

177

DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2004-30468



\$171.00

05/24/2004 04:12:51 PM

D-CCR Cnt=1 Stn=1 BECKEY  
\$145.00 \$11.00 \$10.00 \$5.00

After Recording Return to:  
River Wild Townhomes  
Homeowners' Association, Inc.  
19717 SW Mt. Bachelor Drive  
Bend, Oregon 97702  
Attn: Diane Wilcox

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR RIVER WILD TOWNHOMES**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVER WILD TOWNHOMES (this "Declaration"), to be effective upon its recording in Deschutes County, Oregon, is made and executed on the date hereinafter set forth by Mount Bachelor Village Corporation, an Oregon corporation, hereinafter referred to as the "Declarant".

**WITNESSETH**

Declarant is the owner of that certain real property in the City of Bend, Deschutes County, Oregon, described on **Exhibit A** attached hereto and incorporated herein by reference, which property was platted pursuant to that certain plat recorded in the real property records of Deschutes County, Oregon as Document No. 2003-71138 on October 14, 2003 (the "Plat").

Declarant desires to create a planned community known as River Wild Townhomes on the land described on **Exhibit A** and on such other land as may be added thereto pursuant to the terms and provisions of this Declaration.

NOW THEREFORE, the Declarant declares that the real property described on attached **Exhibit A**, and any property subsequently annexed into this Declaration (collectively, the "Property"), shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions, and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

By recordation of this Declaration in the real property records of Deschutes County, Oregon, Declarant is hereby creating a Class I planned community, pursuant to and subject to ORS 94.550 to 94.785, and applicable successor provisions.

Funds for the maintenance and operation of common maintenance areas will be provided through assessments against those who purchase property within River Wild Townhomes, although to assist with the development, Declarant may from time to time itself provide some improvements. For the protection of all owners of property in River Wild

Townhomes, there will be a system designed to assure that each person who purchases property in River Wild Townhomes will pay an equitable share of the costs for maintenance of the common maintenance areas.

## ARTICLE I - DEFINITIONS

### Section 1.1    “Association”

“Association” shall mean River Wild Townhomes Homeowners’ Association, Inc., an Oregon nonprofit corporation established for the purposes set forth herein and pursuant to ORS Chapter 65.

### Section 1.2    “Betterments”

“Betterments” shall mean any and all Owner upgrades and Owner improvements to a Townhouse after initial sale of the Townhouse by Declarant, other than replacements of items that were included within the Townhouse at the time of original sale with items of similar nature and quality. Betterments may include, without limitation, upgraded appliances, built-in fixtures, building expansions, and outbuildings or other detached structures added by an Owner, other than Declarant.

### Section 1.3    “Board”

“Board” shall mean the Board of Directors of River Wild Townhomes Homeowners’ Association, Inc.

### Section 1.4    “Building Structure”

“Building Structure” shall mean a building structure which is comprised of one or more contiguous Townhouses constructed and located on Lots, including, without limitation, garage structures located on such Lots, whether attached to or detached from the Building Structure. The Building Structure shall be deemed to include all insurable fixtures and improvements included within the Home, including without limitation built-in appliances, but excluding, without limitation, floor, wall, and window coverings, stand-alone appliances, and Betterments and personal property.

### Section 1.5    “Bylaws”

“Bylaws” shall mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be recorded in the real property records of Deschutes County, Oregon.

### Section 1.6    “Common Home Exteriors”

“Common Home Exteriors” shall mean the exterior of each attached Townhouse on the Property. Common Home Exteriors shall include the siding, trim, rain gutters, downspouts, roof, flashing, entry sidewalks, walls, and fencing, if any, driveways, and garage

exteriors. Common Home Exteriors do not include the interior landscaping within enclosed courtyards or landscaping on patios, or the patios or decks, the maintenance responsibilities of which rest solely with the Owners of such Lots.

Section 1.7    “Conversion Date”

“Conversion Date” shall be the date upon which Class “B” membership shall cease and be converted to Class “A” membership. Such date shall be the date which is the earliest of (i) the date on which one hundred percent (100%) of the total Lots in all phases, including any property annexed into River Wild Townhomes by Declarant from time to time, have been conveyed to Class “A” members; or (ii) fifteen (15) years after conveyance of the first Lot to a Class “A” member; or (iii) at such earlier time as Declarant may elect in writing to terminate Class “B” membership.

Section 1.8    “County”

“County” shall mean Deschutes County, Oregon.

Section 1.9    “Declarant”

“Declarant” shall mean Mount Bachelor Village Corporation and/or its successors and assigns, who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

Section 1.10   “Declaration”

“Declaration” shall mean this Declaration of Protective Covenants, Conditions, and Restrictions for River Wild Townhomes and any amendments and supplements thereto made in accordance with its terms.

Section 1.11   “Directors”

“Directors” shall mean the Board of Directors of the Association.

Section 1.12   “Improvement”

“Improvement” shall mean every structure or improvement of any kind, including, but not limited to, a Unit, landscaping, fences, wall, driveways, fixtures, shelters, or other product of construction efforts (including painting, alterations, and reconstruction) on or with respect to River Wild Townhomes.

Section 1.13   “Lot”

“Lot” shall mean any of the plots of land indicated upon the recorded subdivision maps of the Property or any part thereof creating single-family home sites, including townhouses,

with the exception of areas deeded to a governmental authority or utility, together with all Improvements thereon.

