

NO CHANGE IN TAX STATEMENTS

AFTER RECORDING, RETURN TO:

Clackamas County Service District #1  
9101 SE Sunnybrook Blvd., Suite 441  
Clackamas, OR 97015



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**AMENDMENT TO DECLARATION AND MAINTENANCE AGREEMENT  
FOR ON SITE STORMWATER FACILITIES  
AND  
AGREEMENT TO  
MAINTAIN TARALON STORMWATER FACILITIES, FENCES AND SIGNS**

THIS AMENDMENT TO DECLARATION AND MAINTENANCE AGREEMENT FOR ON SITE STORMWATER FACILITIES AND AGREEMENT TO MAINTAIN TARALON STORMWATER FACILITIES, FENCES AND SIGNS (this "**Agreement**") is made this 5<sup>th</sup> day of December, 2007, between NNP-TARALON, LLC, a Delaware limited liability company (the "**Declarant**"), TARALON RESIDENTIAL COMMUNITY ASSOCIATION, an Oregon nonprofit corporation (the "**Association**" and, together with Declarant, "**Owners**"), CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, a county service district (the "**District**"), and the CITY OF HAPPY VALLEY (the "**City**"). This Agreement is made with reference to the following recitals, and these recitals shall constitute an integral part hereof.

**RECITALS**

A. Declarant is the owner of certain real property (the "**Property**") in the City of Happy Valley, County of Clackamas and State of Oregon, legally described as Lots 3 and 7 through 11 as shown in the plat of Taralon Commons, recorded on February 7, 2006, in the plat records of Clackamas County under Record No. 2006-11410, in Book 131, at Page 24 (the "**Plat**").

B. All of the Property, with the exception of Lot 7 of Taralon Commons as shown on the Plat, is part of a planned community commonly referred to as "**Taralon Residential**" created and governed by the Declaration of Covenants, Conditions and Restrictions for Taralon Residential recorded by Declarant on February 7, 2006, in the Clackamas County Official Records under Recording No. 2006-011412 (the "**Original Declaration**"), as amended by the Amendment to Declaration of Covenants, Conditions and Restrictions for Taralon Residential of approximately even date herewith (the "**Amendment**"). The Original Declaration and Amendment are referred to herein collectively as the "**Declaration.**" All capitalized terms not defined herein shall have the meanings given them in the Declaration.

C. The Amendment amended the Original Declaration to reflect the District's requirements concerning stormwater facilities built or to be built by Declarant within the

Property, including detention ponds, drainage swales and related improvements (the “**Taralon Stormwater Facilities**”), to provide for Custom Fences as described and defined in Section 2 below, and to clarify portions of the Declaration addressing the custom directional, street, identification, trail, trellis monument and message signs installed by Declarant (the “**Custom Signs**”) and incorporate the City’s requirements concerning the Custom Signs.

D. District and Declarant entered into that certain Declaration and Maintenance Agreement for On Site Stormwater Facilities dated June 14, 2005, recorded February 7, 2006, in the Clackamas County Official Records under Recording No. 2006-011411 (the “**Maintenance Agreement**”) concerning the District’s ownership of certain on site stormwater facilities. The Maintenance Agreement applies to stormwater conveyance pipes and related appurtenances. It provides, among other things, that Declarant will be responsible for all storm facilities constructed as a part of Taralon Residential, and that this responsibility shall continue until District takes over the responsibility. It further provides that after District takes over the storm system for ownership and maintenance, District’s responsibility will include only facilities that are outside of the road right-of-way and are contained in public easements or tracts in Taralon Residential. The Maintenance Agreement is hereby incorporated into this Agreement by reference with the same effect as if set forth in full herein and is amended hereby as set forth in Section 4 below.

E. Declarant, District and the City enter into this Agreement to further clarify Declarant’s obligations under the Declaration to maintain the Taralon Stormwater Facilities. In addition, the Association, acting through its President and Secretary, enters into this Agreement to confirm that, upon Declarant’s conveyance to the Association of the portions of the Property on which the Taralon Stormwater Facilities are located, such areas shall be Common Areas to be maintained by the Association in accordance with the Declaration and this Agreement.

