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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
MILL POINT RIVERBEND P.U.D.**

**DECLARANTS:**

**CRB Investments, LLC  
Bonnett Properties, LLC**

## TABLE OF CONTENTS

### Declaration of Covenants, Conditions and Restrictions for MILL POINT RIVERBEND P.U.D.

I	DEFINITIONS	2
1.1	Mill Point Riverbend P.U.D.	2
1.2	Declarant	2
1.3	Declaration	2
1.4	Lot	2
1.5	Owner	2
1.6	Common Area	2
1.7	Improvements	2
1.8	Street	2
1.9	Mill Point Owners Association	2
II	GENERAL DECLARATION	3
2.1	Declaration of Covenants, Conditions and Restrictions	3
2.2	Additional Land	3
III	REGULATION OF PERATIONS AND USES ON LOTS AND IN COMMON AREA	3
3.1	Permitted Uses	3
3.2	Prohibited Activities	3
3.3	Condition of Property; Compliance with Laws and Regulations	3
3.4	Maintenance and Repairs	3
3.5	Storage and Refuse Collection Areas	4
3.6	Utilities and Public Improvements	4
3.7	Utility Service and Antennas	4
3.8	Excavation Storage and Refuse Collection Areas	4
3.9	Partition, Subdivision and Lot-line Adjustments	4
IV	DESIGN CONTROLS ON LOTS	5
4.1	Approval of Plans Required	5
4.2	Basis for Approval	5
4.3	Review Fee	5
4.4	Review Procedure	5
4.5	Approval	6
4.6	Design Review by Governmental Authorities	6
4.7	Design Guidelines	6
4.8	Special Architectural and Site Design Considerations	6
4.9	Purpose and Effect of Approval	6
4.10	Declarant Not Liable	6
V	DEVELOPMENT STANDARDS	7
5.1	Lot Coverage	7
5.2	Minimum Setback	7
5.3	Exceptions to Setback Requirements	7

5.4	Landscaping . . . . .	7
	(a) Adjacent Lot Landscaping . . . . .	7
	(b) Common Area Landscaping . . . . .	7
	(c) Parking Area Lighting . . . . .	7
	(d) Buffers . . . . .	7
	(e) Drainage . . . . .	8
5.5	Sidewalks. . . . .	8
5.6	Parking, Loading and Service Areas . . . . .	8
5.7	Building Height. . . . .	8
5.8	Exterior Building Materials and Colors . . . . .	8
5.9	Mechanical and Electrical Equipment . . . . .	9
5.10	Fences and Walls . . . . .	9
5.11	Lighting . . . . .	9
5.12	Signs . . . . .	9
VI	CONSTRUCTION . . . . .	9
6.1	Prosecution of Work . . . . .	9
6.2	Completion of Work. . . . .	9
6.3	Inspections . . . . .	9
6.4	Maintenance During Construction. . . . .	10
6.5	Temporary Structures . . . . .	10
VII	OWNERS' ASSOCIATION. . . . .	10
7.1	Declarant's Right to Exercise Controls . . . . .	10
7.2	Formation of Mill Point Owners' Association ("MPOA"). . . . .	10
7.3	Members . . . . .	11
7.4	MPOA Responsibilities . . . . .	11
7.5	Declarant's Responsibilities . . . . .	11
7.6	Legal Form, Owners' Association . . . . .	12
7.7	Covenant for Common Area Maintenance Charge and Improvement Charge . . . . .	12
	7.7.1 Creation of the Lien and Personal Obligation of Assessments. . . . .	12
	7.7.2 Nature of Assessments . . . . .	12
	7.7.3 Assessment Dates . . . . .	12
	7.7.4 Remedies for Nonpayment of Assessments . . . . .	12
	7.7.5 Subordination of Lien to Mortgages . . . . .	13
VIII	DURATION AND MODIFICATION . . . . .	13
8.1	Duration . . . . .	13
8.2	Modification and Repeal . . . . .	13
8.3	Replat. . . . .	14
IX	ENFORCEMENT . . . . .	14
9.1	Right of Entry . . . . .	14
9.2	Default and Remedies . . . . .	14
9.3	Waiver . . . . .	14
9.4	Costs of Enforcement . . . . .	15

	9.5	Non-Exclusive Rights of Enforcement	15
X		MISCELLANEOUS	15
	10.1	Constructive Notice and Acceptance	15
	10.2	Delegation and Assignment of Declarant's Rights and Duties	15
	10.3	No Liability	15
	10.4	Notices	15
	10.5	Declarant's Approval or Consent	16
	10.6	Captions	16
	10.7	Effect of Invalidation	16

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MILL POINT RIVERBEND P.U.D.**

This Declaration of Covenants, Conditions, and Restrictions ("Declaration") is made this 15<sup>th</sup> day of April, 2003 by Bonnett Properties LLC, an Oregon limited liability company, as owner of that certain real property in the City of Bend, Deschutes County, Oregon, described herein as Exhibit "A," attached hereto and incorporated by reference ("Property A"); and

This Declaration of Covenants, Conditions, and Restrictions ("Declaration") is also made this 15<sup>th</sup> day of April, 2003 by CRB Investments LLC, an Oregon limited liability company, as owner of that certain real property in the City of Bend, Deschutes County, Oregon, described herein as Exhibit "B," attached hereto and incorporated by reference ("Property B");

Whereas, Bonnett Properties, LLC, and CRB Investments, LLC, together ("Declarant") own the entirety of Mill Point Riverbend P.U.D., and together, by this Declaration do hereby wish to establish such contractual obligations between the owners of Property A and Property B, (together "Property") as are set forth herein;

