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Clackamas County Official Records
Sherry Hall, County Clerk

2007-056213

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D.R. Horton
Attn: Maggie Gazdagh
4386 SW Macadam Ave. Ste. 102
Portland, OR 97239



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**FIRST AMENDMENT TO THE RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
WINDSWEPT WATERS**

Recitals

THIS FIRST AMENDMENT TO THE RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WINDSWEPT WATERS (this "First Amendment") is made and entered into effect this 5th day of JUNE, 2007, by D. R. Horton, Inc.-Portland a Delaware corporation (the "Declarant") and by "Windswept Waters Homeowner's Association" (the "Association").

WHEREAS, the Declarant caused that certain Declaration of Restated Covenants, Conditions and Restrictions for Windswept Waters to be recorded on October 26, 2006 as Document No. 2006-099043, in the records of Clackamas County.

WHEREAS, pursuant to 2.2 (c)(i), 11.6 and/or 11.8 of the Declaration, Declarant desires to amend the Declaration as provided herein. Capitalized terms not defined herein shall have the meaning given in the Declaration, except as otherwise indicated.

The Declaration is hereby amended as follows:

1. Article 1, Definitions. Article 1 of the Declaration is hereby amended to include the following language:

1.5.5. "Building Structure" shall mean a building that is comprised of one or more contiguous Homes constructed and located on Lots, including without limitation, garage structures located on the Lots, whether attached to or detached from the Building Structure. The Building Structure shall be deemed to include only the residential and garage structures from the exterior siding and roof through the surface of the drywall. All wall coverings or paint, or anything in or on the interior of the home or garage, including any appliances, heaters and air conditioners, cabinets, flooring, wall and window coverings, personal property, light fixtures, pets, automobiles or outbuildings, except a detached garage as described above, is excluded from this definition of Building Structure.

1.7.5. "Common Home Exteriors" shall mean the exterior of each attached Home within the Property. Common Home Exteriors shall include the siding, trim, rain gutters, downspouts, rain drain and footing drain systems, roof, roof eaves, and flashing,

including the garage whether attached or detached to dwelling unit. Common Home Exteriors do not include the interior landscaping within enclosed courtyards or patios, decks, fencing, or driveways, except as noted within this Declaration. Also excluded from Common Home Exteriors are the maintenance responsibilities which rest solely with the Owners of such Lots as defined in this Declaration.

1.12.5. "Investment Property" shall mean any Lot in which the primary Occupant of the Home located upon such Lot is not an Owner of such Lot and Home.

1.23.5. "Townhome Lots" shall mean those Lots upon which two or more contiguous homes are built, and shall include Lot 1 through 144 located at the Rim at Windswept Waters."

2. Article 2, Property Subject To This Declaration. Article 2 of the Declaration is hereby amended to include the following language:

2.2(d). Voting Rights: Allocation of Assessments shall be replaced with the following language: "Upon annexation, additional Lots so annexed shall be entitled to voting rights and shall be responsible for payment of assessments as required for that fiscal year. At the beginning of the next fiscal year, assessments for the general Common Areas shall be apportioned equally based upon the total number of Lots following such annexation, but assessments that are relative to a specific product type will be spread equally over only the Lots of that type."

3. Article 3, Ownership and Easements. Article 3 of the Declaration is hereby amended to include the following language:

3.4(f). Additional Easements shall have the following language added: "In addition, an easement is specifically reserved to the Owners of any Townhome Lot in each Building Structure, and the Association, as each's interests may exist, for access to, and right of repair or service to utility and/or drainage lines and facilities which exist on each Townhome Lot for common use of Owners in said structure."

3.4(g). Association's Easements shall have the following language added:

1. An easement is hereby reserved in favor of the Association and its successors, assigns, contractors, agents and employees over, across, and under each Townhome Lot, the exterior Building Structure on each Lot, the Common Areas, the landscaped areas, the planter strips and any other areas of the Property necessary or appropriate for the purposes of accomplishing the maintenance, repair, and replacement of improvements."

2. The Common Area open space Tracts A, B, C, D, E, G, and "H" of the Rim at Windswept Waters shall be owned and maintained by the Windswept Waters Homeowner's Association.