## AGREEMENT

NOW, THEREFORE, Declarant, the Association, District and the City hereby agree as follows:

1. **Stormwater Facilities.** The Taralon Stormwater Facilities control the stormwater quantity and quality in Taralon Residential and include drainage swales, detention ponds, wetlands recharge infrastructure, manholes, and conveyance pipes. Several parties share responsibility for the operation and control of the Taralon Stormwater Facilities. For clarity and identification of express obligations, the parties and their responsibilities are described below.

1.1 **DSL/Corp.** The wetland areas are subject to permits from the Oregon Department of State Lands (“**DSL**”) and U.S. Army Corps of Engineers (the “**Corps**”). Declarant is responsible for the proper construction of any required improvements associated with the wetland areas, for maintaining, controlling and monitoring the wetland areas as required by DSL and the Corps and for the costs related thereto, until the portions of Taralon Residential on which the wetland areas are located are conveyed to the Association as Common Areas. Declarant shall so convey the wetland areas land and improvements to the Association upon the earlier to occur of (i) applicable law requiring such conveyance, or (ii) Declarant completing all required improvements associated with the wetland areas, confirming that these improvements

are operating properly and that all required landscaping and vegetation is established, and completing necessary inspections by and receiving the appropriate approval and/or acceptance thereof from DSL and the Corps in accordance with all permits ("**Completion of the Wetland Areas**"); provided, if Declarant conveys the wetland areas land and improvements prior to Completion of the Wetland Areas, Declarant shall remain responsible therefor, and the Association shall grant Declarant all easements and other permissions as may be reasonably appropriate to allow Declarant to fulfill that responsibility. Upon Completion of the Wetland Areas and Declarant's recording of the deed transferring title to the wetland areas land and improvements to the Association, the Association shall be responsible for maintaining, controlling and monitoring the wetland areas as required by DSL and the Corps and for the costs related thereto.

1.2 **Happy Valley/DTD.** The City and/or Clackamas County Department of Transportation and Development are responsible for all stormwater infrastructure contained in the road right-of-way once it is accepted from Declarant.

1.3 **District.** The District is responsible, pursuant to the Maintenance Agreement, as amended hereby, for all stormwater infrastructure, including pipes, flow control devices, manholes and other stormwater facilities existing outside the road right-of-way as more fully described in the Maintenance Agreement, as amended hereby, excepting those portions for which the Owners or DSL/Corps are responsible, as described in Section 1.1 above.

1.4 **Owners.** Declarant is responsible for the proper construction of the Stormwater Facilities. Pursuant to the Maintenance Agreement, as amended hereby, Declarant, until conveyance to the Association, and thereafter the Association will be responsible for the maintenance and operation of (i) the detention ponds on Taralon Residential, as described more fully in Section 1.5 below, (ii) the wetlands recharge conveyance system, subject to DSL and Corps permit(s), and (iii) any private manholes or other facilities designed as part of the wetlands recharge system (collectively, the "**Owner Facilities**"). Declarant shall be responsible for providing prior written notice of any transfer of responsibility from Declarant to the Association to the City, the District and Matrix Development Corporation.

1.5 **Owner Maintenance of Stormwater Facilities.** Declarant shall be responsible for the costs of constructing, maintaining, repairing and replacing the Owner Facilities until the Owner Facilities are conveyed to the Association. Declarant shall so convey the Owner Facilities to the Association upon the earlier to occur of (i) applicable law requiring such conveyance, or (ii) Declarant completing all required improvements associated with the Owner Facilities, confirming that these improvements are operating properly, and completing necessary inspections by and receiving the appropriate approval and/or acceptance thereof from the applicable governing entities in accordance with all permits ("**Completion of the Owner Facilities**"); provided, if Declarant conveys the Owner Facilities prior to Completion of the Owner Facilities, Declarant shall remain responsible therefor, and the Association shall grant Declarant all easements and other permissions as may be reasonably appropriate to allow Declarant to fulfill that responsibility. Upon Completion of the Owner Facilities and Declarant's recording of the deed transferring title to the Owner Facilities to the Association, the Owner Facilities shall become part of the Common Area and Area of Common Responsibility under the Declaration. Pursuant to Section 6.1 of the Declaration, the Association is required to maintain

and keep in good repair each Area of Common Responsibility. The cost of maintenance, repair and replacement of each Area of Common Responsibility is a Common Expense to be allocated among all Units as part of the Common Assessment. Declarant, until Completion of the Owner Facilities and Declarant's recording of the deed transferring title to the Owner Facilities to the Association, and thereafter the Association shall operate and maintain the Owner Facilities (excepting those portions in the jurisdiction of DSL and the Corps as described in Section 1.1 above) as follows:

