenance obligations hereunder during its ownership, the city may exercise its right to perform the work and assess the costs thereof against the developer subject to the notice requirements contained herein. If the Developer does not timely reimburse the City for any maintenance costs incurred after proper notice and demand for payment during Developers ownership of the common area, the city may lien the lots owned by the developer as provided herein and exercise any other rights, including foreclosure of such liens provided herein. Upon three-fourths (¾ths) majority vote of the Members, the Association may dedicate the Common Area to the City of Lafayette or other municipality. If the Common Area is so dedicated, the dedication must be accepted to be effective. Upon three-fourths (¾ths) majority vote of the Members, the Association may also convey the Common Area to a non-profit organization, so long as it accepts the maintenance responsibilities set forth herein. Any such conveyance must be subject to the obligations set forth in this declaration, and the grantee must accept responsibility for
maintenance as set forth herein.

ARTICLE V.
DURATION AND AMENDMENTS

SECTION 1.

Duration. This Declaration shall be perpetual unless terminated as provided for herein. If in the event a third party governmental entity accepts maintenance responsibility for the wetland Tract, as required hereunder, the association may be immediately dissolved upon the approval of the City of Lafayette. This declaration may be terminated, and the Association dissolved, at any time upon a 3/4ths majority vote of the members, subject to the approval of the City of Lafayette.

SECTION 2.

Amendment. This Declaration of Covenants and Restrictions may be amended at any time by an instrument in writing, executed by Members possessing three-fourths (3/4ths) of the votes, and recorded in the real property records of Yamhill County, Oregon. In no event shall any amendment eliminate the maintenance responsibility for the wetland tract set forth herein, unless such responsibility is assumed by a third party, governmental entity and the assumption of that responsibility is approved by the City of Lafayette, or the amendment itself is approved by the City of Lafayette.

ARTICLE VI
MISCELLANEOUS

SECTION 1.

Dispute Resolution. In the event of any dispute concerning this Declaration (except as provided in Subsection A and B below), such dispute shall be determined by arbitration in accordance with the then-current rules of the American Arbitration Association, or if such Association no longer exists, in accordance with the arbitration provisions contained in any applicable law. Any award or determination of the arbitrators may be entered as a judgment in any court of competent jurisdiction in the manner then provided by law.

A. Enforcement. In the event of any actual or threatened violation of any of the provisions herein, the Association acting through the Board of Directors shall have the right to initiate litigation to obtain an injunction to enjoin such violation. The Board of Directors shall have the power to obtain without notice, hearing, or the posting of any bond, a temporary restraining order enjoining such activity until a hearing can be convened to determine whether such temporary restraining order should continue. Under no circumstances shall the
Association be required to post any bond or undertaking as a condition of obtaining any temporary restraining order, preliminary or permanent injunction. The prevailing party in the enforcement action shall recover such party’s attorney fees incurred therein and in any appeal therefrom.

B. Lien Enforcement. The Association, acting through the Board of Directors, shall have the right to foreclose any lien for assessment hereunder by suit in equity to collect assessments accruing within six (6) years prior to the date upon which the foreclosure commenced. In the event of any suit for foreclosure, the Association shall obtain a judgment against the Owner for the amount of the assessment actually due and for the Association’s reasonable costs, disbursements and attorney fees included in such litigation, and a decree of the court directing that any subordinate liens against the lot in question be foreclosed and the Lot and improvements thereon be sold in the manner provided for the sale or real property under execution, with the proceeds of the sale to be used to satisfy the Owner’s obligations to the Association. In the event a lien accrues in favor of the City, the City shall have the same rights to foreclose its lien as provided to the Association.

C. Enforcement Against A Director. No Member who is a Director and who is also the subject of an enforcement action under A or a foreclosure under B shall have any right to attend any Directors’ meetings or vote on any matters related to the enforcement action or foreclosure. The remaining directors may, by a majority vote, remove and replace the offending director during or following such proceedings.

D. Assignment by Declarant and Enforcement. Any or all rights, powers and reservations of Declarant herein contained may be assigned to any person or entity existing now or hereafter. Upon delivery of written notice of assignment from Declarant, the Assignee must accept such assignment and, to the extent of such assignment, the Association shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by the Declarant alone so long as it owns any interest in any portion of said property. The Association, Declarant or any Owner may enforce these Covenants and Restrictions.

E. There shall be no right of action against developer at law or in equity for failure to comply with or enforce the provisions hereof after the conveyance of the Common Area to the Association, except to the extent the developer still owns lots with in the development, all such lots shall be subject to the provisions herein and remedies provided herein.
SECTION 2.

Severability. In the event any term or provision of this Declaration of Covenants and Restrictions is determined to be unenforceable, invalid or void for any reason by a court of competent jurisdiction, such determination shall in no way affect the Property and be binding upon all present and future Owners of any interest of the Property.