3. The retaining wall that runs along the back yards of Lots 1 through 22; Lots 85 through 90, and Lots 52 through 63, shall be maintained by the Windswept Waters Homeowner's Association. The Association shall pay for structural maintenance, repair and/or replacement of Declarant installed segmented block walls, including those on Lots and those that project into Tracts B, C and E. The Association hereby reserves a maintenance easement for said walls pursuant to 3.4(e) as set forth in this Declaration. All funds for said maintenance of walls shall come from reserves collected through the assessments of the Rim Lots 1 through 144 only. Refer to 5.2 (c) in the restated CC&R's for further clarification on retaining walls.

4. Landscaping on Townhome Lots: The Association reserves an easement and except as otherwise noted in this Declaration, shall pay for any landscape maintenance, upkeep and replacement, as well as utilities pertaining to Declarant installed landscaping of all front yard and street-side yards for Lots 1 – 144 of Rim at Windswept Waters, including street frontage planter strips.

5. Drainage Lines: The Association shall maintain the drainage lines for gutters and downspouts from the Homes to the point of intersection with the publicly owned storm drain facility. The Association hereby reserves a maintenance easement for said drainage lines pursuant to 3.4(e) and 3.4(i) as set forth in this Declaration.

6. Tract "F": Has been conveyed to the Windswept Waters Homeowner's Association, which shall maintain it with funds that shall come from reserves collected through the assessments of the Rim Lots 1 through 144 only. Tract "F" has a blanket storm water and drainage easement granted to CCSD #1, over its entirety. Lots 132 – 136 are granted an access easement over Tract "F".

3.4 (k) Sight Vision Restrictions. Lots 85, 86, 65 through 68, 48 through 50 and Tract "D" are subject to sight vision restrictions. Such Sight Vision Restrictions areas will be maintained by the Windswept Waters Homeowner's Association, subject to restrictions as provided in this Declaration. No structure, fencing, plantings, improvement and the like shall be placed or permitted to remain that may obstruct site vision within the site vision restriction area. The Association hereby reserves an easement over, under and across the site vision restriction areas for carrying out enforcement and/or maintenance activities pursuant to this Declaration. No Owner shall be allowed to violate these restrictions, but should they do so, the Declarant or the Board of Directors reserves the right to cause any maintenance and/or repair to be performed on behalf of Owner subject to Article 4.21. This provision shall not be changed without the written consent of the City.

3.5 (l) Lot 132 has an access easement for emergency vehicles for the benefit of Lots 132 – 135.

4. Article 4, Lots and Homes. Article 4 shall have the following language added:

4.5.5 Rim at Windswept Waters Landscaping. Except as otherwise provided in this Declaration, the Association reserves an easement and shall maintain any

landscaping on common open space Tracts A, B, C, D, E, and G of the Rim at Windswept Waters, and the landscaping associated with any maintenance easement held by the Association.

Further, the Association reserves an easement and shall maintain front and/or street-side yard landscaping for Rim at Windswept Townhome Lots. Owners will maintain, and may use any enclosed side and rear yard for any purpose not prohibited hereunder, provided such use is not deemed, by the ARC or the Association to be a nuisance. No Owner may connect to any Association maintained irrigation system.

(a) Landscape installation on Lot by Owners is subject to approval by the ARC. Street trees and perimeter landscaping installed by Declarant on individual Townhome Lots are to be maintained by the Association. Completed landscaping of backyards on all Lots shall be installed by Owners no later than six (6) months after occupancy. All backyard landscaping on Townhome Lots shall be maintained by Owners in a good condition, including watering, weeding, pruning, fertilization, mowing and other forms of maintenance. If Owner fails to maintain said landscaping, Declarant, or Association in its place reserves the rights outlined in Article 4.21 to maintain.

(b) Declarant reserves the right to install and maintain landscape improvements on any Townhome Lot(s) or Common Area.

(c) Any plantings which are added to any Association maintained Townhome Building Lot front or side yard areas by Owners must have ARC approval and will be at the sole expense of the Owner, and the Owner shall be solely responsible for their maintenance and survival. Further, the Association and its landscape maintenance contractor will bear no responsibility for the survival, maintenance, damage or replacement of Owner/Occupant installed plants.