(a) Cut and remove or recycle vegetation as needed to remove dead vegetation and keep the vegetative cover dense and vigorous. Grass (if present) shall be mowed to a height of four to six inches and grass clipping shall be removed. Vegetation, large shrubs and trees that interfere with or limit access to the Owner Facilities shall be removed or pruned.

(b) Remove non-native invasive vegetation, including Himalayan blackberries and English ivy. Removal should be accomplished with minimal use of toxic herbicides and pesticides, preferably by manual extraction including roots, where possible.

(c) Remove and replace invasive vegetation making up 25% or more of the total vegetation of all species.

(d) Adhere to local guidelines and regulations pertaining to the use of fertilizers, herbicides and pesticides.

(e) Selectively irrigate if necessary during the establishment period for the plants until the vegetation becomes established.

(f) Replant bare spots and areas of poor growth with plants creating an aesthetic natural appearance.

(g) Remove dead vegetation and deciduous foliage and debris during the fall season to prevent the unwanted release of nutrients.

(h) Require all landscape maintenance contractors and agents to abide by these guidelines and regulations.

(i) Monitor sediment collection and remove sediment from the conveyance pipe system if accumulation inhibits the Owner Facilities' operation, including wetland recharge pipelines and manhole(s).

(j) Inspect and clean sump systems as necessary to ensure their continued operation and effectiveness.

(k) Store any removed sediment in accordance with safe management practices specified by applicable local, state and federal regulations. Dispose of sediments promptly.

(l) Maintain pedestrian and vehicular access routes into and around the Owner Facilities to minimize plant disturbance and provide convenient access for

maintenance workers to inspect and maintain the Owner Facilities and for District employees to inspect the Owner Facilities.

(m) Provide records of the maintenance performed to District at 9101 SE Sunnybrook Blvd., Suite 441, Clackamas, Oregon 97015, on or before January 1 of each year.

(n) Provide information and signage alerting homeowners within Taralon Residential of the purpose of the facility, the maintenance activities and the importance of proper maintenance.

With regard to those portions of the Owner Facilities in the jurisdiction of DSL and the Corps as described in Section 1.1 above, Declarant, until Completion of the Wetland Areas and Declarant's recording of the deed transferring title to the wetland areas land and improvements to the Association, and thereafter the Association shall comply with all wetland mitigation requirements set forth in the permit(s) issued by DSL and/or the Corps.

**1.6 Inspection by District.** District employees shall be allowed, but not required, to inspect the Owner Facilities at any time, but the District shall not own any of the Owner Facilities. However, if District reasonably determines that Declarant or the Association has not adequately maintained the Owner Facilities, it shall notify the party responsible for such maintenance, providing a reasonably detailed description of the maintenance activities the responsible party must complete. If the responsible party does not commence performance of the maintenance activities within thirty (30) days of its receipt of District's notice and diligently pursue such activities to completion, District may enter upon the Property, perform the necessary maintenance and charge the responsible party for the actual costs of such maintenance. The responsible party shall repay District within thirty (30) days of the responsible party's receipt of District's demand for payment detailing the work performed and the cost incurred by District in performing such work. *Provided, however,* if an emergency occurs for which District reasonably believes that substantial damage to persons, property or the public health or safety may occur if immediate work on the Owner Facilities is not performed, then District may enter onto the Property and perform the work without prior notice to the responsible party, and shall thereafter promptly notify the responsible party of the work performed and the cost incurred by District in performing the work, and the responsible party shall repay District within thirty (30) days of the responsible party's receipt of District's notice and demand.