Section 1.14 “Owner”

“Owner” shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.15 “Property”

“Property” shall mean the real property described on the attached **Exhibit A** and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration by a Declaration of Annexation.

Section 1.16 “River Wild Townhomes”

“River Wild Townhomes” shall mean the community of River Wild Townhomes created on the Property by the Plat.

Section 1.17 “Townhouse”

“Townhouse” shall mean and refer to a Unit on a Lot that is physically attached to another Unit on another Lot by way of a common wall or other similar common element.

Section 1.18 “Turnover Meeting”

“Turnover Meeting” shall be the meeting of the Owners called by the Declarant to turn over control of the Association to the Class A members.

Section 1.19 “Unit”

“Unit” shall mean any residential dwelling, including Townhouses, situated upon any Lot.

**ARTICLE II – RIVER WILD TOWNHOMES HOMEOWNERS’ ASSOCIATION, INC.**

Section 2.1 Membership

The Declarant and every Owner of a Lot by virtue of ownership of such Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Until the Conversion Date, there shall be two (2) classes of membership, Class A and Class B as described in Section 2.2.

Section 2.2 Voting Rights

The Association shall have two (2) classes of voting membership:

A. Class A

Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners, including Declarant) and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot.

B. Class B

The Class B member shall be the Declarant, who shall be entitled to five (5) votes for each Lot it owns until the Conversion Date at which time the Class B membership shall be converted to a Class A membership.

Section 2.3 Suspension

All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article II or is otherwise in default under this Declaration, the Bylaws or the Rules and Regulations of the Association.

Section 2.4 Turnover Meeting

The Declarant shall call a Turnover Meeting within ninety (90) days following the Conversion Date for the purposes of turning over control of the Association to the Class A members. The Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. The Turnover Meeting shall be conducted in accordance with the Bylaws of the Association. At the Turnover Meeting, the Declarant shall turn over to the Association the responsibility for the planned community of River Wild Townhomes and of the Association and the Association shall accept such administrative responsibility. At the Turnover Meeting, the Owners shall elect a Board in accordance with the Bylaws. At the Turnover Meeting, the Declarant shall deliver to the Association those items and documents required by ORS 94.616 or applicable successor provisions. In order to facilitate an orderly transition, during the three-month period following the Turnover Meeting, the Declarant or an informed representative shall be available to meet with the Board on at least three mutually acceptable dates to review the documents delivered pursuant to this Section 2.4. Not later than ninety (90) days after the Turnover Meeting, the Association shall provide Declarant with an estoppel certificate (i) certifying that Declarant has satisfied all of its obligations owed to the Association, including, without limitation, any obligations arising out of or related to this Declaration, or (ii) identifying with specificity the extent to which any such obligations remain unsatisfied.

## Section 2.5    Funding

Subject to the terms of this Article II, the Declarant hereby covenants for each Lot owned within the Property, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) annual or periodic assessments or charges for Common Home Exteriors; (ii) special assessments for capital improvements to the Common Home Exteriors; and (iii) such other assessments as shall be levied hereunder; all such assessments to be established and collected as hereinafter provided. The annual or periodic assessments shall include any reserve assessments necessary to establish and maintain any reserve funds created under Section 2.10. Such assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special and other assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot(s) at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them, in writing.

## Section 2.6    Annual Assessment or Charge for Lots

Subject to the terms of this Article, each Lot is hereby subject to an assessment in an amount not to exceed an amount determined by the Board (until such assessment charge shall be modified as provided in the Bylaws of the Association), for the purpose of creating a fund to be designated and known as the "maintenance fund" for matters described under Section 2.8, the "reserve fund" for matters described under Section 2.9, as well as any other funds contemplated under this Declaration, or any other fund called for by this Declaration or by a Declaration of Annexation. Charges and assessments for funding such funds will be paid by the Owner or Owners of each such Lot in advance in monthly, quarterly or annual installments, commencing as to all Lots upon election by the Board. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each assessment period. Said rate may be adjusted from time to time by the Board as the needs of the Association may, in the judgment of the Board, require. The annual assessment (excluding additional assessments pursuant to Section 2.13 and/or Section 2.14) for each Lot shall be uniform except as specifically provided herein, or as provided in any Declaration of Annexation for River Wild Townhomes. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment for a particular Lot has been paid for a particular assessment period. No Lot Owner shall have any right to any common profits of the Association. Notwithstanding any other terms contained herein, the Declarant shall have the right to abate or pro-rate annual assessments for Lots sold prior to the date on which all intended subdivision improvements are completed, all in Declarant's reasonable discretion.

### Section 2.7    Declarant Responsibility

So long as there is Class B membership, Declarant hereby covenants and agrees that in the event that the annual maintenance fund revenues are insufficient to pay the relevant operating expenses of the Association, it shall provide the funds necessary to make up the deficit, within thirty (30) days of receipt of request for payment thereof from the Association, provided that if the deficit is the result of the failure or refusal of an Owner or Owners to pay their annual maintenance assessments, the Association shall diligently pursue all available remedies against such defaulting Owners, including the immediate institution of litigation to recover the unpaid assessments, and shall reimburse the Declarant the amounts, if any, so collected.

