



AFTER RECORDING, RETURN TO:  
Fremont Crossing Company, LLC  
4632 SW Vermont Street  
Portland, OR 97219

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FREMONT CROSSING

THIS DECLARATION is made this 6<sup>th</sup> day of February, 2004 by FREMONT CROSSING COMPANY, LLC, an Oregon limited liability corporation ("Declarant").

### RECITALS

A. Declarant owns approximately 8.93 acres located within Deschutes County, Oregon. Declarant proposes to develop portions of this property as a zero lot line development to be known as "Fremont Crossing". Deschutes County Planning Department has approved a zero lot line subdivision consisting of 47 lots and common areas. Declarant reserves the right to amend the tentative plan, subject to any approvals required by Deschutes County or any other applicable governmental authority.

B. Declarant desires to subject the property described in the attached Exhibit A (the "Property") to the terms of this Declaration for the benefit of such property and its present and subsequent owners. Additional property may be annexed to Fremont Crossing in accordance with the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the property described in Exhibit A shall be held, sold, and conveyed subject to the terms of this Declaration, which will 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, which is made subject to this Declaration as provided in Section 2.2.

1.2 "Area of Common Responsibility" means those areas for which the Association has maintenance, insurance, operating and other responsibility under this Declaration, as amended or supplemented from time to time.

1.3 "Assessments" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments, and Individual Assessments as described in Article 10 below.

1.4 **"Association"** means the nonprofit corporation formed to serve as the Owners' association and known as "Fremont Crossing Owners Association, Inc."

1.5 **"Board"** shall mean the Board of Directors as elected by the members pursuant to the provisions of the Bylaws.

1.6 **"Building"** shall mean any structure located on a Lot within the Property.

1.7 **"Bylaws"** means the bylaws of the Association as such bylaws may be amended from time to time.

1.8 **"Common Areas"** means those lots or tracts designated as such on any plat of the Property or in this Declaration including any Improvements thereon, but excluding those areas designated as public streets and public right-of-ways, if any. Common Areas will also include Common Easement Areas and Public Areas.

1.9 **"Common Easement Areas"** means those easements established for the benefit of all property within Fremont Crossing pursuant to any plat of the Property.

1.10 **"Community-Wide Standards"** means the standards of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standards may be more specifically determined by the Board of Directors from time to time during the term of this Declaration, as may be extended by the terms hereof.

1.11 **"Declarant"** shall mean Fremont Crossing Company, LLC, an Oregon limited liability corporation, and its successors and assigns if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.12 **"Declaration"** shall mean the Declaration of Covenants, Conditions and Restrictions for Fremont Crossing, as amended or supplemented from time to time.

1.13 **"Development Period"** means the period of time between the date this Declaration is recorded with Deschutes County and the earliest of (a) when all of the property within the Master Plan has been developed and ninety-five percent (95%) of the Lots in the last area to be annexed to this Declaration have been conveyed to persons other than Declarant or an affiliate; (b) when, in its discretion, Declarant so determines, as evidenced by a document executed by Declarant to that effect and recorded with Deschutes County; or (c) December 31, 2010.

1.14 **"Fremont Crossing"** shall mean all the property now or hereafter made subject to this Declaration.

1.15 **"Improvement"** shall mean every temporary or permanent structure of any kind, including, but not limited to any buildings, outbuildings, private roads, driveways, parking areas, walkways, fences and barriers, retaining walls, stairs, decks, hedges, windbreaks, planting, planted trees and shrubs, park strip (if any), signs, storage areas and all other structures or exterior landscaping, vegetation or ground cover of every type and every kind above the land surface.

1.16 **"Living Unit"** shall mean any portion of a structure situated upon the Property designed and intended for use and occupancy as a residence by a single family.

1.17 **"Lot"** shall mean each platted or legally partitioned lot within the Property. Lot does not include Common Areas or Public Areas.

1.18 **"Master Plan"** means the development approval issued by Deschutes County for Fremont Crossing, as the same may hereafter be amended.

1.19 **"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.

1.20 **"Owner"** shall mean the record Owner, including Declarant, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation or a tenant or holder of a leasehold interest. 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.

1.21 **"Policies and Procedures"** 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.

1.22 **"Property"** shall mean the property described on Exhibit A attached hereto.

1.23 **"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.

## **ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION**

2.1 **Initial Development.** Declarant hereby declares that all the real property described on Exhibit A attached hereto, is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. The initial development contains 21 Lots.

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex to Fremont Crossing as Additional Property any real property now or hereafter acquired by it, and may also from time to time in its sole discretion permit other holders of real property to annex the real property owned by them to Fremont Crossing. The rights reserved unto Declarant to subject additional real property to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional real property to this Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build improvements of any kind. The annexation of such real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a declaration which 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 which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. Any such annexation shall be effective upon the filing for record of such declaration unless otherwise provided therein.