**1.7 Liability for Taralon Stormwater Facilities.** Declarant shall be responsible for maintaining a public liability insurance covering the Taralon Stormwater Facilities until the Taralon Stormwater Facilities are conveyed to the Association or other responsible parties. When the Owner Facilities become part of the Common Area and Area of Common Responsibility under the Declaration upon conveyance of the Owner Facilities to the Association, Section 7.1 of the Declaration provides that the Board of Directors of the Association shall obtain a public liability insurance policy covering the Area of Common Responsibility, which shall include the Owner Facilities. The City, the District and Clackamas County shall have no liability for the maintenance, repair or replacement of the Owner Facilities, nor for any damage or injury to property or persons in connection with the Owner Facilities or

lack of maintenance thereof, other than damage or injury to property or persons directly resulting from the acts of such parties, or their employees, agents or contractors.

**1.8 Additional Maintenance Provisions in the Declaration.** The Declaration imposes maintenance obligations and restrictions in addition to those set forth in this Agreement. The Declaration includes restrictions relating to the drainage systems in Taralon Residential, whether located within the Common Area or Units owned by homeowners, including restrictions on obstructing or altering the natural flow of water (Section 12.16), constructing fences (Section 12.25) and altering grades, slopes and drainage (Section 12.29). This Agreement supplements, and does not limit or otherwise restrict, the provisions of the Declaration.

**1.9 Modification.** District's prior written consent shall be required for any modification of the provisions of the Declaration governing maintenance of the Taralon Stormwater Facilities (including the Custom Fences), liability therefor or the restrictions described in Section 1.8 above.

**2. Custom Fences.** Declarant shall install fences in Taralon Residential for the protection of the Taralon Stormwater Facilities, including fences that wrap around the detention ponds and are along the drainage swales and roads, streets and right-of-ways (collectively, the "Custom Fences"). To the extent applicable, the Custom Fences shall be considered a part of the Owner Facilities. Declarant shall be responsible for the cost of maintaining, repairing and replacing the Custom Fences until the portions of the Property on which the Custom Fences are located are conveyed to the Association as Common Areas and an Area of Common Responsibility under the Declaration or, to the extent applicable, dedicated to the City as public streets. Pursuant to Section 6.1 of the Declaration, the Association is required to maintain and keep in good repair each Area of Common Responsibility. Upon Declarant's conveyance of the portions of Property on which the Custom Fences are located to the Association as Common Areas or dedication to the City as public streets, the Custom Fences shall constitute an Improvement under the Declaration, and shall be maintained by and at the cost of the Association, which cost shall be a Common Expense (as defined in the Declaration) to be allocated among all Units as a part of the Common Assessments as defined in and pursuant to the Declaration.

**3. Street Sign Maintenance and Replacement.** Declarant shall install the Custom Signs in Taralon Residential. Declarant shall be responsible for the maintaining, repairing and replacing the Custom Signs and the costs related thereto until the portions of the Property on which the Custom Signs are located are conveyed to the Association as Common Areas or dedicated to the City as public streets. Upon Declarant's conveyance of the portions of the Property on which the Custom Signs are located to the Association as Common Areas or dedication to the City as public streets, the Custom Signs shall constitute an Improvement under the Declaration, and shall be maintained by and at the cost of the Association, which costs shall be a Common Expense to be allocated among all Units as described in the Declaration. The budget for the Association, and the Reserve Study (as appropriate), shall include a separate line item for maintenance, repair and replacement of the Custom Signs.

If the City reasonably determines that Declarant or the Association has not adequately maintained the Custom Signs, it shall notify the party responsible for such maintenance, providing a reasonably detailed description of the maintenance activities the responsible party must complete. If the responsible party does not commence performance of the maintenance activities within thirty (30) days of its receipt of the City's notice and diligently pursue such activities to completion, the City may enter upon the Property, perform the necessary maintenance and charge the responsible party for the actual costs of such maintenance. The responsible party shall repay the City within thirty (30) days of the responsible party's receipt of the City's demand for payment detailing the work performed and the cost incurred by the City in performing such work. *Provided, however*, if an emergency occurs for which the City manager or the City manager's designee reasonably believes that substantial damage to persons, property or the public health or safety may occur if certain Custom Signs are not replaced immediately, then the City may enter onto the Property and replace such Custom Signs with standard street signs (using temporary signs whenever practicable) without prior notice to the responsible party, and shall thereafter promptly notify the responsible party of the replacement performed and the cost incurred by the City in performing the replacement, and the responsible party shall repay City within thirty (30) days of the responsible party's receipt of the City's notice and demand.