### Section 2.8    Maintenance Fund

The Association shall establish a maintenance fund composed of annual maintenance assessments and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Home Exteriors. Such uses and benefits to be provided by the Association shall include, by way of clarification and not limitation, any and all of the following: (i) normal, recurring maintenance of the Common Home Exteriors, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Home Exteriors; (ii) payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the property to which the maintenance fund applies; (iii) payment of all reasonable and necessary expenses in connection with the collection and administration of assessments and the Association's funds and accounts; (iv) all insurance to be carried by the Association hereunder; and (v) all other activities necessary or desirable in the opinion of the Board to keep the Property, including the Common Home Exteriors, neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the Board in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance or what is of general benefit to the Owners or occupants of the Property shall be final and conclusive so long as such judgment is exercised in good faith.

### Section 2.9    Reserve Funds

#### A.    Reserve Fund.

Declarant shall establish a reserve fund in the name of the Association for replacement, in whole or in part, of the Common Home Exteriors for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years, including exterior painting, if the Common Home Exteriors include exterior painted surfaces. The reserve fund need not include those items that could reasonably be funded from the maintenance fund. Assessments for the reserve fund under this Section shall begin accruing from the date the first Lot that is assessed is conveyed. Declarant may elect to defer payment of accrued assessments for reserves for a Lot until the date the Lot is conveyed; provided, however, the Declarant may not defer such payment beyond the

date of the Turnover Meeting, or, if a Turnover Meeting is not held, the date on which administration of the Association is turned over to the Class A members. The book and records of the Association shall reflect the amount owing from the Declarant for all reserve assessments. For purposes of funding the reserve fund, the Association shall impose an assessment to be called the "Reserve Fund Assessment" against each Lot, which assessment shall be spread equally over the Lots. The reserve fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section. However, after the Turnover Meeting (as required by ORS 94.616 or applicable successor provisions), the Board may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses. Funds borrowed under this Section must be repaid later from assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. The Association shall administer the reserve fund and shall make periodic payments into the account. The board shall set future assessments for the reserve fund annually. Any funds established for any of the purposes mentioned in this Section shall be deemed to be a reserve fund notwithstanding that it may not be so designated by the Board. The amount of the reserve fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner. The reserve portion of the initial assessment determined by the Declarant shall be based upon an initial reserve study to be separately conducted in accordance with the terms of Section 2.10.B., or other sources of reliable information.

**B. Reserve Study.**

a) Prior to conveying the first Lot, the Declarant shall conduct an initial reserve study, which shall comply with the requirements for reserve studies set forth in Section 2.10.B.b. below.

b) The Board shall annually conduct a reserve study, or review and update an existing study, to determine the reserve fund account requirements and may adjust the amount of payments as indicated by the study or update and provide for other reserve items that the Board, in its discretion, may deem appropriate. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

**Section 2.10 Non-payment of Assessments: Remedies of the Association**

Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the rate set by the Board from time to time but in no event greater than the highest rate allowed by Oregon law at the time of the non-payment. The Association shall have

the authority as permitted by the Planned Community Act to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for any assessments provided for herein by non-use of the Common Home Exteriors or abandonment of Owner's Lot and/or Unit.

#### Section 2.11 Subordinated Lien to Secure Payment and Other Obligations

To secure the payment of the maintenance charge and all other assessments (including for reserves) established hereby and to be levied on individual Lots as provided in this Article II and all other obligations of a Lot Owner under this Declaration, there is hereby reserved a lien for the benefit of the Association on each Lot, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage lien holder by prepaid U.S. registered mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 94.709 shall apply to the Association's lien. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments that became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of such Association in the real property records of Deschutes County, Oregon.

#### Section 2.12 Additional Assessments

In addition to the periodic assessments described in this Article II, the Association shall have the authority to assess an Owner's Lot(s) for costs and expenses incurred by the Association for corrective action that is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees, including, without limitation, a breach of this Declaration. Each such additional assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, a continuing lien upon the Lot (under Section 2.12), and the personal obligation of the Owner in the manner described in Section 2.6 for annual and special assessments.

Section 2.13 Reallocation Upon Annexation of Property

a) The terms of this Section 2.13 (a) shall apply to all Lots annexed in to River Wild Townhomes. When additional property is annexed to the Property, the Association shall, within sixty (60) days after the annexation, recompute the budget based upon the additional Lots and Common Areas and Common Maintenance Areas and recompute all applicable assessments for each Lot. New Lots shall be subject to assessment from the time of annexation of such Lots to the Property. The Association shall send notice of any applicable assessment to the Owners of new Lots not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws.

b) If additional property is annexed into River Wild Townhomes during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots that were within the Property prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. To the extent that any adjustment results in a credit with respect to assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

Section 2.14 Professional Management

The Association may be professionally managed. In the event that the Board or the Owners elect to use a professional manager, the same shall be selected and hired by the Board. After the Turnover Meeting, the Board shall not engage any professional manager if any member of the Board has any financial (whether direct or indirect) or familial relationship with such manager unless such member (the "Interested Member") has disclosed the relationship and a majority of the Board other than the Interested Member has approved the contract. As used herein, familial relationship shall mean and include the following (whether natural or adopted): spouses, parents (including in-laws), siblings (including in-laws), children, grandparents, grandchildren, aunts, uncles, nieces, nephews, and first cousins. If a professional manager is engaged, the Board shall annually review the scope of and compensation provided by, the management contract.

**ARTICLE III - GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS**

Section 3.1 Interim Board

Declarant shall have the right to appoint an interim board of three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting.