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

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

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

(ii) 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 which Declarant may create or annex to Fremont Crossing, except as may be established by applicable ordinances of Deschutes County, Oregon. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the Deschutes County Planning Department, Oregon.

(e) Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(f) 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 10.10 below.

**2.3 Withdrawal of Property.** Declarant may withdraw property from Fremont Crossing by an amendment to this Declaration executed by Declarant and recorded in the Deed Records of Deschutes County, Oregon. All voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the Common Expenses shall be reallocated to the remaining Lots as provided in Section 10.3. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Property initially subject to this Declaration or Additional Property annexed pursuant to a supplemental declaration at any time prior to the first sale of a Lot in the Property initially subjected to this Declaration, or in the case of Additional Property, prior to the first sale of a Lot in such property

so annexed or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Lots. In addition, Declarant may withdraw any real property then owned by Declarant or any Common Areas if such withdrawal is a result of any changes in Declarant's plans for Fremont Crossing, provided that such withdrawal is approved by a majority of the voting rights in the Association.

### **ARTICLE 3 DESCRIPTION OF PROPERTY AND CONVERSION AND CONSOLIDATION OF LOTS**

3.1 **Number of Lots.** The Property, consisting of the initial development as described on Exhibit A, contains 21 Lots.

3.2 **Land Classifications.** All land within the Property is included in one or another of the following land classifications as shown on Exhibit A, including but not limited to: Lots, Common Areas, Common Easement Areas and Public Areas.

3.3 **Common Facilities; Easements.** Declarant does not agree to build any improvements on the Common Areas other than as required by Deschutes County or as shown on any plat of the Property, but may elect, at Declarant's option, to build additional improvements. Within Common Lot Area H ("Lot H") as described in Exhibit A, the Owners of adjacent Lots 8, 9 and 10 are hereby granted mutual non-exclusive easements to use the driveways crossing Lot H and connecting to such residential Lots. Within Common Lot Area C ("Lot C") as described in Exhibit A, the Owner of adjacent Lots 21 and 22 are hereby granted mutual, non-exclusive easements to use the driveways crossing Lot C and connecting to such residential Lots.

3.4 **Conversion of Lots to Common Area.** 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 Deschutes County, Oregon. Such declaration shall be executed by Declarant and bear a certificate of the President or Secretary of the Association reciting that the holders of a majority of the voting rights in the Association have approved such conversion to Common Areas.

### **ARTICLE 4 PROPERTY RIGHTS IN COMMON AREAS**

4.1 **Owner's Easements of Enjoyment.** Subject to the provisions of this article, every Owner and his 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.

4.2 **Title to the Common Areas.** Title to the Common Areas, except Common Easement Areas and Public Areas if applicable, shall be conveyed to the Association by Declarant free and clear of monetary liens and encumbrances prior to the date on which Class B membership in the Association ceases and is converted to Class A membership as described in Section 8.3(b).

**4.3 Common Easement Areas.** Common Easement Areas, if any, shall be granted or reserved as signage and visual landscape features, or as otherwise provided in this Declaration, a supplemental declaration, or the plat establishing the Common Easement Area. Such areas are to be maintained by the Association and no changes in landscaping will be permitted without written authorization by the Association. 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. In the event any Common Easement Area is conveyed to the Association, such Common Easement Area shall then become a Common Area.

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

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

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

(ii) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(iii) An easement for the purpose of making repairs to any Improvements on Common Areas.

Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to governmental entities 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.

(b) **Use of the Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use. 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. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas identifying the Property or identifying trails or identifying items of interest, including directional signs, provided such signs are approved by the Association and comply with any applicable sign ordinances or recorded restrictions. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

(c) **Alienation of the Common Areas.** The Association may not encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless such encumbrance, sale or transfer has been approved by a majority of the voting rights in the Association. This requirement shall not apply to the easements described in Section 4.4(a) above.

(d) **Limitation on Use.** Use of the Common Areas by the Owners, their family members, guests, tenants and contract purchasers, shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of any Owner and the Owner's members, guests, tenants and contract purchasers to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend and repeal Policies and Procedures in accordance with this Declaration.

4.5 **Delegation of Use.** Any Owner may delegate, in accordance with any applicable provisions of the Bylaws of the Association, the Owner's right of enjoyment of the Common Areas to the members of the Owner's family and tenants or contract purchasers who reside on the Property, whose use of the Common Areas shall be subject to this Declaration and the Policies and Procedures adopted under this Declaration.

4.6 **Easements Retained by Declarant.** So long as Declarant owns any Lot, Declarant shall retain an easement under, over and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale and rental of Lots or Living Units. 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, use, enjoyment or access to an Owner's Lot by the Owner or the Owner's family, tenants, guests or invitees.