4.5.6 Exterior Maintenance. The Association shall provide exterior maintenance for the Common Home Exteriors as follows: paint, repair, replace and care for roofs, gutters, downspouts, drainage lines, exterior building surfaces, and other exterior improvements, including, without limitation, exterior lighting fixtures (except light bulbs) and the exterior portions of any chimneys, rain gutters and downspouts. Such exterior maintenance does not include repair or replacement of doors, windows, screens, skylights, and other glass surfaces, except to the extent of the proceeds of the Association's insurance. The Association shall also maintain front and street-side yard landscaping for Townhome Lots, in accordance with Article 4.5.5 above. The cost of such maintenance by the Association shall be a Common Expense paid out of Assessments described in Article 10 below. In the event, however, the need for such maintenance or repair is caused by the willful or negligent act or omission of any Owner, his/her/their family, tenants, guests or invitees, and to the extent such maintenance or repair is not covered by the Association's insurance policy, the costs of such maintenance and repair may, at the discretion of the Board of Directors, be charged to the Owner as an Individual Assessment. The acceptance and submission of insurance claims is at the sole discretion of the Board of Directors.

Should the insurance proceeds be insufficient to complete the Work by the Owner or the Association, as the case may be, the remainder shall become a specific assessment to be assessed against the Townhome Owner or against the Association in the case of damage to a Townhome Building Structure, shared equally by all members of the Rim At Windswept Waters townhome owners. In the event the insurance proceeds are greater than the costs to replace or repair with regard to a Townhome Building Structure, the excess shall be deposited to the Rim at Windswept Waters reserve fund. If, however, the damage or destruction to a Townhome Building Structure is caused by the gross negligence or willful intent of an Owner, his/her occupants, guests, family members, tenants, agents, licensees or other invitees, the Association through its Board of Directors may assess any amounts for repair or replacement not covered by such Owner's personal insurance coverage as a special assessment against such Owner, to be repaid to the Association on terms decided by the Board, or may recover such amounts from that Owner in any other manner provided by law.

4.18 Damage or Destruction to Home and/or Lot. The following language shall be added:

In the event the Owner fails to commence such work within the sixty (60)-day period, the Association shall immediately commence such work. Should the insurance proceeds be insufficient to complete the work by the Owner or the Association, as the case may be, the remainder shall become a special assessment to the Association shared equally by all Members of the Association. In the event the insurance proceeds are greater than the costs to replace or repair, the excess shall be deposited to the Association's reserve fund. If, however, the damage or destruction is caused by the gross negligence or willful intent of an Owner or his/her occupants, guests, family Members, tenants, licensees, agents or other invitees, the Association through the Board of Directors may assess any amounts for repair or replacement not covered by such Owner's personal insurance coverage as a special assessment against such Owner to be repaid to the Association on terms decided by the Board, or may recover such amounts from that Owner in any other manner provided by Law.

4.20.5 Owner's Maintenance Obligations. All improvements upon any Lot, not maintained by the Association, shall at all times be maintained by the Owner in a clean and attractive condition, painted and in good repair, and in such a fashion as not to create a hazard of any kind. Townhome Lots will be provided with exterior building and landscape maintenance as outlined elsewhere in this Declaration. However, Owners of Townhome Lots are responsible for maintenance, replacement, painting, repair and general upkeep of all exterior doors, including the garage door, and all windows, window screens and skylights. All work is subject to ARC review and approval prior to commencement of work.

