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# Deschutes County Clerk

## Certificate Page



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DECLARATION OF COVENANTS, CODES AND RESTRICTIONS FOR

TERRENCE A. DONOFRIO, CFO  
PENN BROOK HOMES, INC  
250 N. W. FRANKLIN AVE  
SUITE 204  
BEND, OR 97701

SHEVLIN RESERVE, A SUBDIVISION

As amended and re-stated on December 18, 2006

THIS DECLARATION is made this made on December 18, 2006 having been previously recorded on October 11, 2005 and amended on February 9, 2006, by Shevlin Reserve, L.L.C., an Oregon limited liability company ("Declarant").

OBJECTIVES

Declarant owns property located in Deschutes County, Oregon. Declarant proposes to develop portions of this property as a townhome development to be known as Shevlin Reserve.

The plat of Shevlin Reserve has been recorded in the plat records of Deschutes County, Oregon. Declarant desires to subject lots 1 through 12 of the property described in such plat to the covenants, conditions, restrictions, and charges set forth herein for the benefit of such property and its present and subsequent owners. This Declaration shall not apply to lots 13 through 16 of the plat of Shevlin Reserve (as they shall be subjected to the terms of a separate declaration.) Lots 1 through 12 shall hereafter be known as The Townhomes at Shevlin Reserve.

The Declarant has recorded previous documents for covenants, conditions, restrictions and maintenance easements under recording numbers in Deschutes County, OR, numbered 2005-69050, 2005-85807, 2005-85808, 2005-85809, 2005-85810, 2005-85811, 2005-85812, and 2006-09640. This document supersedes and replaces the documents recorded and numbered 2005-69050, 2005-85807, 2005-85808, 2005-85809, 2005-85810, 2005-85811, 2005-85812, and 2006-09640. The documents recorded and numbered 2005-69050, 2005-85807, 2005-85808, 2005-85809, 2005-85810, 2005-85811, 2005-85812 and 2006-09640 will be terminated simultaneously with the recording of this document.

NOW, THEREFORE, Declarant hereby declares that The Townhomes at Shevlin Reserve, more particularly described on Exhibit A attached hereto shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 "Association" means the nonprofit corporation to be formed to serve as the association of Owners (as hereinafter defined) as provided in Article 8 hereof, and its successors and assigns.

1.2 "Building" means six duplex buildings situated on lots 1 through 12, Shevlin Reserve.

1.3 "Declarant" means Shevlin Reserve, L.L.C., an Oregon limited liability company, any person who succeeds to any special Declarant right and to whom all of the Declarant's ownership interest in The Townhomes at Shevlin Reserve is transferred, or any person, other than Owners, to whom the Declarant has transferred, for purposes of resale, all of Declarant's ownership interest in The Townhomes at Shevlin Reserve.

1.4 "Improvement" means every temporary or permanent structure or improvement of any kind, including but not limited to a house, courtyard screen, wall, driveway, street address light fixture or other product of construction efforts on or in respect to any property within The Townhomes at Shevlin Reserve, including landscaping, and every alteration, painting or reconstruction thereof.

1.5 "Living Unit" means the twelve Living Units included in the Buildings.

1.6 "Lot" means a platted or legally partitioned lot, within The Townhomes at Shevlin Reserve.

1.7 "Manager" means the person with whom the Association contracts to provide management services pursuant to section 9.4.

1.8 "Mortgage" means a mortgage, trust deed, or land sales contract; "mortgagee" means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract; and "mortgagor" means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

1.9 "Owner" means the person or persons, including Declarant, owning any Living Unit, including any vendee under a recorded land sales contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Living Unit, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Living Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.10 "The Townhomes at Shevlin Reserve" means the property designated in Section 2.1 of this Declaration.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 Development. Declarant hereby declares that all of the real property described on Exhibit A attached hereto is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration and includes 12 Living Units.

2.2 Declarant Improvements. Declarant agrees to build all improvements necessary for The Townhomes at Shevlin Reserve. Declarant does not agree to build any additional improvements but does not choose to limit Declarant's rights to add improvements not described in this Declaration.