## **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 the Owner shall comply with the restrictions made applicable to such Lot by this Declaration.

### **5.2 Easements Granted.**

(a) In addition to any easements shown on the recorded plats and as set forth elsewhere herein, Declarant hereby reserves for itself and grants to the Association the following easements for the benefit of Declarant and the Association:

(i) **Adjacent Common Area.** The Owner of any Lot which 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.

(ii) **Right of Entry at Reasonable Hours.** For the purpose of performing the maintenance provided for in this Declaration, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner, to enter upon any Lot or Living Units at reasonable hours. The Association shall have a right of entry for purposes of effecting emergency repairs or to prevent imminent damage or injury to the Living Unit, other Living Units, to other Owners and their guests or invitees, or to the Common Areas. In such instances, the Association shall give notice by telephone if reasonably possible prior to entry.

(iii) **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on or described in the recorded plat. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may 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, utility company or the Association is responsible. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side lot lines on which a party wall exists.

(b) **Blanket Easement.** That portion of each Lot within Fremont Crossing outside of the Living Unit located on such Lot shall be subject to a blanket easement in favor of all of the Lots within Fremont Crossing for water, sewer, power, telephone, cable television and other utility and communication lines serving other Lots within Fremont Crossing.

5.3 **Shared Driveway Easements.** Lots 8, 9 and 10, share driveways and turn-around space pursuant to their respective easements covering Lot H granted in Section 3.3 above, and Lots 21 and 22, share driveways and turn-around space pursuant to their respective easements covering Lot C granted in Section 3.3 above (collectively, the "Shared Driveway Easements"), which such Shared Driveway Easements are subject to the following rules:

(a) In addition to the vehicle restrictions and provisions of Section 6.19 of the Declaration, no vehicles, trailers, boats or recreational toys of any kind shall be parked on the driveway portion of a Shared Driveway Easement or in front of any garage when unattended;

(b) Owners, and their children and invitees, shall refrain from leaving toys, tools or any other objects in the Shared Driveway Easement area when not in use. In the event an Owner, the Owner's children or invitees are using the Shared Driveway Easement area at any time, and the adjoining Owner or invitee desires to enter or exit that Owner's garage along the driveway portion of the Shared Driveway Easement area, the persons using the driveway



shall temporarily cease their activities and allow other persons access along the driveway to enter or exit the garage;

(c) Since the Owners of adjoining Living Units sharing a driveway may need to back their vehicles out, across the adjoining property in front of the opposing garage, all asphalt areas in the Shared Driveway Easement area shall be maintained free and clear of any obstruction, whether temporary or permanent;

(d) Except to the extent any such services are provided by the Declarant or Association hereunder, Adjoining Owners sharing a Shared Driveway Easement area shall share equally in the cost of any snow removal, repair or maintenance of the driveway. In the event either Owner refuses to agree to perform reasonable maintenance or repairs, the other Owner (the "repairing Owner") shall have the right to perform such maintenance or repair and to seek reimbursement from the non-participating Owner subject to the following procedures and limitations:

(i) Provided the total cost of the work is estimated at \$500 or less, the repairing Owner may proceed to perform the work and shall have the right to reimbursement of one-half of the cost of the work, including the reasonable value of any services or work performed by the repairing Owner, plus interest at the rate of 12% from the date of payment.

(ii) In the event the total cost of the work is estimated to exceed \$500, the repairing Owner must first submit a written request to the Association for approval of such work including such information as may be reasonably requested by the Association in order to determine the need for the work. Upon a finding by the Association as to the necessity and estimated cost of the proposed work, the Association shall notify both Owners of its decision. Subject to the Association's findings, the repairing Owner may proceed to perform the work and shall have the right to reimbursement of one-half of the cost of the work, including the reasonable value of any services or work performed by the repairing Owner, plus interest at the rate of 12% from the date of payment.

In the event, within thirty days of written demand from the repairing Owner, the non-repairing Owner fails to pay the amount due, the repairing Owner shall have the right to petition the Association to enforce the payment obligation. Upon a finding by the Association as to the amount due from the non-participating Owner to the repairing Owner, the Association shall be authorized to record a lien against the non-participating Owner's Lot for the amount due as of the date of the lien, plus interest at the rate of 12% upon the full amount due as of the date first due until paid. The repairing Owner and non-participating Owner are obligated to accept the findings of the Association as to the amount due from the non-participating Owner; and

(e) The Association shall have the right to enforce all of the provisions of the Shared Driveway Easements affecting the Living Units sharing Shared Driveway Easement areas.