Whereas, Declarant, as owner, entered into an agreement with Seller Mill Point, LLC for Seller to subdivide the Property into six (6) separate lots and common area, together comprising a planned unit development platted as "Mill Point Riverbend P.U.D.," and described in Exhibit "C" as a CC&R Exhibit, attached hereto and incorporated by reference and as further described in the subdivision plat of "Mill Point Riverbend P.U.D.," recorded December 11, 2002. As Instrument No. 2002-69648; and

Whereas, Declarant, as owner, is developing the Property as a planned unit development for purposes of accommodating industrial, commercial and business enterprises to operate in a cohesive and organized manner for purposes described herein; and

Whereas, Declarant, as owner, is providing for common use, maintenance, and construction of such common area improvements as are presently in existence or may be desired in the future, by this Declaration as described in detail herein; and

Whereas, Declarant, as owner, is providing for reciprocal use, maintenance, and construction of such individual parcel improvements as are presently in existence or may be desired by lot owner(s) in the future by this Declaration as described in detail herein; and

Whereas, Declarant, by amendment in accordance with changed conditions of use and ownership, elects to have the Property to be removed from and no longer subject to the Declaration of Covenants, Conditions and Restrictions, recorded November 9, 1982, in Book 364, Page 259, Deschutes County Deed Records; or the amendment by instrument recorded April 25, 1988, in Book 162, Page 1826, Deschutes County Records and recorded December 6, 1988, in Book 175, Page 851, Deschutes County Records as amended by instrument recorded April 7, 1995, in Book 370, Page 774, Deschutes County Records; or the Declaration of Covenants, Conditions and Restrictions recorded April 7, 1995, in Book 370, Page 778, Deschutes County Records (the "existing CC&Rs"); and

Whereas, Declarant is causing this Declaration to be recorded to subject the Property to the covenants, conditions, and restrictions set forth herein;

Now, therefore, Declarant makes the following declarations:

**I      Definitions**

- 1.1 Mill Point Riverbend P.U.D.: The subject real property referenced above as Exhibit A, and all real property now or hereafter the subject of this Declaration.
- 1.2 Declarant: Bonnett Properties LLC, and CRB Investments, LLC, Oregon limited liability companies, and together owner of the subject real property. Either entity may represent the interests, authority, or responsibilities of the other as "Declarant," without further consent of the other entity.
- 1.3 Declaration: This declaration of Covenants, Conditions and Restrictions for Mill Point Riverbend P.U.D., and changes or amendments as may be made from time to time.
- 1.4 Lot: Each and every of the individually subdivided real property lots shall be described individually as a "lot," as described by Exhibit C, attached hereto and incorporated by reference.
- 1.5 Owner: The holder of a fee simple interest in a lot, or the holder of a vendee's interest in a lot under a recorded installment contract of sale. The holder of only a leasehold interest in a lot, a building, or a portion of a building is not an owner for purposes of this definition. If there are two or more co-owners of a lot, they shall collectively constitute only one owner for purposes of this Declaration, and shall have only one vote on any matter on which owners may vote. An owner may appoint a representative as noted herein.
- 1.6 Common area: All areas of the Property outside of the buildings themselves such as sidewalks, streets, landscaping and outdoor improvements; any areas not included in respective lots numbered 1-6; or areas claimed by municipal or quasi-governmental entities by easement or other right of record which excludes owner association control or responsibility.
- 1.7 Improvements: Including, but not limited to, buildings, outbuildings, private roads, driveways, parking areas, fences, barriers, retaining walls, stairs, decks, electrical and gas and water and sewer and fiber optic and telephone and satellite and communication lines or pipes or conduits or equipment, hedges, windbreaks, plantings, planted trees and shrubs, signs, loading areas and all other structures or exterior landscaping, vegetation or ground cover of every type and every kind above or below the land surface.
- 1.8 Street: Any paved surface constructed for the purpose of transporting automotive vehicles or bicycles and designed to function as a vehicular thoroughfare within or adjacent to the Property and shown on any current and valid recorded subdivision or partition map or survey map of record, whether designated thereon as a street, boulevard, place, drive, road, way, or functional equivalent of same.
- 1.9 Mill Point Owners Association: That Association of owners forming an owners association, pursuant to provisions herein, for purposes including, but not limited to, administering, maintaining, improving, protecting, and performing any other such services as are necessary for prudent operation of the Property, common areas, and reciprocal rights and responsibilities of the Property, also to be referenced as "MPOA."

## II GENERAL DECLARATION

- 2.1 Declaration of Covenants, Conditions and Restrictions  
Declarant hereby revokes all existing CC&Rs and removes the property from the CC&Rs, and declares that the Mill Point Riverbend P.U.D. shall be conveyed, built-upon, encumbered, leased, occupied, operated, and used solely in compliance with the conditions, covenants and restrictions set forth in this Declaration and its amendments

thereto; as may be adopted in the future. This Declaration shall apply to and bind all owners, lessees, licensees, occupants, and users of the property, their heirs, successors and assigns in interest as set forth herein, and shall constitute covenants running with the land.

**2.2 Additional Land**

Declarant may add contiguous land now or hereafter owned by Bonnett Properties, LLC, or CRB Investments, LLC, by recording in the county records a document describing the additional land and stating it is subject to this Declaration. Upon recording, the additional land shall be a part of the Mill Point Riverbend P.U.D., as the Project is defined herein.

**III REGULATION OF OPERATIONS AND USES ON LOTS AND IN COMMON AREA**

**3.1 Permitted Uses**

Any business or commercial operation and use consistent with the then applicable zoning ordinances or other regulations of the City of Bend and stated uses declared herein, will be permitted on a respective lot, provided Declarant consents thereto. Changes in use shall be approved, disapproved or conditionally approved after receipt of all information that would be reasonably required for a prudent business decision.