## ARTICLE 3

### PARTY WALLS, INSURANCE, AND DAMAGE OR DESTRUCTION

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

3.2 Damage to Party Wall. In the event of damage or destruction of any party wall from any cause, other than the negligence of an adjacent Owner, the Association shall repair or rebuild the party wall, and each Owner, his successors and assigns, shall have the right to the full use of the party wall so repaired or rebuilt. If an adjacent Owner's negligence shall cause damage to or destruction of the party wall and if such damage or destruction is not covered by insurance, such negligent party shall bear the entire cost of repair or reconstruction. If any negligent Owner shall neglect or refuse to pay his share within 15 days after written demand by the Association, the Association shall be entitled to have a lien on the Living Unit of the negligent Owner for the amount of such defaulting party's share of the repair or replacement cost. Any lien created pursuant to this Agreement may be foreclosed in the same manner as provided in Section 11.3.

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

3.4 Destruction of Living Unit. If one or more of the Buildings are damaged, destroyed, or partially condemned, the Association Board of Directors shall immediately proceed to rebuild and restore the Building or Buildings so damaged, destroyed, or partially condemned so that the same will be returned to substantially the same condition in which the Building or Buildings existed prior to such damage, destruction, or partial condemnation. Each Living Unit shall have substantially the same vertical and horizontal boundaries as before. If the insurance proceeds are insufficient to rebuild and restore, the Owners shall be liable for assessment for any deficiency. Any material deviation from the design of the Living Unit prior to destruction shall require the approval of the Owner of the attached Living Unit plus a positive vote of seven (7) additional Owners.

3.5 Easements. No Owner shall alter or change a party wall in any manner, interior decoration excepted. Each party wall shall always remain in its present location. Each adjacent Owner shall have a perpetual easement in that part of the Living Unit of the adjacent Owner on which the party wall is located, for party wall purposes. In addition, each Owner shall have an easement across any adjoining Lot or Lots to allow the servicing of HVAC units, drain lines, retention ponds or dry wells located on the Owner's or an adjoining Lot.

3.6 Insurance. The Association, through the Board of Directors, shall obtain and maintain at all times and shall pay for out of operating assessments the following insurance covering both the Lots and the Living Units, including fixtures, equipment, and other property which would ordinarily be required to be covered by a holder of a first mortgage:

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

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

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

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

Notwithstanding any of the foregoing provisions and requirements for Association insurance, each Owner is required to have regular homeowner's insurance for interior contents and theft of personal

property. We encourage all Owners to also purchase additional personal liability insurance for incidents and claims that may be filed against the individual Owner for events on their Lot and/or Living Unit.

3.7 Election Not to Rebuild. If any Living Unit is destroyed and the Owners of all Living Units situated in the affected Building elect not to rebuild and if the election not to rebuild is approved by a seventy-five percent (75%) vote of the Owners, the affected Lots shall be cleared of debris and Living Units of an alternate design may be constructed subject to approval of Declarant or the Association.

#### ARTICLE 4

##### Building Maintenance Agreement inserted as of January 27, 2006

WHEREAS, the shared walls, roof, footings, exterior fireplace structure, and the chimney for the interior fireplaces within the property lines of the lots and any shared structural connections or other Improvements as necessary for the construction of the Shevlin Reserve townhouses must be maintained by owners and/or the Association of the Owners of Lots 1 through 12 of the Shevlin Reserve Subdivision.

Now, therefore, it is agreed, upon ownership by all owners, mortgagors, mortgagees, renters or any other legal entity of possession, as follows:

1. The Improvements of the Shevlin Reserve townhouses are commonly owned and shall be maintained by the owners of said Lots. The owners of each Lot(s) shall share equally in the maintenance of the Improvements except as otherwise hereinafter provided.
2. The obligation to maintain the Improvements shall be attached to and run with the land and shall be binding on all successors in interest to the Lots. It is the intent of the parties hereto, to create a continuing obligation on the part of each owner of the Lots present or future, to share in the maintenance of the Improvements.
3. If a lot owner or his agent disturbs the Improvements in any way, such owner shall bear the full cost and responsibility of returning the respective Improvements to the condition it was prior to such disturbance. In the event such owner refuses or neglects to restore the Improvements, the other Lot owner may have such repairs made and assess the Lot owner for the cost of such repairs. Those common Improvements required by the state building code as defined in ORS 455.010 shall be maintained without exception.
4. In the event other repairs are required by governing municipalities to the Improvements, the cost will be divided equally among all Lot owners and assessed by the Association.
5. Structural Improvements identified or necessary for lateral stability, including but not limited to horizontal and vertical strapping, foundation tie downs and plywood sheathing, shall not be altered without the analysis and approval of a structural engineer registered in the State of Oregon and pursuant to a permit from the governing jurisdiction.
6. The above agreements may only be amended through the Association of the owners of the Lots, with exception of the requirement to maintain those Improvements required by the state building code in paragraphs 3 and 5 above.
7. The parties shall hold harmless, defend and indemnify the City of Bend and its officers, agents and employees against all claims, demands, actions and suits, including attorney's fees