#### **5.4 Eave, Overhang and Maintenance Easement.**

Four (4) foot wide mutual eave overhang and maintenance easements (each, an "Eave Easement," and collectively, the "Eave Easements"), lying two (2) feet on each side of the center line of every party wall constructed or to be constructed on each Lot contained in the Fremont Crossing (as applicable) are hereby granted to the Owners of each Lot sharing the party wall. The Eave Easements shall inure to the benefit of each Owner sharing a party wall and shall run with and both burden and benefit the Lot of the Owner. Any Owner granted an Eave Easement hereunder shall have the right to enter into the area covered by the Eave Easement pertaining to that Owner's Lot in order to maintain the eave overhang of the Owner's Living Unit in a reasonable manner, perform reasonable alterations to the eave overhang and/or ensure that drainage from the eave overhang does not negatively impact that Owner's Lot or any adjoining Lot. Any damage or destruction to the area covered by an Eave Easement shall be immediately repaired by the Owner causing such damage or destruction. If repairs to an area covered by an Eave Easement are necessitated by events or causes not attributable to any one Owner, the costs and expenses related thereto shall be borne by the respective Owners sharing in the applicable Eave Easement area in the same manner as set forth in Section 5.3(d) above with respect to Shared Driveway Easements. Any entry by an Owner into that portion of the applicable Eave Easement area which lies on a Lot owned by another Owner shall only occur after the Owner entering the Eave Easement area has provided reasonable notice to the other Owner, except in the event of emergency, when an Owner may enter onto such portion of the Eave Easement area located outside the Owner's Lot without providing prior notice to the other Owner.

## **ARTICLE 6 RESTRICTIONS ON USE OF RESIDENTIAL LOTS**

**6.1 Structures Permitted.** No structures shall be erected or permitted to remain on any Lot except structures containing Living Units and structures normally accessory thereto the location of which is in conformity with the applicable governmental regulations, is compatible in design with the dwelling structure constructed on such Lot, and has been approved by the Declarant during the Development Period or the Association thereafter.

**6.2 Residential Use.** All Lots and Living Units shall be used for residential purposes only. No retail or industrial use shall be allowed on any Lot. 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 Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder 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 any Living Unit as a sales or rental office or model home or apartment for purposes of sales or rental in Fremont Crossing, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his Living Unit. Commercial use in a residence may be allowed provided only normal residential activities would be observable outside the Living Unit and that the activities would not be in violation of applicable governmental ordinances.

6.3 **Antennas.** Only standard TV antennas and satellite dishes shall be permitted on a Lot. All over-the-air reception devices shall comply with the restrictions imposed by the Declarant, the Board of Directors, or the Association, pertaining to the size, means, method and location of TV antenna and satellite dish installation.

6.4 **Appearance.** All garbage, trash, cuttings, refuse, garbage and refuse containers, heat pumps, air conditioners, and other service facilities located on the Lot shall be screened from view of neighboring lots and streets in a manner approved by the Declarant during the Development Period or the Association thereafter.

6.5 **Alterations.** Owners are expressly prohibited from painting or changing the exterior of the building or other structure without written permission of the Declarant during the Development Period or the Association thereafter. No structure may be installed outside of the Living Unit except structures, including without limitation fences, installed with written approval of the Declarant during the Development Period or the Association thereafter.

6.6 **Damage or Destruction.** If any Living Unit within Fremont Crossing is destroyed and the Owners of all Living Units situated in the affected building elect not to rebuild and if the election not to rebuild is approved by a seventy-five percent (75%) vote of the Owners within Fremont Crossing, the affected Lots shall be cleared of debris and Living Units of an alternate design may be constructed subject to approval of Declarant during the Development Period or the Association thereafter.

6.7 **Fences and Walls.** No fences shall be placed on any Lot or any portion thereof without approval by the Declarant during the Development Period or the Association thereafter. Approved fencing must be in compliance with Sunriver Design Review Specifications Committee.

6.8 **Firearms and Related Activity.** The Property is subject to the Deschutes County Codes for firearms.

6.9 **No Increased Insurance.** Nothing shall be done or kept on any Lot or Common Area which will increase the cost of insurance on the Living Units or Common Areas. No Owner shall permit anything to be done or kept in his Living Unit or in the Common Areas which would result in cancellation of insurance on any Lot or any part of the Common Areas.

6.10 **Grades, Slopes and Drainage.** Each Owner of a 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 express written permission of the Declarant during the Development Period or the Association thereafter 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 which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

6.11 **Landscaping.** All exterior landscape installations and plantings must be approved by the Declarant during the Development Period or the Association thereafter.

**6.12 Leasing of Living Units.** There is no restriction on the right of any Owner to lease or rent such Owner's Living Unit. Any tenancy upon any Lot or in any Living Unit shall be governed by the terms and provisions of the Declaration, Bylaws and Association Policies and Procedures.