**3.2 Prohibited Activities**

No use will be conducted on a lot or in common area, nor shall any materials or products be manufactured, processed or stored thereon which shall, in the opinion and sole discretion of Declarant, cause an undue fire or health hazard, be offensive or detrimental to any adjacent property or to its occupants, or which shall constitute a nuisance. Customary and ordinary construction activity performed in accordance with all applicable laws and without undue interference with neighboring properties shall not be considered a nuisance, so long as it is also performed in accordance with terms contained herein below.

**3.3 Condition of Property; Compliance with Laws and Regulations**

The owner and its agents and assigns of each lot and also the common area shall at all times keep them and the buildings, improvements and appurtenances thereon in a safe, clean, neat and sanitary condition and comply at its own expense, with all applicable governmental statutes, ordinances, regulations, requirements, and directives.

**3.4 Maintenance and Repairs**

- (a) Maintenance of each lot and all improvements thereon shall be the responsibility of the owner in a condition acceptable to Declarant and Declarant shall have the right to designate and employ a maintenance operator to perform necessary functions at owner's prorated expense. All repairs, alterations, replacements, or additions to improvements shall be (i) made pursuant to applicable building codes and permit requirements, (ii) made in a good and workmanlike manner and (iii) of a quality at least equal to the original work.
- (b) Periodic cleaning (including ice and snow removal), maintenance to safe and aesthetically pleasing standards, and necessary repairs of each respective lot shall be the owner's responsibility, but if not completed in a timely manner, it shall be Declarant's option to arrange for such work, at owner's expense, without liability to Declarant, and owner shall indemnify Declarant for same if so claimed.
- (c) Owner shall maintain general public liability insurance against claims for bodily injury, death, or property damage on, in, or about the owner's lot and the common area adjacent thereto. Coverage amounts shall be subject to Declarant's discretion, but shall be bound for a minimum of \$1,000,000 combined single limit. Declarant shall be named an additional insured and shall have the right to purchase replacement coverage at owner's expense on Declarant's demand.

- (d) Common Area shall be maintained by Mill Point Owners Association in accordance with usual and customary standards for health, safety, and shall be aesthetically pleasing and complimentary to adjacent lots, as a courtesy to all owners to provide uniform and timely maintenance services. Mill Point Owners Association shall, not be responsible for hazardous conditions which are the responsibility of owner under 3.4(a) or under other laws, rules, regulations, or at common law. Expenses shall be assessed and paid by owners pursuant to Section 7.5.

**3.5 Storage and Refuse Collection Areas**

All exterior storage vessels or structures, whether for disposal or retention or some other purpose, shall be masked from public view by structure or landscaping, and shall be used and maintained in such a way as to preclude public view of contents at all times, subject to Declarant's approval and continued satisfaction. Such items include, but are not limited to dumpsters, public sanitary devices, trailers, or ashtrays.

**3.6 Utilities and Public Improvements**

Declarant reserves the sole right to consent to the construction and operation of utility mains and related infrastructure or systems. No owner shall enter into any contract or agreement with any governmental body or utility agency with reference to the installation of public improvements without Declarant's advance, express and written consent.

**3.7 Utility Service and Antennas**

Sewer, water, drainage, lines, wires and other devices for the communication or transmission of electric current or digital code, including telephone, television, microwave or radio signals shall be contained in conduits or cables constructed, placed and maintained underground or concealed in or under buildings or other approved structures, provided that electrical transformers may be permitted if properly screened and approved by Declarant.

**3.8 Excavation**

No excavation of a lot shall be made except in connection with construction of an approved improvement, and upon completion, exposed openings shall be backfilled and disturbed ground shall be graded, leveled, and restored to Declarant's satisfaction, or original condition in accordance with approved plans.

**3.9 Partition, Subdivision and Lot-line Adjustments**

No lot shall be partitioned or subdivided, nor shall any lot line be adjusted, without the prior written approval of Declarant and the MPOA.

**IV DESIGN CONTROLS ON LOTS**

**4.1 Approval of Plans Required**

All plans for improvements or replacement shall be submitted by an owner and approved by Declarant in writing. Approval shall be based upon final plans and specifications prepared by licensed architects, engineers or other qualified professionals. Plan submissions will also be required for significant revisions, alterations, additions, or changes of use for approved or existing improvements. Plans must be drawn to an easily-readable scale such as 1"=20' unless otherwise noted, and shall be submitted to Declarant prior to submittal to any governmental authority. Submittal shall consist of four (4) copies of the following as applicable:

- (a) Lot plan
- (b) Architectural plans, elevations and sections
- (c) Existing topographic and proposed grading plan



- (d) Landscape plan
- (e) Description of proposed construction staging and access areas, and any temporary structures.

#### 4.2 Basis for Approval

In exercising its right of approval, Declarant shall consider, among other things, the following:

- (a) Adequacy of lot dimensions for the proposed improvement;
- (b) Nature and location of improvements and uses upon neighboring lots;
- (c) Exterior appearance of architectural style, proportions, height, bulk, color schemes, textures and materials;
- (d) Relationship to topography of lot and neighboring lots;
- (e) Compatibility and harmony of external design with neighboring structures;
- (f) Proper facing of building elevations with respect to nearby streets;
- (g) Design and effect of parking area or on lot roadways on traffic within Mill Point Riverbend P.U.D.;
- (h) Adequacy of storm water retention and drainage;
- (i) Adequacy of screening of equipment installations and service areas;
- (j) Compliance with the standards of Article V below;
- (k) Conformity and appropriateness to the Mill Point Riverbend P.U.D. development concept and design guidelines, as referenced in 4.7 below.