5

In the event repair or replacement of common foundations of any Townhome Building Structure or common firewall (which terms shall have the same meaning as party walls) of a Building Structure should become necessary or appropriate, then the Owners of the Townhome Lots within the Building Structure that required such repair or replacement shall be jointly responsible for such repair and/or replacement, and the Owners of such affected Lots shall share equally in the expense of such repair and replacement. In the event an Owner of a Townhome Building Lot determines repair or replacement of the common foundations or common firewalls of a Building Structure is necessary or appropriate, that Owner shall notify the other Owners of the affected Homes within the Building Structure of the need to perform such repair or replacement. If a majority of the Owners of the affected Homes within the Building Structure agree that such repair or replacement is necessary, they shall jointly cause such work to be performed, and each Owner of an affected Unit shall pay an equal portion of the expense of such work. If an Owner of an affected Home determines repair or replacement of the common foundations or common firewalls of a Building Structure is necessary or appropriate and a majority of the Owners of the other Homes affected or claimed to be affected do not concur with such determination, then the Owners of the Homes affected (or claimed to be affected) shall mutually agree upon and retain a professional engineer licensed in the State of Oregon having at least five (5) years experience in such matters to inspect the common foundations or common firewalls, and such engineer shall make a determination as to whether such repair or replacement is required. The determination of such engineer shall be binding to the affected Owners, and all expenses and fees of the engineer and of the repair or replacement work required to be performed, if any, shall be borne as provided in this Article. In the event the Owners of Homes so affected or claimed to be so affected cannot agree upon a professional engineer having the required qualifications within a thirty (30)-day period, then any of the affected Owners may make application to the ACC, which shall select such engineer having the requisite qualifications. The fees and expenses of the engineer shall be shared equally by the Owners of the Homes affected or claimed to be affected. In the event the Owner of an affected Home fails to contribute to the expense of the repair or replacement of the common foundation or common firewalls by thirty (30) days after written demand therefore, then the amount not paid or reimbursed, as well as Attorney fees, collection costs, and interest thereon at the rate of twelve percent (12 %) per annum from the date of such written demand shall become a charge and lien against the Owner of a Home failing to make such payment or reimbursement. Each Owner of Townhome Building Lots shall be deemed to have agreed by acceptance of a deed conveying the Townhome Building Lot, that any such lien shall be effective, without the necessity of obtaining the joinder of such Owner in the execution of any instrument, upon the filing by another Owner of a Townhome Building Lot of a claim of lien in the Official Records of Clackamas County, Oregon.

5. Article 10, Funds and Assessments. Article 10 shall have the following language added:

10.1 (b) Insurance By the Association. The Board shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability insurance with respect to all the Common Area in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily

6

injury, including deaths of persons, and property damage, whether caused by the negligence of the Association or otherwise; provided, however, that such policy(ies) shall not be for an amount of less than one million dollars (\$1,000,000.00) per person, per occurrence, and that such policy(ies) shall provide that the coverage thereunder cannot be canceled or substantially modified without at least ten (10) days written notice to the Association. Additionally, for Lots 1 through 144 only, known as Townhome Lots, the Association shall obtain, and maintain in effect, from such companies fire and extended coverage casualty insurance (including coverage for damage resulting from vandalism and malicious mischief) with respect to each Building Structure, as defined in Article 1.5.5, and the Common Areas (including any insurable improvements in the Common Areas) in an amount equal to one hundred percent (100%) of the replacement cost thereof. The casualty coverage may be obtained on a "blanket" basis. The Association may obtain such other and further policies of insurance as it deems advisable. The named insured on the policy may read "Windswept Waters Home Owner's Association for Rim at Windswept Waters". The casualty insurance to be obtained by the Association pursuant to this Article 10.1(b) shall include the following terms, if the Board determines they are reasonably available:

(i) A waiver of subrogation by the insurer as to any claims against the Board, any Owner, or any guest of an Owner;

(ii) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(iii) A provision that no policy may be canceled, invalidated, or suspended because of the action of an Owner;

(iv) A provision that no policy may be canceled, invalidated, or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association correct the defect and allows the Association a reasonable time to make the correction; and

(v) A provision that any "other insurance" clause in any policy shall exclude from its coverage all owners' policies.

At the discretion of the Board, the Association may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Association, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his/her/their status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of the Articles of Incorporation of the Association.

10.1 (c) Insurance by the Owners. The insurance described in Article 10.1 (b) above does not provide personal liability coverage for the Owners, nor fire or extended coverage casualty insurance for the Owners' personal property, the inside surfaces of the Building Structure, and all other improvements including, but not limited to, appliances, heaters and air conditioners, cabinets, flooring, wall and window coverings, light fixtures and personal property nor the Lot or land on which the Building Structure resides. The

7

responsibility for obtaining insurance that covers at least these items rests solely with the individual Owners of Townhome Lots.