**6.13 Livestock, Poultry and Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and do not constitute a nuisance.

The Property is within Sunriver Resort Jurisdiction and resident animals are subject to the Sunriver leash laws. Animal nuisance ordinances are also in effect for barking and trash strewing dogs. If an animal is off the Owner's Lot, it must be on a leash. Contact the Sunriver Police Department Office to report violations. The Sunriver Police Department Office is best equipped to deal with these problems and can enforce stringent fines.

**6.14 Maintenance of Improvements and Grounds.** Each Lot within the Property shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. In addition, each Owner shall keep all areas of the Lot free of trash, excess building materials, household items, and other unsightly material. Unsightly rear storage is prohibited.

**6.15 Noise; Exterior Lighting and Noise-making Devices.** Occupants of Living Units shall exercise extreme care not to make noises which may disturb occupants of other Living Units. Except with the consent of the Declarant during the Development Period or the Association thereafter, no exterior lighting or noise-making devices shall be installed or maintained on any Lot within Fremont Crossing. Owners shall not tamper with exterior lighting except to replace expended bulbs with similar new bulbs.

**6.16 Offensive or Unlawful Activities.** No noxious or offensive activity shall be carried on upon any Lot therein nor shall anything be done or placed thereon which interferes with or jeopardizes the enjoyment of the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**6.17 Outside Fixtures.** No recreational equipment, including but not limited to, basketball hoops or play structures, are allowed in any street located within Fremont Crossing. Other accessory structures or equipment, including but not limited to, tool sheds, play equipment and dog houses are allowed only in locations and with screening as approved by the Declarant during the Development Period or Association thereafter.

**6.18 Outside Storage.** Woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, unless obscured from view of neighboring property and streets by a fence or appropriate screen approved by the Declarant during the Development Period or Association thereafter.

6.19 **Parking, Prohibited Vehicles, and Lot Appearance.** Boats, trailers, buses, motor homes, commercial vehicles, flat bed pick-up trucks, recreational vehicles, (including campers), disabled vehicles or other similar vehicles shall not be parked or stored on any Lot other than inside an enclosed garage, screened from view in a manner approved by the Declarant during the Development Period or Association thereafter, or on a temporary basis as allowed in the Association Policies and Procedures which may be amended from time to time. No vehicle shall be parked in the street and at no time may vehicles in disrepair be parked on driveways, on the street or on sidewalks within the Property. No major or extended vehicle repairs shall be performed unless inside an enclosed garage. Any vehicle found in violation of these restrictions is subject to towing by the Association at the Owner's expense, which cost may be assessed as an Individual Assessment as provided in Article 10. No other materials, trash, garbage, refuse containers, or other unattractive materials shall be permitted on any Lot, Common Area, or the streets.

6.20 **Signs.** No sign of any kind shall be displayed to public view on or from any Lot without the Design Review Committee's prior written consent; provided, however, that an Owner may display not more than one (1) "for sale" sign per Lot. Said signs shall be limited in size to not more than four (4) square feet. The color, size and placement of such signs will be specified by the Declarant during the Development Period or the Association thereafter. No "for rent" signs are allowed on a Lot at any time.

6.21 **Utility Easements.** Easements for installation and maintenance of utilities may be reserved over portions of certain Lots, as shown on the recorded plat. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities. 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, utility company, or Association is responsible.

6.22 **Windows, Decks, Porches, Outside Walls and Yards.** In order to preserve the attractive appearance of Fremont Crossing, the Association may regulate the nature of items which may be placed in or on windows, decks, entry porches, outside walls and yards so as to be visible from outside of the Lot. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches or decks.

## **ARTICLE 7 PARTY WALLS**

The dividing wall adjacent to the Living Units situated in the same building is hereby declared to be a party wall. The cost of maintaining the party wall shall be borne equally by the Owners of the adjacent Living Units.

7.1 **Damage to Party Wall.** In the event of damage or destruction of any party wall from any cause, other than the negligence of an adjacent Owner, the Association shall repair or rebuild the party wall, and each Owner, his successors and assigns, shall have the right to the full use of the party wall so repaired or rebuilt. If an adjacent Owner's negligence shall cause damage to or destruction of the party wall and if such damage or destruction is not covered by insurance, such negligent party shall bear the entire cost of repair or reconstruction. If any

negligent Owner shall neglect or refuse to pay his share within fifteen (15) days after written demand by the Association, the Association shall be entitled to have a lien on the Living Unit of the negligent Owner for the amount of such defaulting party's share of the repair or replacement cost. Any such lien may be foreclosed in the same manner as an Individual Assessment.

**7.2 Drilling Through Party Wall.** With the prior written consent of the Declarant during the Development Period or Association thereafter, either adjacent Owner shall have the right to break through the party wall for the purpose of repairing or restoring sewerage, water, or utilities, subject to the obligation to restore the party wall to its previous condition at his own expense and the payment to the adjoining Owner of any reasonable damages caused thereby.