#### 4.3 Review Fee

Declarant may establish and assess a fee for reviewing an owner's plans and specifications submitted pursuant to Section 4.1. Said review fee shall reasonably approximate the cost incurred in connection with such review.

#### 4.4 Review Procedure

If Declarant fails either to approve or disapprove properly-submitted plans and specifications within fifteen (15) business days after receipt of all submittals required by Section 4.1, it shall be conclusively presumed that Declarant has approved said plans and specifications; provided, however, that if, within the fifteen (15) business-day period, Declarant gives written notice of the fact that more time is required for the review of such plans and specifications, there shall be no presumption that the same are approved until the expiration of such reasonable period of time as is set forth in the notice. Declarant shall not arbitrarily or unreasonably withhold its approval of plans and specifications.

#### 4.5 Approval

Declarant may approve plans and specifications as submitted, or as altered or amended, or may grant approval to the same, subject to specific conditions. Decisions shall be made in writing.

#### 4.6 Design Review by Governmental Authorities

Any plans or specifications submitted to governmental authorities shall be provided to and approved by Declarant prior to commencement of implementation.

#### 4.7 Design Guidelines

The concept for Mill Point Riverbend P.U.D. shall be determined by Declarant in its sole discretion. Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any party; provided however, that once approval has been given pursuant to Section 4.5 above, work may proceed in accordance with the

approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

**4.8      Special Architectural and Lot Design Considerations**

Building programs shall incorporate the following:

- (a) Distinct architectural style, materials and finishes which are identifiably contemporary or historically reminiscent in design, concept and quality;
- (b) Methods that reduce the large-scale visual impact of building mass and provide relief from large wall expanses;
- (c) Preservation of existing terrain, rock outcroppings and mature trees, and optimization of view corridors, wherever possible;
- (d) The use of window patterns, roof forms, indirect accent lighting and other features which enhance individual buildings while retaining a consistency of basic architectural elements among other buildings in the Project.

**4.9      Purpose and Effect of Approval**

Declarant's review and approval or denial of plans and specifications are for Declarant's sole benefit and do not constitute a representation or warranty that such plans and specifications are or are not suitable for the purposes for which they are intended, or that they comply with any building or engineering standard, code or ordinance. Each owner, upon submitting plans and specifications for approval, agrees to indemnify and hold Declarant, its agents, contractors, successors and assigns from and against any and all claims, damages, expenses, liabilities or losses arising out of or in any way connected with plans and specifications submitted for review in accordance with Section 4.1.

**4.10     Declarant Not Liable**

Declarant shall not be liable for any damage, loss, or prejudice suffered or claimed by any person by:

- (a) The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
- (b) The construction of any improvement, or performance of any work, whether or not pursuant to approved plans and specifications; or
- (c) The development of any lot within Mill Point Riverbend P.U.D.

**V      DEVELOPMENT STANDARDS**

**5.1      Lot Coverage**

Configuration of lots is unusual by design, and somewhat unique to the Mill Point Riverbend P.U.D., affording equitable common area division under MPOA oversight and maintenance. Existing lot coverages shall be maintained, in case of replacement or improvement construction, subject to Declarant and MPOA approval.

**5.2      Minimum Setback**

Except as otherwise provided in Section 5.3, no improvements of any kind shall be placed on a lot closer to a property line than improvements are located at the time of Declaration execution, pursuant to Exhibit C.

**5.3      Exceptions to Setback Requirements**

The following improvements, or portions thereof, are specifically excluded from the setback requirements set forth in Section 5.2 subject to applicable law:

- (a) Unsupported roof overhang, subject to approval by Declarant;
- (b) Steps and walkways;
- (c) Paving and associated curbing, except that no vehicle parking shall be permitted in front or side yard setbacks unless approved by Declarant;
- (d) Landscaping, drainage, and irrigation systems;
- (e) Architectural fences, walls, and sign elements except that Declarant's specific approval is required when placed within a front yard setback;
- (f) Underground utility facilities and their above-ground appurtenances.

#### 5.4 Landscaping

All common areas shall be maintained uniformly by the MPOA. Each area surrounding a respective lot shall be landscaped in accordance with the approved plans and specifications, subject to Declarant and MPOA approval, and in conformity with the criteria and requirements set forth below:

- (a) Adjacent Lot Landscaping. Existing landscaping in place at the time of Declaration execution shall be deemed approved. Changes or replacement of existing landscaping shall be subject to approval of Declarant and MPOA. Existing mature trees are to be preserved wherever possible, in accordance with any landscaping guidelines that Declarant may establish, and in compliance with applicable law. In case of alteration or replacement, landscaping shall be installed and operable within sixty (60) days of destruction or removal of existing landscaping, whichever first occurs, or as soon thereafter as weather permits.
- (b) Common Area Landscaping. The MPOA shall be responsible for landscaping and maintaining any common area, and subject to applicable law.
- (c) Parking Area and Street Lighting. Parking area and street lighting fixtures needing replacement shall be of a type specified by Declarant, installed by the MPOA, and no other fixtures shall be permitted.
- (d) Buffers. Plant and natural material buffers shall be installed by MPOA in accordance with Declarant standards in specified areas, including but not limited to public street entrances and borders along Colorado Avenue. MPOA shall be responsible for keeping buffer reasonably clean and free of debris at all times.
- (e) Drainage. Catch basin and related natural water flow control devices are in place and shall be maintained and improved and installed as necessary by MPOA or owners to properly accommodate and manage water courses. Such devices shall be maintained, improved, or installed in accordance with customary engineering standards and subject to Declarant and MPOA approval.

#### 5.5 Sidewalks

MPOA shall provide common area pedestrian circulation systems to meet the needs of on-lot users in a safe manner and using all-weather-efficient materials, and shall maintain same in accordance with usual customary standards of care.