and costs brought against any of them arising out of the failure to properly design, locate, construct, repair or maintain the Improvements.

8. In exchange for their promises under this agreement, the parties acknowledge that this agreement is executed in part to comply with the applicable state specialty code.

9. The following exceptions will be maintained by individual Lot owners and are not the responsibility of the Association:

- a. Outdoor fireplace cleaning and maintenance of all working parts;
- b. Snow and ice removal of city sidewalks, as required by city code;
- c. Snow and ice removal of driveways, entryways, courtyards and terraces;
- d. Window cleaning;
- e. Or as subsequently agreed by the Lot Owners and identified by the Association.

## ARTICLE 5

### PROPERTY RIGHTS IN LIVING UNITS

5.1 Use and Occupancy. Except as otherwise expressly provided in this Declaration, the Owner of a Living Unit in The Townhomes at Shevlin Reserve shall be entitled to the exclusive use and benefit of such Living Unit.

5.2 Easements Reserved. In addition to any easements shown on the recorded plats, Declarant hereby reserves the following easements for the benefit of Declarant, the Owners, and the Association:

(a) Exterior and Landscaping Maintenance. The Association, its managers, and contractors shall have the right to enter upon each Lot and Living Unit to the extent reasonably necessary for maintenance and repair of landscaping on the Lots and exterior portions of the living Units. All land to the rear of the Living Units will be landscaped with natural materials by the Declarant, and the land shall not be irrigated. Such landscaping shall be maintained by the Association and shall not be modified by an Owner.

(b) Right of Entry. Declarant, the Association, and any representative of the Association authorized by it 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. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) Sidewalks and Paths. Declarant, the Association, and the Owners, shall have an easement across that portion of each lot on which there is situated a portion of a sidewalk or path as shown on the plat of The Townhomes at Shevlin Reserve Townhomes.

5.3 Restriction on Transfer. There shall be no inter vivos transfer, either directly or indirectly, of any interest in a Living Unit which would result in any person owning, either directly or indirectly through a corporation or a partnership, less than a twenty percent (20%) interest in such Living Unit without the prior written consent of Declarant.

## ARTICLE 6

### RESTRICTIONS ON USE OF LIVING UNITS

6.1 Occupancy. No Owner shall occupy, use, or permit his Lot or Living Unit, or any part thereof, to be used for any purpose other than a private residence for the Owner, his family or his guests,

including home occupations as defined in applicable land use ordinances, except that each Owner shall be permitted to rent the Unit for periods of no shorter duration than 30 days when not in occupancy. Nothing in this section shall be deemed to prohibit (a) activities relating to the sale of Living Units, or (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on Lots in the normal course of construction. Declarant may use any Living Unit as a sales office or model.

6.2 Maintenance. Each Lot shall be maintained in a clean and attractive condition, in good repair, and in such a fashion as not to create a fire hazard. All garbage, trash, cuttings, refuse, garbage, and refuse containers, clothes drying apparatus, and other service facilities located on each Lot shall be screened from view in a manner approved by Declarant and/or the Association. No Owner shall take any action that will unduly increase the Association's expense of exterior maintenance.

6.3 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a Lot except with the prior written consent of Declarant or the Association.

6.4 Offensive or Commercial Activity. No offensive or commercial activity shall be carried on, nor shall anything be done on any Lot that may be or become an annoyance or nuisance to the other Owners.

6.5 Signs. No signs shall be erected or maintained on any Lot except signs which are approved as to appearance and location by Declarant. The restrictions contained in this paragraph shall not apply to directional signs or the placement by the Declarant or Declarant's agent of one or more signs identifying the name of the Declarant and/or the location of a sales office or model home.