Section 3.2 Purpose of Maintenance Fund

The Board, for the benefit of the Owners, shall provide and shall pay for out of the maintenance fund provided for in Section 2.9 above the following:

- A. Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Association rather than against the individual Lots and/or Owners, if any.
- B. Maintenance, repairs, and enhancement of the Common Home Exteriors.
- C. The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager provided that a management agreement entered into prior to the Turnover Meeting shall not have a term in excess of three (3) years and shall be terminable without penalty if the Board gives not less than thirty (30) days written notice of termination to the other party not later than sixty (60) days after the Turnover Meeting. The management agreement may provide that if it is not terminated as provided in the foregoing sentence, it will renew automatically for successive one-year periods, until terminated by either party (i) without cause, effective as of the next scheduled renewal date, by providing not less than thirty (30) days' written notice to the other party; or (ii) with cause, effective upon the date of written notice, by providing such notice to the other party.
- D. Legal and accounting services.
- E. A policy or policies of insurance insuring the Association and/or its Board and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided herein in Article IV, and Insurance carried under Section 4.3.B.
- F. Workers compensation insurance to the extent necessary to comply with any applicable laws.
- G. Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.
- H. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes, assessments, fees or costs, which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law, which are necessary to fulfill the obligations of the Association hereunder, or which in the Board's opinion shall be necessary or proper for the enforcement of this Declaration, except to the extent the same relate solely to the Lots.

Section 3.3 Powers and Duties of Board

The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association and the powers and duties of a non-profit corporation pursuant to the Oregon Nonprofit Corporation Act and a homeowners' association pursuant to ORS 94.630:

A. To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

B. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

C. To enter into contracts, maintain one (1) or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

D. To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

E. To make reasonable rules and regulations for River Wild Townhomes, and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the River Wild Townhomes, by the Owners in the portions affected.

F. Within ninety (90) days after the end of the fiscal year, to (i) distribute to each Owner and, upon written request, any mortgagee of a Lot, a copy of the annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year.

G. To make all books and records of the Association available for inspection by Owners at reasonable times and intervals; provided, that the Association may withhold from disclosure those documents permitted by the Planned Community Act.

H. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

I. To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

J. To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

K. To grant easements, licenses and concessions through or over the Common Areas, as permitted by the Planned Community Act.

Section 3.4 Board Powers Exclusive

The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

Section 3.5 Maintenance Contracts

The Board, on behalf of the Association, may enter into contracts by which the Association agrees to perform services that the Association is not otherwise required to perform. Such contracts may be with any Owner or other person or entity and shall be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

**ARTICLE IV - IMPROVEMENTS; INSURANCE**

Section 4.1 Improvements

The Declarant does not choose to limit its right to add Improvements not described in this Declaration to the planned community of River Wild Townhomes.

Section 4.2 Liability Insurance; Casualty Insurance

A. Association Liability Insurance.

From on and after the date on which responsibility for any Common Home Exteriors vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association, covering all damage or injury caused by the negligence of the Association, which policy limits shall be as determined by the Board of the Association, but shall include public liability insurance of at least One Million Dollars (\$1,000,000.00) per occurrence. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of the Board, the Owners and other insureds, as their interests may be determined by the Board, ensuring all against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association shall be received, held in a segregated account and distributed to all interested parties, as their interests may be determined. The insurance coverage obtained and maintained by the Association may not be brought into contribution with insurance bought by Owners or their mortgagees.

B. Townhouse Insurance

The Association shall obtain and maintain in effect, from a company authorized to do business in the State of Oregon, fire and extended coverage casualty insurance with respect to all Units in an amount equal to one hundred percent (100%) of the replacement cost thereof. As provided in Section 6.3, each Owner shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to that Owner's personal property and each Owner shall

obtain fire and extended coverage casualty insurance with respect to such Owner's Betterments. No insurance coverage obtained by an Owner (or such Owner's mortgagee) may be brought into contribution with insurance obtained by the Association. The Association shall obtain the insurance required under this Section 4.2.B for Lots that are annexed into River Wild Townhomes as soon as reasonably possible after such annexation.

### Section 4.3 Association's Maintenance Obligations

Subject to the other terms of this Declaration, the Association will permanently maintain, repair and replace as necessary the Common Home Exteriors. Maintenance of the Common Home Exteriors shall include the painting, staining, restaining, repairing, and replacing of all exterior surfaces, including roofs (but excluding the repair and replacing of exterior doors) and roof overhangs; and maintaining, repairing and replacing exterior lighting fixtures, the exterior portions of chimneys, rain gutters, down spouts, and roof and foundation drainage systems.

### Section 4.4 Lot Maintenance

#### A. Individually By the Lot Owners.

The Association's responsibility to maintain the Common Home Exteriors described in Section 4.3 specifically do not include the following duties, which are the sole responsibility of each Owner of a Lot with respect to Improvements located on that Owner's Lot: maintaining, repairing, replacing, restoring, or cleaning of: glass; exterior items of hardware not specifically described in Section 4.3 (including replacing and repairing exterior doors); exterior window casements, sashes and frames, if any; window screens, storm windows, storm doors, or screen doors (other than painting and staining of the same); concrete or paved patios or pads; decks; electrical and mechanical doorbells, lights, and knockers; air conditioning and heating equipment and devices (including heat pumps); skylights (if any), and exercising all due care in doing so and being solely responsible for any damage or liability arising therefrom; and other matters not set forth in Section 4.3. The Owners of Lots shall also be responsible for maintaining, repairing, and replacing the interiors of their respective Units, including without limitation, maintaining, repairing, and replacing electrical wiring and fixtures, plumbing pipes and conduits, all fixtures and appliances (whether built-in or free-standing), air conditioning, heating, sewage disposal, and interior fire protection systems and all amenities and hardware located within the interiors of the Building Structures.