#### 5.6 Parking, Loading and Service Areas

Each lot shall be provided with adequate employee and business parking, loading and delivery facilities to accommodate all operations or uses without requiring on-street parking or maneuvering, in accordance with existing allocations in place on date of Declaration execution. If parking requirements increase as a result of change in approved use or expansion of an existing use, additional off-street parking shall be provided to satisfy the requirements of this section, but such accommodations may be

made for an additional charge. All parking areas shall conform to the following standards, and in addition shall comply with applicable law:

- (a) Parking areas shall be paved, curbed and striped in accordance with applicable law, approved plans and specifications, and shall provide, in addition to parking spaces, adequate driveways and space for movement of vehicles.
- (b) No parking spaces shall be located on or permitted within front or side yard setback areas unless previously approved in writing by Declarant.
- (c) Parking areas shall be planned and administered to accommodate snow removal.
- (d) Loading docks, delivery and service areas shall be located and screened to restrict to the greatest extent practicable their view from adjacent streets and neighboring lots.

#### 5.7 Building Height

The maximum height of all structures within Mill Point Riverbend P.U.D. shall be to heights in place on the date of Declaration, subject to applicable law. Greater heights may be allowed by Declarant on a case-by-case basis, subject to governmental approval. Improvements such as satellite dishes, not to exceed 48" in diameter, may be located on building roof tops subject to Declarant and MPOA approval.

#### 5.8 Exterior Building Materials and Colors

Exterior walls and surfaces must be finished with building materials of a texture, character and color compatible with the surrounding lot improvements in place on date of Declaration. Consideration should be given to ease of maintenance. Declarant shall have the sole right to approve or disapprove materials and colors.

#### 5.9 Mechanical and Electrical Equipment

Exterior components of plumbing, processing, heating, cooling and ventilating systems shall be screened from public view to the greatest extent practicable. Screening devices shall appear as integrated parts of the architectural design. Ground-level or other exterior equipment including electrical transformers shall be adequately screened with either plantings or durable enclosures so as to blend with the visual background. In areas where noise is generated by mechanical systems, insulation may be required to reduce the impact on neighboring properties, subject to Declarant discretion dependent upon particular acoustical environments.

#### 5.10 Fences and Walls

Fences and walls shall be designed to coordinate with and be appropriate to the overall building style and lot design. Fencing layouts and designs are subject to Declarant's approval and will be considered based upon specific lot and use conditions. Perimeter fencing defining property lines is prohibited.

#### 5.11 Lighting

All replacement lighting is to be shielded downward, bulbs not visible, and confined within property lines, and shall conform to any lighting guidelines which may be set forth by Declarant, and in compliance with applicable law.

#### 5.12 Signs

All signs, whether permanent or temporary, business identification, directional, or street number, are subject to review and approval by Declarant and shall conform to sign criteria which may be established by Declarant, as amended from time to time, and shall comply with applicable law, subject to governmental review.

## **VI CONSTRUCTION**

### **6.1 Prosecution of Work**

Upon approval from Declarant pursuant to Section 4.5, the owner receiving such approval shall promptly satisfy any conditions of such approval and shall diligently proceed with the prosecution of all approved excavation, construction or alterations, and landscaping in strict conformity to the approved plans and specifications. If for any reason work has not commenced within one (1) year from the date of Declarant's approval, approval shall expire.

### **6.2 Completion of Work**

All construction, reconstruction, refinishing or alterations of any improvement including landscaping shall be completed within one (1) year from the commencement of the work, unless otherwise previously agreed by Declarant in writing.

### **6.3 Inspections**

Declarant shall have the right, upon reasonable prior notice to owner, to inspect any work related to any building, structure or facility or any landscaping or other improvements within Mill Point Riverbend P.U.D. to determine its conformity with approved plans and specifications. In the event Declarant determines in good faith that certain work is non-conforming, Declarant may issue a stop work notice, without the necessity of court order, which shall require the owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of this Declaration. Any inspection or correction conducted or instituted by Declarant shall have the same purpose and effect as Declarant's review and approval of plans and specifications as set forth in Section 4.9.

### **6.4 Maintenance during Construction**

It shall be the responsibility of each owner to insure construction lots are kept free of unsightly, unhealthy, or hazardous conditions, including dust. Any activity which is determined by Declarant to be incompatible with surrounding uses shall be considered non-conforming and a breach of this Declaration.

### **6.5 Temporary Structures**

No temporary buildings or other temporary improvements, including trailers, tents or shacks shall be permitted on lot or common area unless expressly approved in writing prior to entry by Declarant.

## **VII OWNERS' ASSOCIATION**

### **7.1 Declarant's Right to Exercise Controls**

- (a) Declarant, as subdivider and owner of Mill Point Riverbend P.U.D., may exclusively exercise all design, landscaping, sign and other controls as well as those other duties, obligations and rights prescribed under this Declaration until

Declarant relinquishes the exercise of control and the burden of such duties to the Owners' Association as set forth below, subject to improvements and conditions in existence at the execution of this Declaration.

- (b) When Declarant ceases to own land in Mill Point Riverbend P.U.D. as the same may be enlarged by the addition of land pursuant to Section 1.2, or at any earlier time at Declarant's option, Declarant shall relinquish its exercise of such rights and responsibilities and shall record in appropriate offices a declaration stating that Declarant no longer desires to exercise further controls over development in Mill Point Riverbend P.U.D. except to the degree it has such rights as an owner or as a member of the Owners' Association. Copies of such declaration shall be provided to each owner within Mill Point Riverbend P.U.D. contemporaneously with recordation of the declaration. Recordation of such a declaration shall formally terminate Declarant's rights and duties relating to design, landscaping, sign and other controls, as well as any other duties, rights and obligations of Declarant under this Declaration, except to the degree it has such rights as an owner or as a member of the Owner's Association.

