

106 ↓
71

After recording, return to:

NNP-RiverRim, LLC
c/o Newland Communities
805 SW Industrial Way, Suite 9
→ Bend, Oregon 97702

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2003-29886



\$71.00

00161323200300298860080084

05/05/2003 04:11:05 PM

D-COTV Cnt=2 Stn=3 MARSHA

\$40.00 \$5.00 \$11.00 \$10.00 \$5.00

^
~~PLANNED COMMUNITY SUBDIVISION~~
(BUILDER'S COVENANTS, CONDITIONS AND RESTRICTIONS)

FOR

RIVERRIM

THIS AGREEMENT AS TO BUILDER'S COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVERRIM ("Builder's CC&Rs") is made this 7th day of April, 2003, by NNP-RIVERRIM, LLC, a Delaware limited liability company duly authorized to transact business in the State of Oregon ("Seller"), and Schumacher Construction, Inc., an Oregon Corporation ("Builder").

RECITALS

A. Builder entered into that certain Lot Purchase Agreement dated April 4th, 2003 ("Purchase Agreement"), with Seller for the purchase of 5 lots (the "Lots" or, singular, a "Lot") in RiverRim P.U.D., Phase 1, Deschutes County, Oregon ("RiverRim"), the legal descriptions of which are set forth in Exhibit A attached hereto and by this reference incorporated herein.

B. RiverRim is subject to that certain Planned Community Subdivision Declaration of Covenants, Conditions and Restrictions for RiverRim recorded April 25, 2002, Auditor's File # 2002-22719, records of Deschutes County, Oregon (the "Declaration"). Among other things, the Declaration imposes upon Builder requirements to obtain approvals from Seller in connection with Builder's development of and construction on the Lots, requirements to comply with Seller's Development Standards (and Builder hereby acknowledges receipt of a copy of such Development Standards) and other requirements as more particularly set forth in the Declaration.

C. The Purchase Agreement also imposes upon Builder requirements and obligations in connection with the development of and construction on the Lots.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants of the parties set forth herein, Seller and Builder agree as follows:

AGREEMENTS

1. **Builder's Obligations.** In connection with Builder's development of the Lots and Builder's construction of residences and improvements in, on or under the Lots or related thereto, Builder shall comply with all applicable terms, conditions, provisions, agreements, requirements and obligations of the Declaration, Seller's Development Standards and the Purchase Agreement. This includes, without limitation:

- (a) Builder's obligations to secure governmental approvals and other approvals and permits in connection with Builder's development and construction;
- (b) obtaining approval by Seller of all preliminary, final or revised plans or applications for all construction about any improvements on or adjacent to the Lots;
- (c) compliance with model home restrictions;
- (d) compliance with provisions as to grading, erosion control and maintenance of the Lots;
- (e) compliance with requirements as to the use of Seller's project names;
- (f) conveyance of easements when required; and
- (g) compliance with restrictions on resale of Lots, other than to home buyers.

2. **Release.** Upon the resale of a Lot subject to the Builder's CC&Rs to a home buyer, if Builder is not then in default under these Builder's CC&Rs with respect to the Lot being sold, Seller shall execute and deliver to Builder, or to the closing escrow for such resale, a release in recordable form, releasing the subject Lot from the lien, agreements, requirements, and obligations of these Builder's CC&Rs. The release of such Lot from these Builder's CC&Rs shall constitute a partial release only and shall not affect the other Lots subject to these Builder's CC&Rs, which shall remain subject thereto. Lots released from these Builder's CC&Rs shall remain subject to the Declaration. The terms of the Declaration shall control over the terms of the Builder's CC&Rs, and a release from the Builder's CC&Rs shall not constitute a release from or satisfaction of any of the terms of the Declaration, even with respect to similar provisions in the Declaration and the Builder's CC&Rs. In the event of a resale of a Lot by Builder to a home buyer where Seller has not released the Lot from these Builder's CC&Rs because of noncompliance with a term or terms thereof, Seller shall release the Lot from the Builder's CC&Rs in the manner above provided when such noncompliance has been cured and Seller has been provided with evidence of such cure.

3. **General and Miscellaneous Provisions.**

(a) **Time Is of the Essence.** Time is expressly made of the essence of each provision of these Builder's CC&Rs.

(b) **Notices.** Any notice required or permitted under these Builder's CC&Rs shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail addressed as follows:

To Seller: NNP-RiverRim, LLC
 c/o Newland Communities
 16701 S.E. McGillivray Boulevard, Suite 150
 Vancouver, Washington 98683
 Attention: D.E. Wood, Jr.