**7.3 Destruction of Living Unit.** If one or more of the buildings are damaged, destroyed, or partially condemned, the Association Board of Directors shall immediately proceed to rebuild and restore the building or buildings so damaged, destroyed, or partially condemned so that the same will be returned to substantially the same condition in which the building or buildings existed prior to such damage, destruction, or partial condemnation. Each Living Unit shall have substantially the same vertical and horizontal boundaries as before. If the insurance proceeds are insufficient to rebuild and restore, the applicable Owners shall be liable for assessment for any deficiency.

**7.4 Easement.** No Owner shall alter or change a party wall in any manner, interior decoration excepted. Each party wall shall always remain in its present location. Each adjacent Owner shall have a perpetual easement in that part of the Living Unit of the adjacent Owner on which the party wall is located, for party wall purposes.

## **ARTICLE 8 ASSOCIATION**

Declarant shall organize an association of all of the Owners within Fremont Crossing. Such association, its successors and assigns, shall be organized under the name "Fremont Crossing Owners Association, Inc." or such similar name as Declarant shall designate, 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 property 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 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 membership 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) **Lots.** Lots shall be allocated one Voting Unit per Lot. A single-family residential Lot shall be allocated one vote regardless whether the Living Unit has been constructed on 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 Units for each Lot owned computed in accordance with Section 8.3(a) above. When more than one person holds an interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine. In no event, however, shall more Voting Units be cast with respect to any Lot than as set forth in Section 8.3(a) above.

Class B. The Class B member shall be the Declarant and shall be entitled to three times the Voting Units computed under Section 8.3(a) for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first:

(i) Declarant has completed development of all Lots and Common Areas permitted under the Master Plan for Fremont Crossing, and Lots representing ninety-five percent (95%) of the Voting Units computed in accordance with this section have been sold and conveyed to Owners other than Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership; or

(iii) December 31, 2010.

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 homeowners association pursuant to the Oregon Planned Community Act, whether or not such Act is applicable to the Association.

(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 the provisions herein, 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, 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, through the Board of Directors, shall obtain and maintain at all times and shall pay for out of Assessments the following insurance covering both the Common Areas and the Living Units within Fremont Crossing, including fixtures, equipment, and other property which would ordinarily be required to be covered by a holder of a first mortgage:

(i) Property insurance including, but not limited to, fire, extended coverage, vandalism, and malicious mischief, and

(ii) Insurance covering the legal liability of the Association, the Owners individually and the manager, including but not limited to, the Association Board of Directors, the public and the Owners and their invitees or tenants, incident to ownership, supervision, control or use of Fremont Crossing. There may be excluded from the policy required under this subsection, coverage of an Owner, other than coverage as a member of the Association or Board of Directors, for liability arising out of the acts or omissions of that Owner and the liability incident to the ownership or use of the part of Fremont Crossing as to which that Owner has the exclusive use or occupancy. Liability insurance required under this subsection shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement providing that the rights of named insured under the policy shall not prejudice any action against another named insured.

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to such trustee (each of whom shall be referred to in this Declaration as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.



Each Owner appoints any Insurance Trustee or substitute Insurance Trustee designated by the Association, as an attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their first mortgage holders, as their interests may appear.

(c) **Rulemaking.** The Association, through the Board of Directors, shall have the right to make, establish, promulgate, amend and repeal from time to time any Policies and Procedures governing the conduct of persons and the operation and use of Lots, Living Units and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the Policies and Procedures, upon adoption, and a copy of each amendment or modification shall be furnished to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of such Policies and Procedures shall be as provided in the Bylaws of the Association.

(d) **Enforcement.** Subject to the provisions of Article 11, 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 Policies and Procedures adopted by the Association.

(e) **(e)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, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

(f) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas, subject to Section 4.4 above, and 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 interest within the property conveyed to the Association by Declarant.

(g) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.4 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.

(h) **Joint Use and Maintenance Agreements.** The Board of Directors of the Association may enter into joint use and maintenance agreements with other associations, entities or persons relating to the joint use and maintenance of the Common Areas or other facilities.

**8.6 Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member of the Association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

**8.7 Interim Board.** Declarant shall have the right to appoint an interim board of 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 next annual meeting following termination of Class B membership. At such meeting, the interim directors shall resign and be replaced by their successors, who shall be designated as provided in this Declaration and the Bylaws of the Association.