## **7.2 Formation of Mill Point Owners' Association ("MPOA")**

Upon Declarant's relinquishment of its control and duties, the Owners' Association shall automatically succeed to all duties, powers, responsibilities, rights and privileges of Declarant under this Declaration.

## **7.3 Members**

- (a) All owners are members of the MPOA, and each lot represents a share of votes proportional to the number of square feet contained in each lot owned by each owner. Within thirty (30) days after the commencement date of the Owners' Association, the initial members of the MPOA shall convene. Persons eligible for Owners' Association Officership, shall be limited to an individual owner or directors, officers, employees, agents, owners or partners of any corporation, partnership, joint venture or proprietorship owning any lot within Mill Point Riverbend P.U.D. Declarant shall solicit from and then circulate to all owners, a list of nominees for the three (3) initial officer positions within the 30-day organizational period. Declarant shall then conduct an election of the initial Officership. The three nominees obtaining the three highest vote totals shall constitute the initial Owners' Officers: President, Vice President, and Secretary/Treasurer.
- (b) Each owner of a lot or lots throughout Mill Point Riverbend P.U.D. shall have the right to cast votes for each Owners' Association officer per each lot's square footage, as described in 7.3(a) above. If the owner of a lot consists of more than one person or entity, they shall agree among themselves and designate in writing a single person who is entitled to cast the votes for the lot. If they do not agree and designate in writing the person entitled to cast the votes for the lot, that lot shall not be entitled to vote. The initial Owners' Association shall meet within ten (10) days after the election and may at that time adopt any governing documents, including bylaws, guidelines, procedures, rules and regulations, relating to the Owners' Association and Mill Point Riverbend P.U.D. Any owner may appoint a representative to act in owner's capacity, and such appointment shall be in writing addressed to MPOA, signed by owner.

## **7.4 MPOA Responsibilities**

In addition, to other duties herein, MPOA shall be responsible for maintenance, improvements, and safe operation of all common area on the Property. MPOA shall also administer any reciprocal or cross-easement agreements between owners or lots as needed for telecommunications, underground utilities, drainage, or other improvements.

All common area costs not properly and fairly attributable to the operation of a respective lot shall be pooled as a common area maintenance charge or a common area improvement charge and allocated equally to the owners, payable pursuant to maintenance assessment or improvement assessment provisions below. Such charges shall include, but not be limited to, water costs for landscaping, electrical costs for lighting, and maintenance costs for sidewalks, streets, snow removal and landscaping.

**7.5 Declarant's Responsibilities**

In the event Declarant is unsuccessful in organizing the Owners' Association within the 30-day organizational period specified by Section 7.3 above, Declarant shall have no further responsibilities relating to the Owners' Association, and the Owners' Association shall be organized exclusively by the owners within Mill Point Riverbend P.U.D. Such failure of organization of the Owners' Association shall not affect the existence of the Owners' Association or the effectiveness of this Declaration.

**7.6 Legal Form, Owners' Association**

The Owners' Association shall determine the legal form of the Owners' Association and any association of owners.

**7.7 Covenant for Common Area Maintenance Charge and Improvement Charge**

**7.7.1 Creation of the Lien and Personal Obligation of Assessments**

The Declarant covenants for Mill Point Riverbend P.U.D., each owner of any lot by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agrees to pay to Declarant or MPOA as the case may be, regular annual, special, or other regular periodic assessments to charges, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time such assessment was levied. The obligation shall remain a lien on the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

**7.7.2 Nature of Assessments**

The assessments levied by the Declarant and the MPOA shall be used exclusively for the improvement and maintenance of the common area and costs associated with same. After consideration of current maintenance costs and future needs, the Declarant or MPOA may fix a regular flat assessment upon a monthly, quarterly, or annual basis. The regular periodic flat charges must be fixed at a uniform rate for all lots and may be collected on a monthly, quarterly, or annual basis in the discretion of the Declarant, such assessment to be based on the total costs divided by the square footage area of the lots, resulting in a proportional share, unless Declarant determines that such method of cost allocation is inequitable, in Declarant's sole discretion, in which circumstance Declarant may devise an alternate cost allocation method, subject to approval of the MPOA.

### **7.7.3 Assessment Dates**

All lots shall be subject to the annual, quarterly, or monthly assessments provided for herein effective the first day of the month following the month an owner takes possession of any lot. The Declarant shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every owner subject thereto. The due dates shall be established by the Declarant.

### **7.7.4 Remedies for Nonpayment of Assessments**

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the lesser rate of 18% per annum or the highest rate allowed by law per annum. The Declarant, or MPOA, at Declarant's discretion, shall file in the office of the County Clerk of Deschutes County, State of Oregon, within thirty days after delinquency, a statement of the amount of any such charges or assessments, together with interest, which have become delinquent, with respect to any lot on said property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs and expenses and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the lot, with respect to which it is fixed from the date the note of delinquency thereof is filed in the office of the County Clerk, until the same has been paid or released as herein provided. Such lien may be enforced by the Declarant in the manner provided by law with respect to liens upon real property, as provided by Oregon Statutes. The owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs and disbursements, including reasonable attorney's fees of the Declarant of processing and, if necessary, enforcing such liens, all of which expense, costs and disbursements and attorney's fees shall be secured by said lien, including fees on appeal, and such owner at the time such assessment is levied, shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of owner's lot.