4. **Amendment of Maintenance Agreement.** To reflect the above agreements and obligations and to clarify responsibilities, the Owners and the District hereby amend the following provisions of the Maintenance Agreement:

4.1 Paragraph 4 of the Maintenance Agreement is hereby amended to read in its entirety:

"4. Maintenance Obligation. The Developer shall be obligated to operate, maintain, and repair those certain stormwater facilities to be accepted and assumed by the District for the first year. This Agreement shall obligate the District to operate, maintain, and repair those certain stormwater facilities after the first year and throughout the duration of this Agreement. Operation and maintenance shall be performed according to the District's defined schedule that details tasks and time of performance, a copy of which is attached as Exhibit 2. The requirements of Exhibit 2 may be modified following District inspection if as-built facilities differ from originally proposed facilities. Nothing in this Agreement shall obligate the District or the Developer to any construction standards other than those which were in place at the time the permit for construction of the facility was issued."

4.2 Exhibit 2 of the Maintenance Agreement is hereby amended to read in its entirety:

"This Agreement applies to stormwater conveyance pipes and related appurtenances as follows:

- A) The Developer will be responsible for all stormwater facilities constructed as part of this subdivision plus any additional facilities that are specifically identified in this Agreement. This responsibility shall continue until the Developer conveys these facilities to the homeowner's association or other responsible parties.

B) After the District takes over the stormwater facilities for maintenance, its responsibility will include only facilities that meet all of the following criteria:

- Were constructed as part of this subdivision.
- and
- Are outside of the road right-of-way.
- and
- Are contained in public easements, or tracts.
- and
- Are neither individual roof drain lines nor lines smaller than 8" in diameter.
- and
- Ownership of which is not retained by either the Developer or the homeowner's association.

These facilities shall be cleaned at the expense of the Developer a minimum of once annually and at least once immediately before acceptance by the District for maintenance. The sediment and debris shall be disposed of at an approved disposal site.

Any of the facilities listed below that are located on the site shall be cleaned as outlined below and any necessary repairs performed. Any facilities not mentioned below will be maintained and/or repaired as needed.

Detention Pond -----	Remove sediment from bottom of pond. Clean associated pond out structures, and overflow weirs.
Detention Pipe -----	Clean all sediment & debris from detention pipe.
Sedimentation M.H. -----	Located at one or both ends of detention pipe. Clean out sump.
Storm Manhole -----	Clean sediment and debris from bottom of manhole.
Pollution Control M.H. -----	Clean out sump and baffles.
Control Manhole -----	Clean out sump. Inspect overflow riser & orifice of obstructions.
Private Storm Pipe -----	Remove sediment from pipe and 18" sumps of affected catch basins and junction boxes.
Storm sewer cleanout -----	For access purposes to clean and maintain storm sewer pipes.



Bio-Swale-----	Remove sediment & inspect any weirs, orifice, and control structures for obstructions.
Drywell-----	Remove sediment from sump in the drywell, & the sediment from the sump of the associated sedimentation manhole.
Access Portal -----	For access purposes to clean and maintain a storm detention pipe.
Drainage Swale-----	Remove sediment, debris. Do not remove roots of vegetation.
Modified Trapped CB -----	Clean sump. Inspect riser tee and orifice for obstructions.
Ditch Inlet Catch Basin ----	Clean sump and grate.
Pond Outlet Structure-----	Clean sump. Inspect associated overflow riser, and orifice for obstructions.
Siltation Basin -----	Remove sediment from bottom of basin. Clean associated overflow structure.

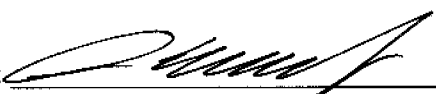
Exhibit 2 is hereby accepted as part of the Maintenance Agreement.”