**8.8 Turnover Meeting.** 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 Lots representing ninety five percent (95%) of the Voting Units computed in accordance with Section 8.3(a) above have been sold and conveyed to Owners other than Declarant. If the Declarant fails to call the turnover meeting as required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

**8.9 Appointment of Directors.** Effective as of the next annual meeting following termination of Class B membership, the Board of Directors of the Association will be composed of three (3) directors, all of whom shall be elected by the Owners pursuant to the terms hereof and the Bylaws (as applicable).

**8.10 Litigation Against Declarant.** Additionally, notwithstanding anything to the contrary contained herein or in the Bylaws, the Association (to the extent allowed under applicable law) shall not institute legal action against Declarant regarding any damage, loss or prejudice suffered or claimed by the Association on account of any action or failure to act by Declarant with respect to this Declaration, the Bylaws, Fremont Crossing or any matter related thereto, unless seventy-five percent (75%) of the Owners of Lots in the Property have first approved in writing the institution of such legal action.

## **ARTICLE 9 MAINTENANCE, UTILITIES AND SERVICES**

**9.1 Maintenance of Common Areas.** The Association shall be responsible for exterior lighting (if any) for and perform all maintenance upon the Common Areas, Common Easement Areas, and landscaping within dedicated rights of way, including but not limited to

grass, trees, entrance signs, streets, street lighting and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall further maintain and keep in good repair the Area of Common Responsibility as determined by the Board of Directors. Such maintenance shall include landscaping and landscape irrigation systems (including water and power for such systems) within the Lots. Replacement of the roof and exterior painting of each Living Unit within Fremont Crossing shall be managed by the Association as determined by the Board of Directors. Each Owner, however, shall be responsible for repairing, restoring or rebuilding any damage that would be insured against by the insurance the Owner is required to carry under Section 8.6. All such damage shall be restored as promptly as possible to its original appearance. Any change to such appearance must be approved by the Declarant during the Development Period and the Association thereafter.

**9.2 Maintenance of Utilities.** The Declarant, during the Development Period, and the Association thereafter 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. Each Owner shall be responsible for maintaining utility lines within his Lot.

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

## **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 Fremont Crossing and for the improvement, operation and maintenance of the Common Area and Areas of Common Responsibility.

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

**10.3 Apportionment of Assessments.** All Lots shall be subject to assessment and shall pay an equal share of the Annual Assessments and Special Assessments commencing upon the date such Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Lots subject to Assessment. Notwithstanding the provisions of this section, however, 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.

**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

over assessment and any common profits of the Association. The budget shall take into account the number of Lots 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 the 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 10.8 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. The method of adoption of the budget and 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 which in the aggregate in any fiscal year exceed an amount equal to twenty (20%) percent 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 as provided in the Bylaws. 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 Individual Assessments.** Individual Assessments include, without limitations, charges for services provided under this Declaration. 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 Policies and Procedures 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 Individual Assessments.

**10.7 Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.8, separate and apart from its other funds, in an account to be known as the "Operations Fund." 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 on 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 Section 8.5 herein.

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

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

**10.8 Reserve Fund.** The Declarant shall establish a reserve fund for replacement of those items to be maintained by the Association all or a part of which will normally require replacement in more than three (3) and less than thirty (30) years ("Reserve Fund"). Such Reserve Fund shall be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement cost over time. The Reserve Fund shall be used only for replacement of common property as determined by the Board of Directors and shall be kept separate from the Operations Fund. Any interest earned on funds deposited in the Reserve Fund, however, may either be accumulated in the Reserve Fund or deposited in the Operations Fund. The Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments or Special Assessments. Nothing in this section shall prohibit prudent investment of the reserve account. 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.

**10.9 Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by Declarant within the Property, hereby covenants, 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, expenses or attorneys' fees imposed pursuant to Section 12.7, 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.

**10.10 Annexation of Additional Property.** When Additional Property is annexed to Fremont Crossing, 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.

## ARTICLE 11 ENFORCEMENT

11.1 **Remedies.** This Declaration shall be specifically enforceable by Declarant or by any Owner of any Lot. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal, or enjoining of any offending Improvements or condition.

11.2 **Nonwaiver.** Failure by the Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.3 **Nonqualifying Improvements and Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on the Owner's Lot, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot, the Improvements thereon and the use thereof, into conformance with this Declaration. If the Owner is unable, 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 and within thirty (30) days of 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 fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation, 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 which 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 including administrative costs as determined by the Board of Directors, 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, or;

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

11.4 **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 of 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 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 the Owner's Lot.

(b) The Association shall have a lien 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 from the date on which the Assessment is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments 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.

**11.5 Notification of First Mortgagee.** The Board of Directors shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days after notice of default to the Owner.

**11.6 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 which was recorded prior to 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 which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

**11.7 Interest, Expenses and Attorneys' Fees.** 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 three percentage points per annum above the prevailing Portland, Oregon prime rate at the time, 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 of the Association not to exceed thirty percent (30%) of such Assessment. 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 of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect

any money due under this Declaration or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action 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 or in connection with any bankruptcy proceedings or special bankruptcy remedies.