### **7.7.5 Subordination of Lien to Mortgages**

The lien of the assessments provided for herein shall be inferior, junior and subordinate to the lien of any first mortgages and first trust deeds now or hereafter placed upon said property or any part thereof. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which became due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **VIII DURATION AND MODIFICATION**

### **8.1 Duration**

Unless sooner terminated or modified according to the procedures provided in Section 8.2 below, this Declaration shall remain in effect for a period expiring on the twentieth (20th)



annual anniversary date of the execution of this Declaration and shall be automatically renewed for an unlimited number of successive ten (10) year periods, unless repealed as provided below.

## **8.2     Modification and Repeal**

This Declaration may be terminated or extended or any covenant, condition or restriction herein may be modified or amended as to all or any portion of Mill Point Riverbend P.U.D. pursuant to the following procedures:

- (a) Except as otherwise provided in (b) below, with the written consent of Declarant and of the owners of fifty-one percent (51%) of the Owners of lots within Mill Point Riverbend P.U.D. The consent of Declarant shall not be required after Declarant ceases to be an owner of any lot.
- (b) Until such time as Declarant no longer owns any interest in Mill Point Riverbend P.U.D. or relinquishes control pursuant to Section 7.1 herein, Declarant acting alone may modify or amend the provisions of Articles III, IV, V and VI; provided, however, that (i) any such modification or amendment must be within the spirit and overall intention of the development as set forth herein; (ii) prior to any such modification or amendment, Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary; and (iii) any modification or amendment shall not provide for any type of improvements or use not presently permitted by this Declaration.
- (c) No termination, extension or modification or other amendment shall become effective until a proper instrument has been recorded in the deed records of Deschutes County and such change is made in compliance with applicable law. No material amendment of this Declaration shall affect the rights of a mortgagee under a mortgage or a trustee or beneficiary under a trust deed constituting a lien on any lot unless such person consents in writing to the amendment.

## **8.3     Replat**

Declarant reserves the right to replat all or any portion of Mill Point Riverbend P.U.D., before or after the sale of any lots, provided that no changes are made to the plat of any lot that is not owned by Declarant without the consent of the owner of such lot.

# **IX     ENFORCEMENT**

## **9.1     Right of Entry**

Declarant, or its authorized representative, shall have the right to enter any lot for the purpose of determining compliance with this Declaration.

## **9.2     Default and Remedies**

In the event of any breach, violation, or failure to perform or satisfy any covenant, condition, or restriction which has not been cured within the time set forth in a written notice to do so, Declarant at its sole option and discretion may enforce any one or more of the following remedies or any other rights or remedies to which Declarant may be entitled by law or equity, whether or not set forth herein. All remedies provided herein or by law or equity shall be cumulative and not mutually exclusive; damages or declaratory relief; specific performance or injunction; abatement of nuisance without further legal action, including costs, notice of claim of lien to Deschutes County in accordance with applicable law, as governed by the laws of the State of Oregon.

## **9.3     Waiver**

No waiver by Declarant of a breach of any of these restrictions, and no delay or failure to enforce any of these restrictions, shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of this Declaration.

9.4 Costs of Enforcement

In the event any legal or equitable action shall be instituted to enforce any provision of these restrictions, the party prevailing in such action shall be entitled to recover all of its costs, including court costs, arbitration or mediation costs, and reasonable attorneys' fees and costs.

9.5 Non-Exclusive Rights of Enforcement

The rights of enforcement granted to Declarant are non-exclusive and shall be exercisable by Declarant for so long as Declarant owns any interest in Mill Point Riverbend P.U.D. Concurrently, each owner is hereby granted the rights of enforcement and the remedies provided to Declarant by Section 9.2.

**X MISCELLANEOUS**

10.1 Constructive Notice and Acceptance

Every person or entity who now or hereafter owns, occupies, or acquires any right, title, or interest in or to any portion of Mill Point Riverbend P.U.D. is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in Mill Point Riverbend P.U.D.

10.2 Delegation and Assignment of Declarant's Rights and Duties

Declarant may from time to time delegate any or all of its rights, powers, discretion and duties as Declarant hereunder to such agent or agents as it may designate. Declarant may permanently assign any and all of its rights, powers, discretion and duties as Declarant hereunder to any person, corporation or association which will assume the duties of Declarant. Such assignment shall become effective upon recordation with the Deschutes County Recorder. If at any time Bonnett Properties, LLC, or CRB Investments, LLC, cease to exist and have not made such assignment, a successor Declarant may be appointed only with the written consent of fifty-one percent (51%) of the owners within Mill Point Riverbend P.U.D.

10.3 No Liability

Neither Declarant nor its successors or assigns shall be liable to any owner or occupant of Mill Point Riverbend P.U.D. by reason of any mistake in judgment, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every owner or occupant of any of Mill Point Riverbend P.U.D. by acquiring its interest therein agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief attributable to or caused by same.

10.4 Notices

All notices to be given pursuant to this Declaration shall be in writing. If given to the Declarant, notice is effective only upon receipt. If given to an owner, notice is effective: (i) two (2) days after mailing by United States certified or registered mail, postage prepaid, addressed to the owner of a lot at the address shown on the then current property tax roll

for Deschutes County; or (ii) upon receipt in the case of messenger, overnight courier, or facsimile. Notices to Declarant shall be delivered to: Dr. Charles Bonnett, Bonnett Properties, LLC, and CRB Investments, LLC, 164 NW Hawthorne, Bend OR 97701.

10.5 Declarant's Approval or Consent

Any provision of this Declaration whereby Declarant's approval or consent is required, said approval or consent must be in writing to be valid and shall be the responsibility of owner to obtain. Notwithstanding the foregoing, Declarant may delegate certain review and approval rights to an agent, and may do so without express notice to owners.

10.6 Captions

The captions of articles and sections herein are used for convenience only and not intended to be part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular article or section to which they refer.