6.6 Antennas and Satellite Dishes. Exterior satellite receiver, transmission dishes, exterior antennas, or other sending or receiving devices shall not be permitted to be placed upon any Lot except as approved by Declarant or the Association.

6.7 Prohibited Structures. Except for trailers related to construction activities within The Townhomes at Shevlin Reserve no house trailer, mobile home, manufactured home assembled off site, tent, shack, barn, or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot.

6.8 View. The height of vegetation and trees on a Lot shall not materially restrict the view of other Owners. The Board of Directors of the Association shall be the sole judge of the suitability of such heights. This section is not to be read as justification to create views not present when the Living Unit was originally purchased.

6.9 Parking. No house trailer, travel trailer, boat trailer, camper, incapacitated motor vehicle, snowmobile, motor home, or off-road vehicle shall be parked or stored on any Lot outside of the garage, except as provided in the Association's rules and regulations.

6.10 Domestic Animals. No domestic animals shall be kept or raised on any Lot or within or in any Living Unit except for household pets which may be kept and raised only in accordance with regulations adopted by the Association Board of Directors. The Association Board of Directors shall have the right to prohibit pets which are regarded as dangerous.

## ARTICLE 7

### BUILDING RESTRICTIONS

7.1 Approval Required. No Improvement, as defined in Section 1.5 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the Declarant or a majority vote of the Board of Directors of the Association. Nothing herein shall require the Declarant to obtain approval from the Association, however.

7.2 Procedure. Any Owner proposing to construct any Improvements within The Townhomes at Shevlin Reserve (including any exterior alteration, addition, destruction, or modification to any such Improvements) shall follow the procedures and shall be subject to the approvals and restrictions required by this Declaration. Failure to follow such procedures or obtain such approvals shall be deemed a breach of this Declaration.

7.3 Fences. No fences of any kind shall be permitted within The Townhomes at Shevlin Reserve other than the screens as provided by the Declarant and/or the Association.

7.4 Construction Beyond Rear of Dwelling. No Owner shall construct any building or structure beyond the rear of the Living Unit.

## ARTICLE 8

### ASSOCIATION

Declarant shall organize an association of all of the Owners within The Townhomes at Shevlin Reserve. Such Association, its successors, and assigns, shall be organized under the name "The Townhomes at Shevlin Reserve Homeowners Association, Inc.," or such similar name as Declarant shall designate, and shall have such property, powers, and obligations as are set forth in this Declaration for the benefit of The Townhomes at Shevlin Reserve and all Owners of property located therein.

8.1 Organization. Declarant shall, before the first Living Unit is conveyed to an Owner, organize the Association as a nonprofit mutual benefit corporation under the Oregon Nonprofit Corporation Act.

8.2 Membership. Every Owner of one or more Living Units shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Living Units, be a member of the Association. Such membership shall commence, exist, and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 Voting Rights. Voting rights within the Association shall be allocated as follows:

(a) Living Units. Except as provided in Section 8.3(b) with respect to the Class B member, Living Units shall be allocated one vote per Living Unit.

(b) Classes of Voting Membership. The Association shall have two classes of voting membership:



Class A. Class A members shall be all Owners with the exception of the Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to voting rights for each Living Unit owned computed in accordance with Section 8.3(a) above. When more than one person holds an interest in any Living Unit, all such persons shall be members. The vote for such Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Living Unit.

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

- (i) When Living Units on seventy-five percent (75%) of the Lots have been sold and conveyed to Owners other than Declarant; or
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership; or
- (iii) Upon the expiration of seven years from the date hereof.

8.4 Powers and Obligations. The Association shall have, exercise, and perform all of the following powers, duties, and obligations:

- (a) Declaration. The powers, duties, and obligations granted to the Association by this Declaration.
- (b) Statutory Powers. The powers, duties, and obligations of a mutual benefit nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act as it may be amended from time to time.
- (c) General. Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the Oregon Nonprofit Corporation Act.

8.5 Liability. Neither the Association nor any officer or member of its Board of Directors shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board of Directors, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him.