#### B. Jointly by the Lot Owners.

Except as otherwise provided in this Declaration and subject to this Section, in the event repair or replacement of the common foundations of a Building Structure, common fireplace chase or common firewalls (which term shall have the same meaning as party walls) of a Building Structure should become necessary or appropriate, then the Owners of the Units within the Building Structure that require such repair or replacement shall be jointly responsible for such repair and/or replacement, and the Owners of such affected Units shall share equally in

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

## ARTICLE V- EASEMENTS

### Section 5.1    Utility Easements

As long as the Declarant owns a Lot, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of such Lot for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. The Board shall also have the right to grant the easements described herein, subject to the approval of the Declarant so long as Declarant owns a Lot.

Section 5.2    Declarant's Easement to Correct Drainage

Declarant hereby reserves for the benefit of Declarant a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

Section 5.3    Easement for Unintentional Encroachment

The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon a Lot caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching property to the extent of such encroachment.

Section 5.4    Entry Easement

If the Owner of any Lot fails to maintain the Lot as required herein, fails to comply with any requirements hereunder, or if there is an emergency, the Association shall have the right to enter upon the Lot as provided herein or as otherwise provided in this Declaration. The Association shall have the right to enter upon the Lot to make emergency repairs without providing advance notice. The Association shall have the right to enter upon the Lot to do other work reasonably necessary for the proper maintenance and operation of the Lot after providing five (5) days' written notice to the Owner. In each case that notice is required, such notice may be made by a posting on the front door of the Unit located on the particular Lot. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

Section 5.5    Reserved Easements

Easements for installation and maintenance of utilities and/or buffers with adjacent property are reserved as may be shown on the Plat or any replat of the Property. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which would violate the terms of the easements as described on the Plat. The easement area of each Lot and all improvements contained therein 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.

Section 5.6    Maintenance Easements for Common Home Exteriors

All Lots shall be subject to an easement of ingress and egress for the benefit of the Association and its successors, assigns, contractors, property managers, agents and employees over, across and upon the portion of each Lot as may be expedient or necessary for the installation, maintenance, repair or replacement of the Common Home Exteriors or other improvements upon Lots or as reasonably necessary to complete any other tasks authorized or required of the Association under this Declaration. All Lots shall also be subject to an easement of ingress and egress for the benefit of the Association and its successors, assigns, contractors, property managers, agents and employees over, across and upon the Lots, including the Unit(s) to the extent reasonably necessary, for purposes of performing maintenance, repair and/or replacement of Common Home Exteriors and/or compliance with the terms of Section 6.2.

Section 5.7    Maintenance Easements

An easement is hereby granted and reserved in favor of the Association and its successors, assigns, contractors, property managers, agents and employees over, across and upon each Lot, the exterior portions of the Units on each Lot or other areas of River Wild Townhomes necessary or appropriate for purposes of accomplishing the maintenance, repair, replacement or other obligations of the Association hereunder.

**ARTICLE VI- USE, OCCUPANCY, CASUALTY, AND INSURANCE**

Section 6.1    Declarant Use

The provisions of this Article shall not apply to the use of any Lot or Unit by the Declarant as i) a model home, sales office, or construction office; or ii) the use of any Lot as a site for a sales office trailer or construction office trailer.

Section 6.2    Casualty to Townhouses

The Association shall be responsible for repairing, reconstructing, and rebuilding all damage to or destruction of any Building Structure, subject to the provisions of this Section 6.2. The Association shall rebuild and/or restore the damaged or destroyed portions of the Building Structures to substantially the same condition in which these existed prior to such damage or destruction, subject to current governmental regulations and building codes, unless Owners of at least 75% of the Lots and at least 75% of first mortgagees of the Lots agree that the damaged or destroyed portions shall not be rebuilt and/or restored. Rebuilding and/or restoration shall begin within sixty (60) days following the damage or destruction. If the proceeds of the insurance policies held by the Association are insufficient to fund the full cost of rebuilding and/or restoration, the difference between the amount of such proceeds and such cost (including any insurance deductible) shall be charged to all Lot Owners by means of a special assessment. The Association may, but shall not be obligated to, make such special assessment against any Owner or Owners whose negligence or willful misconduct caused the damage or destruction. If the required number of Owners and first mortgagees of Lots agree that the damaged or destroyed

portions of the Building Structures shall not be rebuilt and/or restored, the proceeds of the insurance policies held by the Association shall be distributed on an equitable basis among the Owners of the affected Lots in such manner as the Board shall determine. The Association shall represent the Owners in any proceeding, negotiation, settlement, or agreement relating to the payment of proceeds under any insurance policies held by the Association. The Association shall not be obligated to repair, restore or rebuild any Betterments or any personal property of any Owner.