10.7 Effect of Invalidation

If any term or provision of this Declaration is held to be invalid by any court, such invalidity shall not affect in any way the validity of the remaining Declaration provisions.

IN WITNESS WHEREOF, the undersigned Declarant has caused the execution of this Declaration on the date first above written.

**DECLARANT:**

Bonnett Properties, LLC, an Oregon Limited Liability Company

By: Dr. Charles Bonnett  
Dr. Charles Bonnett, Managing Member

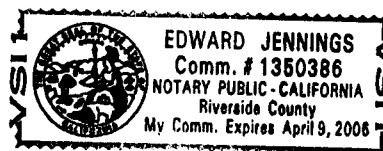
CRB Investments, LLC, an Oregon Limited Liability Company

By: Dr. Charles Bonnett  
Dr. Charles Bonnett, Managing Member

STATE OF California )  
COUNTY OF RIVERSIDE ) ss.

The foregoing instrument was acknowledged before me this 15 day of April, 2003, by Dr. Charles Bonnett, on behalf of Bonnett Properties, LLC, and CRB Investments, LLC.

Edward Jennings  
Notary Public for California



## **EXHIBITS**

**EXHIBIT "A" – Legal Property Description of Bonnett Properties, LLC parcels**

**EXHIBIT "B" – Legal Property Description of CRB Investments, LLC parcels**

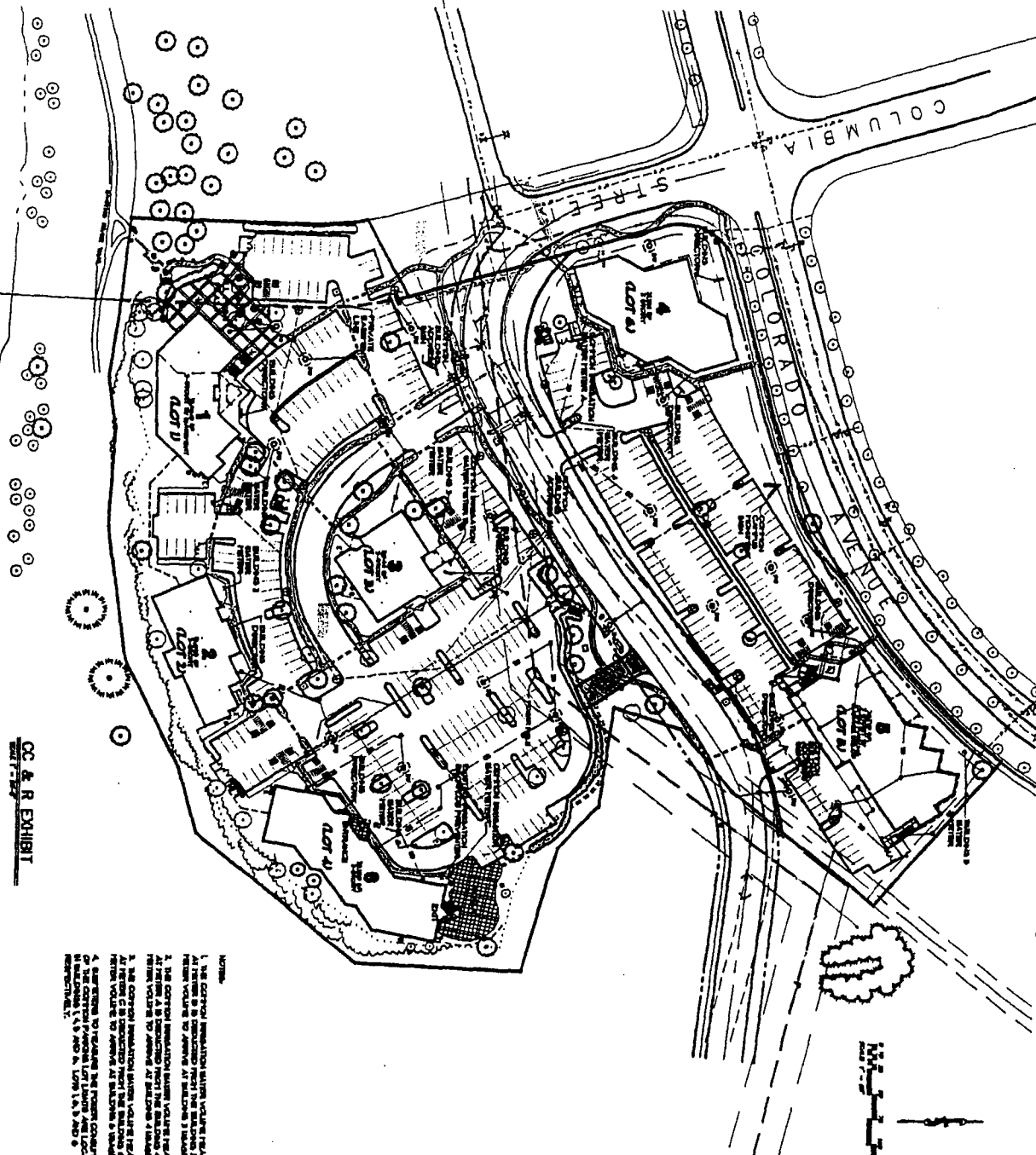
**EXHIBIT "C" – CC& R Exhibit Prepared by Hickman Williams & Associates, Inc.**

EXHIBIT A

Lots Three (3), Four (4) and Six (6), MILL POINT RIVERBEND P.U.D., City of Bend,  
Deschutes County, Oregon.

EXHIBIT B

Lots One (1), Two (2) and Five (5), MILL POINT RIVERBEND P.U.D., City of Bend,  
Deschutes County, Oregon.



**CC & R EXHIBIT**  
**WALTON - BRY**

- [illegible]

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