8.6 Interim Board and Turnover Meeting. Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarant or their successors have been elected by the Owners at the turnover meeting described in this Section. Not later than ninety (90) days after the expiration of the period of Declarant's Class B membership pursuant to Section 8.3, Declarant shall call a meeting for the purpose of turning over administrative responsibility for The Townhomes at Shevlin Reserve to the Association. Declarant shall give notice of the meeting to each Owner as provided for in the Bylaws of the Association. If Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 8.7 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

8.7 Transitional Advisory Committee. Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant of The Townhomes at Shevlin Reserve to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the later of (a) Declarant has conveyed to Owners, other than a successor Declarant, Living Units on fifty percent (50%) of the Lots in The Townhomes at Shevlin Reserve, or (b) the date that Declarant has conveyed six (6) Lots in The Townhomes at Shevlin Reserve to Owners, other than a successor Declarant. Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Declarant, shall select two or more members. Declarant may select no more than one member.

(a) Declarant Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.

(b) Owners' Failure to Select Members. Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.

(c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 8.6 above has been held.

8.8 Declarant Control After Turnover. After the turnover meeting described in Section 8.6 above, Declarant shall continue to have the voting rights described in Section 8.3(b) above. In addition, a majority of the Board of Directors of the Association shall be elected by Declarant, as Class B member, with the balance of the Board of Directors elected by the Class A members. After termination of Class B membership, all directors shall be elected by the Class A members.

8.9 Association Rules and Regulations. The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and Living Units as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property within The Townhomes at Shevlin Reserve. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Living Units upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

## ARTICLE 9

### MAINTENANCE, UTILITIES, AND MANAGEMENT SERVICES

9.1 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities on the Property, if any, such as sanitary sewer service lines, domestic water service lines, retention ponds, storm water detention facilities, and storm drainage lines, and all catch basins, except to the extent such maintenance is performed by the utilities furnishing such services.

9.2 Maintenance of Building Exteriors and Landscaping. Maintenance of the exterior of the Buildings, sidewalks and entry-walk, and landscaping on the Lots shall be the responsibility of the Association except as hereinafter provided. Landscaping to the rear of each property will be left in a natural state and not irrigated, but will be maintained by the Association. Exterior maintenance of Buildings shall include, but is not limited to, painting or staining as required, re-roofing, maintenance of all sewer pumps, all exterior lighting, asphalt driveways, gutters and concrete planters. Owners shall be responsible for concrete maintenance and repair on all courtyards, and terraces, as well as the care of any hot tubs. Owners shall also be responsible for the cost of any exterior repairs necessitated or caused by the negligence or intentional misconduct of such Owner or such Owner's guests or invitees pursuant Article 4, Section 3, above, including, but not limited to, broken windows and other property damage.

9.3 Management. The Association Board of Directors may engage a Manager for the Association and may delegate to the Manager such duties of the officers of the Association as the Association Board of Directors deems appropriate.

## ARTICLE 10

### ASSESSMENTS

10.1 Annual Operating Budgets. The Association Board of Directors shall on or before December 1 of each year prepare an operating budget for the Association for the ensuing year, taking into account the current costs of insurance premiums, maintenance, and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law.

10.2 Operating Assessments. All Living Units shall be assessed equally for operating costs. The amount of the assessment per Living Unit shall be determined by dividing the annual budget by the total number of Living Units.

10.3 Special Purpose Assessments. In the event that the Association Board of Directors deems it to be the advantage of the Owners to impose a special purpose assessment to provide funds for a particular capital improvement, capital expenditure, or recreational facility; it may impose such a special assessment, provided that the amount of the assessment and the terms upon which it will be imposed have been approved by the vote or written consent of the Class B member, if any, and by not less than seventy-five percent (75%) of the votes of the Class A members who are voting in person, by absentee ballot or by proxy at a meeting duly called for the purpose of approving the Special Purpose Assessment.

10.4 Property Reserve Account. Declarant shall establish a reserve account that shall be called the "Property Reserve Account," and which need not be kept separate and apart from all other funds of the Association. The Property Reserve Account shall be used exclusively for replacement of items of common property which will normally require replacement, in whole or in part, in more than three and less than thirty years, for painting of the exterior of Buildings and for replacement of roofs on the Buildings and not for regular or periodic maintenance expenses. Included as a line item in each operating assessment, shall be an amount to be added to the Property Reserve Account which amount shall take into account the current replacement cost of each item of common property which has an estimated life of greater than three but less than thirty years and the estimated remaining life for such items of common property and the estimated cost of painting and reroofing the Buildings together with the projected date upon which exterior painting and reroofing will be required. Declarant shall not be required to pay any amount under this Section 10.4 assessed to a Living Unit owned by Declarant until such date as the Living Unit is occupied as a residence. At least annually, the Association Board of Directors shall conduct a reserve study or review and update an existing study of the common property to determine the reserve account requirements in accordance with ORS 94.595. At any time after the second year after the turnover meeting described in Section 8.6 above, future assessments for the Property Reserve Account may be increased or reduced by the Association Board of Directors provided that any such action by the Association Board of Directors may be modified by vote of not less than seventy-five percent (75%) of the Owners.