### Section 6.3    Owner's Insurance

Each Owner of a Lot shall obtain, and maintain in effect, from a reputable insurance company authorized to do business in the State of Oregon, public liability and property damage insurance with respect to such Lot with limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) per person per occurrence and Seven Hundred Fifty Thousand Dollars (\$750,000) for property damage. Each Owner shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to that Owner's personal property. Each Owner shall also obtain fire and extended coverage casualty insurance with respect to such Owner's Betterments. No Owner shall be obligated to obtain any of the insurance coverages described in Section 4.3, nor shall any insurance coverage obtained by an Owner (or such Owner's mortgagee) be brought into contribution with insurance obtained by the Association. The Association shall have the right, but not the obligation, to request evidence that any Owner has procured the required insurance. Upon written request from the Association, an Owner shall present a certificate of insurance evidencing the required coverages. The Association shall have the right, but not the obligation, to increase the coverage limits established by this Section 6.3 from time to time to reflect increases in the cost of living. Such increases shall require neither an amendment to this Section 6.3, nor a vote of the Owners, and shall be effected, if at all, by providing written notice to each Owner not less than thirty (30) days prior to the effective date of such increases.

## **ARTICLE VII- PROPERTY RIGHTS**

### Section 7.1    Owner's Use and Occupancy

Except as otherwise provided herein, by applicable law or by the terms of any instruments recorded against the applicable Lot, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot. Declarant, the ARC and any representative of the Association authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration; provided, the Owner is first provided with five (5) days' written notice if entry is to be by the Association or Declarant or one (1) days' written notice if entry is to be by the Association. Notwithstanding the foregoing, no notice shall be required in the case of emergency. No such entry shall be deemed to constitute a trespass, conversion, or otherwise create any right of action in the Owner of such Lot.

## Section 7.2    Owners' Right of Enjoyment

Every Owner shall have a right of enjoyment to his or her Lot, subject to the following provisions:

A.     The right of the Association to establish and publish rules and regulations governing River Wild Townhomes, affecting the welfare of Association members.

B.     The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid or during which such Owner is otherwise in material breach hereunder; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

C.     All easements herein described in this Declaration are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

## Section 7.3    Effect of Declaration

Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

## Section 7.4    Rezoning Prohibited

No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the prior written consent of the Board and of the Declarant so long as Declarant owns a Lot, which may be withheld in the Board's or Declarant's sole discretion, as applicable. Declarant or the Board may enforce this covenant by obtaining an injunction against any non-approved rezoning at the expense of the enjoined party.

## Section 7.5    Lot Consolidation and Division

No Lot may be consolidated with another Lot, except by Declarant. No Lot may be subdivided, except by Declarant.

## Section 7.6    Drainage Alteration Prohibited

The surface water drainage contours of each Lot shall conform to the approved grading plan established by the Declarant. No Owner shall fill or alter any drainage swale established by the Declarant, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the

Declarant. Each Owner shall take steps to assure that its Lot has adequate drainage and does not cause runoff to be directed onto any adjacent property.

## **ARTICLE VIII- USE RESTRICTIONS/BUILDING STANDARDS**

### **Section 8.1 Interior Walls**

Each Owner of a Lot shall ensure that the wall(s) separating such Owner's Unit from other Units within the same Building Structure are not punctured or otherwise breached by such Owner or Owner's lessees, invitees, contractors, or family members, except in connection with repair and replacement activities set forth in Section 4.5.

### **Section 8.2 Structural Integrity of Building Structures**

No Owner of a Lot shall alter, tamper, modify, or affect the structural elements of any Building Structure necessary for lateral stability, including, without limitation, horizontal or vertical strapping, foundation tie downs, and plywood sheathing, without (i) the prior analysis and approval of a structural engineer registered and licensed in the State of Oregon, (ii) the prior written approval by the Association of plans and specifications prepared by the Owner or Owner's professional, and (iii) a permit issued by the local jurisdictional authority.

### **Section 8.3 Development Activity**

Notwithstanding any other provision herein, Declarant and its successors and assigns shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwelling units on the Property.

### **Section 8.4 General Exterior Maintenance**

Each Lot Owner shall keep all Improvements upon his or her Lot in good condition and repair or otherwise maintained, except to the extent the Association is obligated to perform such maintenance. Declarant and the Association shall have the right at any reasonable time to enter upon any Lot to paint, repair, or otherwise maintain any improvements in need thereof, and to charge the cost thereof to the Lot Owner; provided, however, except in the case of emergency, the Declarant and/or the Association shall first provide the Owner with at least one (1) days' prior written notice, which notice may be given by a posting on the front door of the Unit located on such Lot.

### **Section 8.5 Security**

Neither Declarant nor the Association shall be responsible for security of the Common Maintenance Areas or any Unit or Lot, and the Owners are exclusively responsible for security of their homes, Lots and property.

## Section 8.6 Construction Activities

This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by a Lot Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the Deschutes County area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the ARC in its sole good faith judgment, the Association shall have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is excessive accumulation of debris of any kind which is offensive, or detrimental to it or any other portion of the Property, then the Association may contract for or cause such debris to be removed, and the Lot Owner shall be liable for all expenses incurred in connection therewith.