To Builder: Schumacher Construction, Inc
 61396 S. Highway 97
 Suite 226
 Bend, OR 97702
 Attn: Robert M. Schumacher

(c) **Attorney Fees.** In the event any controversy or claim arises under these Builder's CC&Rs, the prevailing party shall be entitled to its reasonable costs, disbursements and attorney fees, together with all expenses that it may reasonably incur in taking such action, including, but not limited to, costs incurred in searching records, expert witness and consulting fees, discovery depositions, whether or not introduced into evidence in the trial, hearing or further proceeding and travel expenses in any arbitration, trial or other proceeding, including any proceeding brought to enforce an award to judgment and any and all appeals taken therefrom.

(d) **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause. Without limiting the generality of the foregoing provision if, notwithstanding noncompliance with a term or terms of these Builder's CC&Rs, a Lot is released therefrom, Seller need not release any other Lot or Lots from these Builder's CC&Rs if there is then noncompliance with the same or similar term or terms.

(e) **Governing Law.** These Builder's CC&Rs shall be construed in accordance with and governed by the laws of the State of Oregon. The parties agree to venue in Deschutes County, State of Oregon.

(f) **Severability.** If any portion of these Builder's CC&Rs shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

(g) **Counterparts.** These Builder's CC&Rs may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement.

(h) **Number, Gender and Captions.** In construing these Builder CC&Rs, it is understood that if the context so requires the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply generally to one or more individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Builder's CC&Rs.

(i) **Binding Effect.** The covenants, conditions and terms of these Builder's CC&Rs shall extend to and be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the undersigned parties have executed these Builder's CC&Rs as of the date first written above.

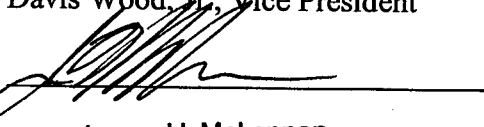
SELLER:

NNP-RIVERRIM, LLC,
a Delaware limited liability company

By:


Davis Wood, Jr., Vice President

By:


Name: James H. McLennan
Vice President and
Title Chief Financial Officer

Schumacher Construction, Inc.
An Oregon Corporation

Name:

Title:

On this 17th day of April, 2003, the undersigned, a Notary Public in and for the State of Washington duly sworn, personally appeared Davis Wood, Jr., to me known to be the Vice President of NNP-RIVERRIM, LLC, a Delaware limited liability company, the company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath that he is authorized to execute the said instrument.

A circular notary seal for Adrianna Poff, a Notary Public in the State of Washington. The seal features a double-lined border. The text "ADRIANNA POFF" is at the top, "COMMISSION EXPIRES" is below it, "NOTARY PUBLIC" is in the center, and "MAY 14, 2004" is below that. "STATE OF WASHINGTON" is at the bottom.

Page 5. BUILDER'S COVENANTS, CONDITIONS AND RESTRICTIONS
K:\41520\00001\SMS\SMS_034CCR

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

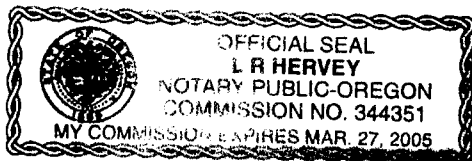
On _____, 2003 before me, _____, Notary Public,
personally appeared _____, claiming to be the _____ of
NNP-RIVERRIM, LLC, a Delaware limited liability company, personally known to me to be
the person whose name is subscribed to the within instrument and acknowledged to me that he
executed the same in his authorized capacity, and that by his signature on the instrument the
person or entity on behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Signature _____
Notary Public for the State of California
My commission expires _____

STATE OF OREGON)
) ss.
County of DESCHUTES)

The foregoing instrument was acknowledged before me on 4/23/03,
2003, by Robert Schomacher in (his/her) capacity as
PRESIDENT of SCHOMACHER CONSTRUCTION INC a(n)
OREGON CORP, on behalf of the Corporation.



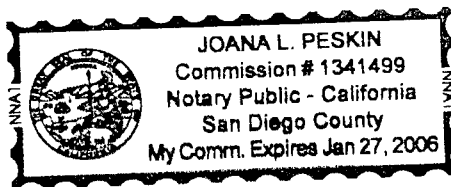
[Signature]
Notary Public for Oregon
My commission expires: 3.27.05

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On this 30th day of April, 2003, the undersigned, a Notary Public in and for the State of California duly sworn, personally appeared James H. McLennan, claiming to be the Vice President and Chief Financial Officer of NNP-RIVERRIM, LLC, a Delaware limited liability company, the company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath that ~~(s)~~he is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Joana L. Peskin

Notary Public in and for the State of California
My Commission expires 1/27/06

EXHIBIT A
(Schumacher)

Lots 128, 129, 130, 131 and 133, RiverRim P. U. D., Phase 1, Deschutes, Oregon, as recorded on April 25, 2002 in plat cabinet F pages 110-125 in the office of the Deschutes County Clerk, Deschutes County, Oregon