10.5 Payment of Assessments. The Association shall, on or about the 25th day of each month provide notice to the Owner of each Living Unit of the amount of the assessments for such Living Unit for the ensuing month. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 15 days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. The Board shall have the right to give discounts for advance payment of assessments.

10.6 Creation of Lien; and Personal Obligation of Assessments. Declarant, for each Living Unit owned by it within The Townhomes at Shevlin Reserve does hereby covenant, and each Owner of any Living Unit by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorney fees imposed pursuant to Section 11.6, shall be a charge on the land and a continuing lien upon the Living Unit against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was the Owner of such Living Unit at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

10.7 Annual Accounting. Each calendar year the Association Board of Directors shall render to each Owner an accounting which shall set forth the amount and source of all income received in the maintenance fund and all disbursements from the fund during the previous calendar year, together with a statement of the assets and liabilities of the maintenance fund at the close of the last calendar year. The Association Board of Directors shall maintain records of all amounts received into the maintenance fund and of all disbursements therefrom, which records shall be open to inspection by any Owner at any reasonable time during the normal business hours.

## ARTICLE 11

### ENFORCEMENT

11.1 Remedies. In the event any Owner or the invitee of any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Lots and Living Units, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) bring suit or action against such Owner to enforce this Declaration, or (c) impose fines as provided in Section 11.7. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Living Unit.

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the Improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives or remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

(a) Remove Cause of Violation. Enter onto the offending Lot, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation, or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done.

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

- (c) Fines. Impose one or more fines as provided in Section 11.7.

11.3 Default in Payment of Assessments; Enforcement of Lien. If an assessment, fine, or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the legal rate of interest and, in addition, the Association may exercise any or all of the following remedies:

(a) Suspension of Rights; Acceleration. The Association may suspend such Owner's voting rights until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Lot.

(b) Lien. The Association shall have a lien against each Lot and Living Unit for any assessment levied against the Lot and Living Unit and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Living Unit from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.386 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot and Living Unit at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot and Living Unit. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

(c) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in paragraph 11.3(b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) Other Remedies. The Association shall have any other remedy available to it by law or in equity.

11.4 Notification of First Mortgagee. The Board of Directors may notify any first mortgagee of any Living Unit of any default in performance of this Declaration by the Living Unit Owner which is not cured within sixty (60) days.

11.5 Subordination of Lien to First Mortgages. The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first mortgage on such Lot and Living Unit which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot and Living Unit shall not affect the assessment lien, provided however, that if a first mortgagee acquires a Lot and Living Unit by foreclosure or deed in lieu of foreclosure, such mortgagee and a subsequent purchaser (other than the Owner liable for payment of the assessment covered by the lien) shall not be liable for any of the common expenses chargeable to the Lot and Living Unit which became due before the mortgagee or purchaser acquired title to the Lot and Living Unit by foreclosure or deed in lieu of foreclosure. Such sale or transfer, however, shall not release the Lot and Living Unit from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

11.6 Late Charge, Expenses, and Attorney Fees. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed 10 percent of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

11.7 Fines. The Board of Directors may establish a schedule of fines applicable to violations of this Declaration or rules and regulations established pursuant to this Declaration. Fines may be imposed by the Board of Directors after giving the alleged violator notice of the proposed fine and an opportunity to be heard. Fines shall be payable within ten days after receipt of written notice of the imposition of the fine. All fines shall be deposited in the Association's operating account.