Section 8.7 Rental Restrictions/Compliance by Invitees. The Leasing or Renting of a Unit by its Owner shall be governed by the provisions of this Section 8.7. "Leasing or Renting" a Unit means the granting of a right to use or occupy a Unit, for a specified term or indefinite term (with rent reserved on a periodic basis), whether in exchange for the payment of rent (that is, money, property or other goods or services of value) or not; but shall not mean and include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership. With the exception of a lender in possession of a Unit following a default in a mortgage or trust deed, a foreclosure proceeding or any deed or other arrangement in lieu of a foreclosure, no Owner shall be permitted to Lease his Unit for hotel or transient purposes, which shall be defined as Renting for any period less than 30 days. Each Owner shall be responsible for compliance by all of such Owner's visitors, tenants or invitees, whether such visitor, tenant or invitee is occupying the Owner's Lot and/or Unit or otherwise visiting or using any portion of the Property, with all provisions of this Declaration, the Bylaws, and any and all rules and regulations, and all applicable laws. All construction and use of Lots and Units shall be in accordance with all applicable laws, including, without limitation, City of Bend ordinances and codes.

## **ARTICLE IX– ANNEXATION**

### Section 9.1 Annexation by Declarant

At any time during the Initial Term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 18 Lots in River Wild Townhomes, including the Lots currently existing, and Lots expected to be created in property to be annexed to River Wild Townhomes, but this number may be adjusted at the sole discretion of

Declarant, subject to the terms of Section 9.1.A. Declarant shall have no obligation of any kind to annex any additional property to the Property.

A. Eligible Property

Any or all of the real property in Deschutes County, Oregon adjacent to (“adjacent” property shall include property on the other side of a public right of way, a public or private street or a river) or contiguous with the Property shall be eligible for annexation. There is no limitation on the amount of land that Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals or as set forth herein.

B. Consent or Joinder Not Required

No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

C. Declaration of Annexation

Annexation shall be evidenced by a written Declaration of Annexation (the “Declaration of Annexation”) executed by the Declarant, or (in the case of an annexation by action of members) by the Board and the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration of annexation with respect to any annexed property may:

- i) establish such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property;
- ii) establish additional or different limitations, uses, restrictions, covenants and conditions as Declarant may deem to be appropriate for the development of such annexed property; and/or
- iii) contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

Without limitation of the meaning of the foregoing provisions of this Section 9.1, in any Declaration of Annexation Declarant may, but shall not be obligated to, establish easements particular to different Lots and/or to create any such Sub-Associations as it may elect.

D. Voting Rights; Allocation of Assessments

Upon annexation, additional Lots so annexed shall be entitled to the voting rights as set forth in Section 2.2, and assessments shall be reallocated and reapportioned in the manner set forth in Section 2.13.

Section 9.2 Annexation by Action of Members

At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved by at least seventy-five percent (75%) of the outstanding votes and by Declarant so long as Declarant owns at least one (1) Lot. Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 9.1.C above executed by the parties herein described.

Section 9.3 No Duty to Annex

Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

**ARTICLE X -GENERAL**

Section 10.1 Remedies

If any default by any Owner under the provisions of the Declaration, Bylaws or rules and regulations of the Association shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. The Association shall not file or maintain any litigation for damages in excess of \$5,000 unless first approved by at least sixty-six percent (66%) of the outstanding votes of the Owners, and any such litigation filed without such prior approval may be caused to be dismissed with prejudice. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under the Declaration or these Bylaws, including actions for the appointment of a receiver, for actions initiated by the Association during Declarant's period of administrative control prior to the Conversion Date, initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association, or to defend claims filed against the Association or to assert

counterclaims in proceedings instituted against it. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. Except as otherwise provided below, all expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest from the due date until paid at the rate set by the Board from time to time but in no event greater than the highest rate allowed by Oregon law at the time of the non-payment, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective maintenance assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Lot and upon all of his additions and Improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner. Without limiting the generality of this Section 10.1, any and all costs incurred by the Association in remedying an Owner's violation of this Declaration shall be an assessment against such Owner's Lot, secured by a lien upon such Lot pursuant to the terms of Section 2.12. Except as otherwise specifically provided herein or in the Bylaws for actions by the Association to recover delinquent amounts owed by Owners to the Association, to enforce compliance with the Declaration, Bylaws or Rules and Regulations adopted by the Association, for the appointment of a receiver by the Association or to foreclose the Association's lien, in no event shall a party be entitled to recover attorneys' fees and costs for actions against the Declarant, its successors and assigns, the Association or Owners for actions to enforce compliance with the Planned Community Act (ORS 94.550 to 94.783, as it may be amended).

#### Section 10.2 Fines Imposed by the Association

In addition to any other remedies available to the Association hereunder and subject to the requirements of ORS 94.630(1)(n), the Association shall have the right to impose reasonable fines upon an Owner who violates the Declaration, Bylaws and any rules or regulations of the Association, in the manner and amount the Board deems appropriate in relation to the violation.

#### Section 10.3 Term and Amendments

The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded (the "Initial Term"), after which time they shall be automatically extended for successive periods of ten (10) years each, unless a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding is presented to the Board or other duly appointed and authorized persons, which shall authorize the Board, or other duly appointed and authorized persons, to execute and properly record a notice of termination of this Declaration in the real property records of Deschutes County, Oregon. This Declaration may be amended at any time during the first thirty (30) year period or any extension thereof, by a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as the Declarant is a Class B Member. Notwithstanding the foregoing, no amendment to this Declaration shall change the boundaries of any Lot or any uses to which any Lot or Unit is

restricted or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot unless the Owners of affected Lots or Units unanimously consent to the amendment. Upon approval of an amendment as provided herein, the president and secretary shall execute an instrument amending this Declaration and certifying that the amendment was adopted in accordance with this Declaration and ORS 94.590, which certification shall be properly acknowledged in the manner of acknowledgment of deeds, and the Board, or other duly appointed and authorized persons, shall record the instrument amending this Declaration. For purposes of voting on an amendment to this Declaration pursuant to this Section 10.3, Declarant shall be treated as a Class A member with one (1) vote per Lot owned except as otherwise provided by ORS 94.585. Subject to the provisions of Section 10.4, notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of anyone, modify, amend or repeal this Declaration at any time before the closing of the sale on the first Lot, provided said amendment, modification, or repeal is in writing and properly recorded in the Deed Records of Deschutes County, Oregon.