10.4 (b) Allocation of Assessments shall read: Except as described in Article 10.4 (d) below, the total amount in the General Association budget shall be charged equally against all Lots which have closed escrow to an Owner other than the Declarant or a Declarant assignee as annual assessments. Any profits of the Association shall be similarly allocated.

10.4 (d) Assessments Particular to Townhome Lots. In addition to all assessments described in this Article 10, the Association shall assess Townhome Lots for costs and expenses incurred by or at the direction of the Board for upkeep and maintenance of the exterior walls, exterior paint and roofing, and exterior maintenance of the front and street-side yards of these Townhome Lots, including blanket fire and casualty insurance for Rim at Windswept Waters as further described in Article 10.1 (b) above.

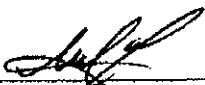
In addition to the maintenance fund and the reserve fund described above, separate funds are hereby established for receipt, administration and distribution of proceeds arising from assessments against Townhome Lots related to the upkeep and maintenance of the exterior building maintenance described above and landscaping of the front and street-side yards. Such assessments will be fixed annually in accordance with the general budget guidelines outlined in Article 10.4 (a) above for the general association assessment. All Townhome Assessments will be in addition to the general assessment for the maintenance of the Common Areas. Townhome Assessments will be accounted for separately with different bank accounts and general ledgers. Such assessments for upkeep and maintenance of these Townhome Lots maintenance responsibilities shall be subject to the same terms and conditions as the regular or special periodic assessments described above, with the exception that the funds established pursuant to this Article 10.4(c) shall be managed and expended solely for the upkeep and maintenance of the front and street-side yard maintenance and exterior maintenance of the Townhome Lots as described above. This is to also be interpreted that the funds for Townhome Lots will be kept separate for the exclusive use on those types of lots. Said funds will include reserves for the exterior maintenance including but not limited to walls and roofs. A reserve study required in Article 10.5 (b) shall incorporate these maintenance responsibilities, although any additional costs associated with such reserve study will be chargeable to the separate Rim at Windswept homeowners, to the extent possible. Exterior wall painting is to include any trim. All doors, windows and any skylights, including frames, glass replacement and cleaning is the sole responsibility of Owners.

6. Effect of Amendment. Except as expressly amended hereby the Declaration remains in full force and effect.

7. Certification. The undersigned Declarant certifies that this First Amendment has been approved in the manner required by Article 11.6 and/or 11.8 of the Declaration.

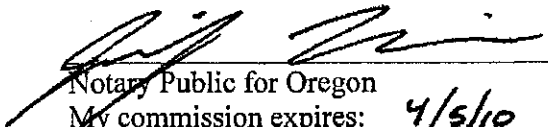
IN WITNESS HEREOF, the undersigned hereby execute this document as of,
June 5, 2007.

D.R. HORTON, INC.-PORTLAND
a Delaware corporation

By: 
Mike Loomis
Its: Vice President, Land Development

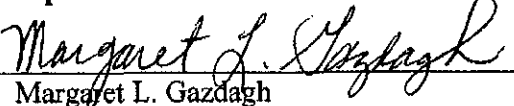
STATE OF OREGON)
) ss
County of Multnomah)

The foregoing instrument was acknowledged before me on June 5, 2007, by Mike Loomis, Vice President Land Development for D.R. Horton, Inc.-Portland, a Delaware corporation, on behalf of the corporation.


Notary Public for Oregon
My commission expires: 4/5/10

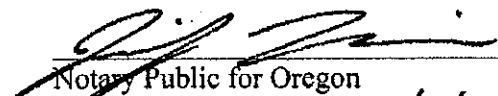


Windswept Waters Homeowner's Association

By: 
Margaret L. Gazdagh
Its: Secretary on behalf of the Association

STATE OF OREGON)
) ss
County Of Multnomah)

The foregoing instrument was acknowledged before me on June 5, 2007, by Margaret L. Gazdagh who is the Secretary of "Windswept Waters Homeowner's Association" on behalf of the Association.


Notary Public for Oregon
My commission expires: 4/5/10