**11.8 Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 11, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order, as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Lot, or any part thereof, to do the same or similar acts.

**11.9 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.

## **ARTICLE 12 DISPUTE RESOLUTION**

### **12.1 Mediation.**

(a) Except as otherwise provided in this section, before initiating litigation or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within Deschutes 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 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 Deschutes County, Oregon and an offer to use the program is not made as required under paragraph (a) of this section, then litigation or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation 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 or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court or administrative body arising from litigation 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 or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

**12.2 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.

**12.3 Survival.** The mediation agreement set forth in this section shall survive the transfer by any party of its interest or involvement in the Property and any Lot or Living Unit therein and the termination of this Declaration.

### **ARTICLE 13 DECLARANT'S IMMUNITY**

The Declarant has a non-exclusive right and power to enforce the covenants, conditions, and restrictions contained in this Declaration, but the Declarant has no legal obligation to enforce or attempt to enforce the provisions hereof. In the event Declarant refuses, neglects, fails or is negligent in enforcing or attempting to enforce the Declaration, there shall not exist or be created any cause of action or claim against Declarant, and each Owner or any person or entity claiming by, through or from said Owner hereby releases Declarant from and against any claim arising in connection with the development of the Property or related to Declarant's acts or omissions in preparing, filing or enforcing this Declaration and shall be stopped from making or enforcing any such claim.

## ARTICLE 14 MORTGAGEES

14.1 **Reimbursement of First Mortgagees.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which 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 therefore from the Association.

14.2 **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 section, 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 14.2 and shall be sent postage prepaid by certified U.S. mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent, or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by an affirmative vote or written consent not less than six (6) months prior to the intended termination date of Owners owning not less than 75 percent of the Lots in the Property.

15.2 **Amendment.** This Declaration or any provision thereof may be terminated, extended, modified or amended, as to the whole of said Property or any part thereof with written consent of the Owners of at least seventy-five (75%) of the Lots in the Property; provided, however, that as long as Declarant owns any of the Lots, no such termination, extension, modification, or amendment shall be effective without the written approval of Declarant. Any such approved amendment must be certified by the President and Secretary of the Association as being adopted in accordance with the Declaration as provided in ORS 94.590. Notwithstanding the foregoing, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration in order to comply with the requirements 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 seventy-five (75%) of the voting rights of the Lots in the Property.

**15.3 Joint Owners.** Unless otherwise provided in this Declaration, in any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

**15.4 Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Lot shall give the Association written notice within seven (7) days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the Transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Association, notwithstanding the transfer of title.

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

**15.6 Construction; Severability; Number; Captions.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof 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.

**15.7 Terminology and Captions.** 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.

**15.8 Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, to 4632 SW Vermont Street, Portland, OR 97219; if to an Owner, at the address given by the Owner at the time of purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided in this section.

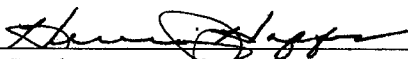
15.9 **Recording.** Any amendment, deletion or repeal of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

15.10 **Time of the Essence.** Time is of the essence with respect to each and every duty and obligation of the Owners set forth herein.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 6<sup>th</sup> day of February, 2004.

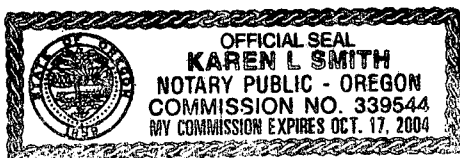
**DECLARANT:**

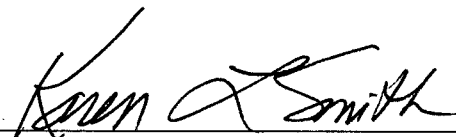
FREMONT CROSSING COMPANY, LLC, an  
Oregon limited liability corporation

By:   
Herbert J. Hoffart  
Its: Managing Member

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

The foregoing instrument was acknowledged before me on February 6, 2004  
by Herbert J. Hoffart as Managing Member for FREMONT CROSSING COMPANY, LLC, an  
Oregon limited liability corporation.



  
Notary Public for Oregon  
My commission expires: 10-17-2004

**EXHIBIT A TO**  
**Declaration of Covenants, Conditions and Restrictions for FREMONT CROSSING**

Land Classification:

Property Description

Lots:

Lots 8 - 28 as shown on the plat of FREMONT CROSSING recorded in Deschutes County, Oregon.

Common Areas:

Fremont Drive and Evergreen Loop as shown on the plat of FREMONT CROSSING, recorded in Deschutes County, Oregon.

Common Lot Areas A, B, C, D, E, F, G, H, and J

There are no Common Easement Areas or Public Areas.