Declarant further reserves the right at any time to amend this Declaration, or any amendment hereto, in order to correct scrivener's errors. In no event shall an amendment pursuant to this Section create, limit, or diminish Declarant's special rights without Declarant's written consent or change the boundaries of any Lot or any use to which any Lot is restricted unless the Owners of the affected Lots consent to the amendment.

#### Section 10.4 Regulatory Amendments

Notwithstanding the provisions of Section 10.3, until the Turnover Meeting described in the Bylaws and to the extent permitted by applicable law, Declarant shall have the right to amend this Declaration or the Bylaws in order to comply with the requirements of any applicable statute, ordinance, regulation or guideline of 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 or to comply with any applicable law, including, without limitation, the Oregon Planned Community Act.

#### Section 10.5 City Approval of Certain Amendments; Indemnification

Those portions of Section 4.3 pertaining to the exteriors of Building Structures and all of Sections 4.4.B, 8.1, 8.2, 10.5, and 10.14 of this Declaration shall not be amended without the prior written consent of the City of Bend, Oregon.

#### Section 10.6 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

### Section 10.7 Rights and Obligations

The provisions of this Declaration and the Articles of Incorporation and Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and Bylaws, whether or not mention thereof is made in said deed.

### Section 10.8 Miscellaneous Provisions

Any provision of the within Declaration or of the Articles of Incorporation and Bylaws to the contrary notwithstanding, the following provisions shall control:

#### A. Notice to Institutional Holders of First Mortgage Liens

The following actions will require notice to all institutional holders of first mortgage liens: (i) abandonment or termination of the Association; or (ii) material amendment to the Declaration.

#### B. Notice to Institutional Holders of First Mortgage of Default or Liens

Upon the written request of any first mortgagee of a dwelling on a Lot, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such dwelling in the performance of such Owner's obligations under the within Declaration or the Bylaws or Association rules or regulations which is not cured within thirty (30) days. Any first mortgagee of a dwelling who comes into possession of the said dwelling pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which accrued before the time such holder comes into possession of the dwelling.

#### C. Consent of Institutional Holders of First Mortgage Liens

Unless at least seventy-five percent (75%) of the first mortgagees (based upon one (1) vote per Lot for each mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

- i) by act or omission seek to abandon, partition, encumber, or transfer the Common Areas, if any, or any portion thereof or interest therein except for the purpose of dedication for public right of way. (The granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause.);

ii) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association;

iii) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the Units or maintenance of the Units or Lots; or

iv) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Areas on a current replacement cost basis in an amount not less than one hundred (100) percent of the insurable value (based on current replacement costs).

#### Section 10.9 Personal Pronouns

All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

#### Section 10.10 Statutory References

All references to particular statutory provisions in this Declaration shall be deemed to refer to such statutory provisions or their successor provisions, if applicable.

#### Section 10.11 Headings

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

#### Section 10.12 Conflicts

If there is a conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

#### Section 10.13 Partial Invalidity

The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

#### Section 10.14 Termination

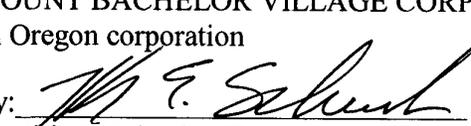
This Declaration shall terminate upon the termination of the CC&Rs in accordance with the terms of Section 10.3, except that those portions of Section 4.3 pertaining to the exteriors of Building Structures and all of Sections 4.4.B, 8.1, 8.2, 10.5 and 10.14 of this Declaration shall not terminate without the prior written consent of the City of Bend, Oregon.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of this 24<sup>th</sup> day of May, 2004.

**DECLARANT:**

MOUNT BACHELOR VILLAGE CORPORATION,  
an Oregon corporation

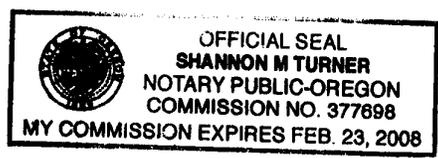
By:

  
Kirk E. Schueler, Treasurer

STATE OF OREGON        }  
  }  
COUNTY OF DESCHUTES }

The foregoing instrument was acknowledged before me the 24<sup>th</sup> day of May, 2004, by Kirk E. Schueler, the Treasurer of Mount Bachelor Village Corporation, an Oregon corporation, on behalf of the corporation.

  
Notary Public, State of Oregon



**EXHIBIT "A"**

**PROPERTY SUBJECT TO THE DECLARATION OF RIVER WILD  
TOWNHOMES**

LOTS 22, 23, 24, 25, 26, 27, 28 & 29, of the Official Plat of RIVER WILD AT MOUNT BACHELOR VILLAGE, P.U.D., PHASE 1, located in the West One-Half (W1/2) of Section 7, Township 18 South, Range 12 East, Willamette Meridian; recorded on October 14, 2003 in Volume 2003, Page 71138 in the official records of Deschutes County, Oregon