DATED this 29 day of Dec., 2005.

By: Joe Green, Declarant

STATE OF OREGON )
County of Marion ) ss.

Personally appeared Joe Green, and acknowledged the foregoing instrument to be his voluntary act and deed this 29th day of December, 2005.

Notary Public for Oregon
My Commission Expires: 8-14-07
LEGAL DESCRIPTION  
"GREEN HEIGHTS"
Prepared for Joe Green

A tract of land located in the Joel Perkins Donation Land Claim No. 39 in the East Half of the Southwest Quarter and the West Half of the Southeast Quarter of Section 6, Township 3 South, Range 4 West of the Willamette Meridian, City of Lafayette, Yamhill County, Oregon, and more fully described based on County Survey No. 10,860 by Leonard A. Rydell, P.L.S. as follows:

Beginning at the Initial Point, a 1-1/2 inch iron pipe, said iron pipe being South 00°47'00" East 996.79 feet and South 89° 22' 03" West 809.24 feet from a Yamhill County Brass Cap at the Northeast corner of the Joel Perkins Donation Land Claim No. 39, said iron pipe at the Northeast corner of that tract of land conveyed to School District No. 40 by Warranty Deed recorded 16 November 1971 in Volume 87, Page 242, Yamhill County Deed Records; said iron pipe being also on the South line of a tract of land conveyed to Arthur J. O'Dell et us. by deed recorded 22 April 1947 in Book 142, Page 198, Yamhill County Deed Records; thence North 89° 22' 03" East along the South line of said O'Dell tract 809.24 feet to a 5/8-inch iron rod on the centerline of Dunway Road (County Road No. 85); thence South 00°47'00" East 923.45 feet to a 5/8-inch iron rebar on the centerline of County Road No. 84; thence South 85° 24' 50" West 194.00 feet along the centerline of said County Road No. 84 to a 5/8-inch iron rebar at the Southeast corner of that tract of land conveyed to Christ A. Santrizos and Patricia L. Santrizos, husband and wife, by Warranty Deed (Individual) recorded 15 April 1977 in Film Volume 119, Page 998, Yamhill County Deed Records; thence North 00° 47' 00" West along the East line of said Santrizos tract 208.71 feet to a 5/8 iron rebar at the Northeast corner of said Santrizos tract; thence South 85° 24' 50" West along the North line of said Santrizos tract 208.71 feet to a 1/2-inch iron pipe at the Northwest corner of said Santrizos tract; thence South 00° 47' 00" East along the West line of said Santrizos tract 208.71 feet to a 5/8-inch iron rebar on the centerline of County Road No. 84 at the Southwest corner of said Santrizos tract; thence South 85° 24' 50" West 388.82 feet along the centerline of County Road No. 84 to the Southeast corner of said School District No. 40 tract; thence North 01° 55' 22" West 978.27 feet along the East line of said School District No. 40 to the Initial Point.

Said parcel containing 16.4584 acres.

Exhibit A

Save and accept any portion of the above described property line within any public right of way.
Amendment to Conditions, Covenants and Restrictions for Green Heights No. 2

This amendment to the Conditions, Covenants and Restrictions for Green Heights No. 2, in the City of Lafayette, County of Yamhill, State of Oregon, is made and entered into this 3rd day of May 2010 by Joe Green, Owner of Lots 38-55, 59, and 60-83.

WHEREAS the owner of the above mentioned lots desire to amend the Covenants, Conditions and Restrictions recorded February 23, 2006 as Instrument #200603931 as follows:

No structures shall be erected or permitted to remain on any Lot except one single-family structure containing a dwelling unity, which shall include a private garage, a backyard fence, and structures normally accessory to a dwelling. The foregoing provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool, or a shelter or port for the protection of such swimming pool, or a structure for the storage of a boat and/or camping trailer for personal use, provided the location of any such structure is in conformity with the applicable government regulations, and the structure is compatible with the dwelling structure constructed on such Lot and approved by the Architectural Review Committee. No mobile, log, or manufactured homes are permitted within the Property. Each Lot shall provide for off street parking in the garage. Nothing in this section shall be deemed to prohibit the construction of a residence on a Lot in accordance with this Declaration, nor the storage during the course of construction, of materials and equipment on the Lot as may be necessary for such construction, nor the use of any residence on a Lot as a sales office or model home for the purpose of sales of homes or lots in Green Heights.

All other terms and provisions will remain the same.

Joe Green

State of Oregon
County of Yamhill
Washington

This instrument was acknowledged before me this 3rd day of May 2010 by Joe Green.

Donna J McMurtry
Notary Public for Oregon
My Commission Expires: January 23, 2011