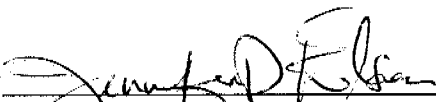
*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

**ASSOCIATION:**


TARALON RESIDENTIAL  
COMMUNITY ASSOCIATION,  
an Oregon nonprofit corporation

By:   
Davis Wood, Jr., President

By:   
Jennifer Elson, Secretary

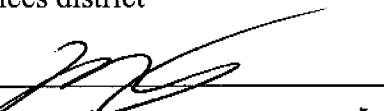
**DECLARANT:**

NNP-TARALON, LLC,  
a Delaware limited liability company

By:   
Davis Wood, Jr., Vice President

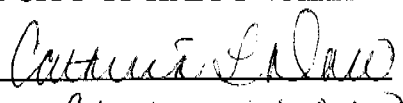
**DISTRICT:**

CLACKAMAS COUNTY SERVICE  
DISTRICT NO. 1, an ORS 451 special  
services district

By:   
Name: Michael Kusnizki  
Its: DIRECTOR

**CITY:**

THE CITY OF HAPPY VALLEY

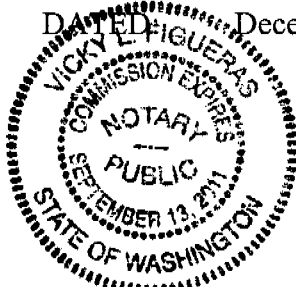
By:   
Name: CATHERIN L DAW  
Its: CITY MANAGER

*[Notary acknowledgments on following page]*

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

I certify that I know or have satisfactory evidence that Davis Wood, Jr., is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as President of Taron Residential Community Association, an Oregon nonprofit corporation.

DATED: December 5, 2007.

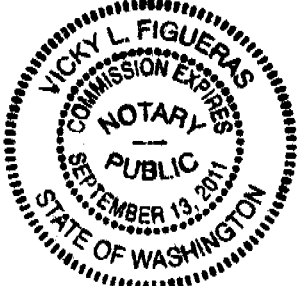


Vicky L. Figueroa  
Notary Public in and for the State of Washington  
Residing at Camas, WA  
My appointment expires: 9-13-2011

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

I certify that I know or have satisfactory evidence that Jennifer Elson is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute this instrument and acknowledged it as Secretary of Taron Residential Community Association, an Oregon nonprofit corporation.

DATED: December 6, 2007.



Vicky L. Figueroa  
Notary Public in and for the State of Washington  
Residing at Camas, WA  
My appointment expires: 9-13-2011

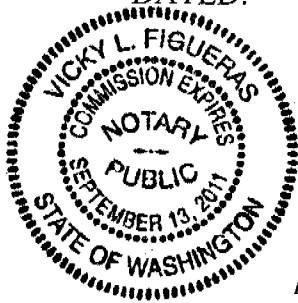
[Additional notary acknowledgments on following page]

STATE OF WASHINGTON )

County of Clark ) ss.

I certify that I know or have satisfactory evidence that Davis Wood, Jr., is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as Vice President of NNP-Taron, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 5, 2007.



Vicky L. Figueras  
Notary Public in and for the State of Washington  
Residing at Canas, WA  
My appointment expires: 9-13-2011

[Additional notary acknowledgments on following page]

STATE OF OREGON )  
County of Clackamas ) ss.

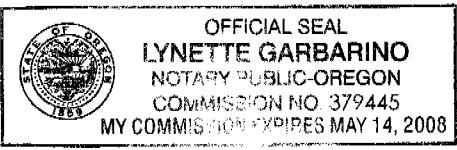
The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of FEBRUARY, 2008, <sup>ref</sup>  
by Michael S. Kuemz as Director of CLACKAMAS COUNTY  
SERVICE DISTRICT NO. 1, an ORS 451 special services district.



Kathy E. Frasier  
Notary Public for Oregon  
My Commission Expires: 9-19-2011

STATE OF OREGON )  
County of Clackamas ) ss.

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of January, 2008,  
by Catherine Law as City Manager THE CITY OF HAPPY  
VALLEY, an Oregon municipal corporation.



Lynette Garbarino  
Notary Public for Oregon  
My Commission Expires: May 14, 2008

(13)