11.8 Nonexclusiveness of Remedies. An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

12.1 Amendment and Repeal. This Declaration, or any provision hereof, may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Class A votes, together with the written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

12.2 Regulatory Amendments. Notwithstanding the provisions of Section 12.1 above, until termination of the Class B membership, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

12.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in The Townhomes at Shevlin Reserve and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in The Townhomes at Shevlin Reserve and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Class A votes and the written consent of the Class B member, if any, and the written approval of the holders of mortgages on Living Units in the project to the extent required by Section 12.4. Any such termination shall become effective only if prior to the intended termination date a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

12.4 Right of Mortgagees Relating to Maintenance. At any time that the landscaping or the exterior of the Buildings are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 12.4 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

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

12.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members, and other persons entering The Townhomes at Shevlin Reserve under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Lot, Living Unit, and other areas within The Townhomes at Shevlin Reserve. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

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

12.8 Construction; Severability. This Declaration and any Supplemental Declaration shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and any Supplemental Declarations shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

12.9 Claims Against Declarant. Except as expressly provided herein or by law, any dispute, controversy or claim by the Association or any Owners, (collectively "Claim against Declarant", its principals, successors, assigns, agents or brokers, and/or any contractor, subcontractor, architect, materialman, or other person or entity involved in the planning development or construction of The Townhomes at Shevlin Reserve Townhomes, or any component part thereof), shall be handled as follows:

(a) The Association or Owners, as the case may be, shall deliver written notice of the nature of such Claim to Declarant and any other involved person or entity within one (1) year of becoming aware of the existence of such Claim, or the facts giving rise to such Claim. For purposes of this Section, knowledge of such Claim shall be deemed to exist, without limitation, upon the identification of such Claim or facts relating thereto, in (I) a written report prepared following an inspection in accordance with the inspection provisions contained herein, (ii) a writing by an Owner to Declarant, or (iii) upon discovery of such Claim.

(b) If Declarant or another involved party requests, within one hundred twenty (120) days of the date of receipt of such written notice of Claim, it shall be provided with access to the Property and a reasonable opportunity and time period to cure or otherwise resolve such Claim.

(c) Any such Claim, if not otherwise resolved, shall be submitted to and settled by binding arbitration in accordance with the rules of the American Arbitration Association. Such arbitration shall constitute the sole and exclusive remedy for the resolution of any such Claim.

(d) Any arbitration instituted pursuant to this Declaration shall be conducted in accordance with the Commercial Arbitration Rules or the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The decisions of the of the arbitrator, including the determination of the amount of any damages suffered, if any, shall be conclusive, final and binding upon all the parties, their heirs, executors, administrators, successors, assigns, officers, directors and shareholders, as applicable. On the demand of the arbitrator or any party to an arbitration initiated hereunder, and after reasonable opportunity to join in and become a party to such arbitration, all of the parties to such arbitration and such concerned parties shall be bound by such arbitration proceeding. If any party refuses or neglects to appear at or participate in such arbitration proceeding, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented by the party or parties who do participate. The arbitrator is authorized to award any party or parties such sums as it considers proper for the time, expense and trouble of arbitration including arbitrator fees and attorneys' fees.

(e) In any arbitration of a dispute, controversy or claim by the Association or any Owner or Owners against Declarant, its successors and assigns, and/or any contractor, subcontractor, architect, materialman, consultant, or any other person or entity involved in the planning, development or construction of the The Townhomes at Shevlin Reserve or any component part thereof, not less than ninety percent (90%) of the amount actually awarded, if any, as a result of such arbitration (excluding an award of attorneys fees and costs of suit) must be utilized by the Association, Owner or Owners, solely and exclusively, for the construction, reconstruction, repair or replacement of the Associations or Owners' property. In such proceeding, there shall be no award in excess of the total costs of such repair, improvement or replacement, save the prevailing party's attorney's fees and costs of the suit.



12.10 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 12.11.

(a) Addresses. All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:

(i) If to an Owner, then to the last address for such Owner shown in the Association's records.

(ii) If to Declarant or to the Association, then to Declarant or the Association at:


Shevlin Reserve, L.L.C.  
250 NW Franklin Avenue, Suite 204  
Bend, Oregon 97701  
Attn: Stephen J. Robertson

(b) Change of Address. Any party hereto may change the address to which notices shall be directed by giving ten days' written notice of such change delivered as provided herein.

IN WITNESS WHEREOF, Declarant has executed this Declaration the date first above written.

**SHEVLIN RESERVE, L.L.C**

By: **PENNBROOK HOMES, INC., Manager**

By   
Stephen J. Robertson, President

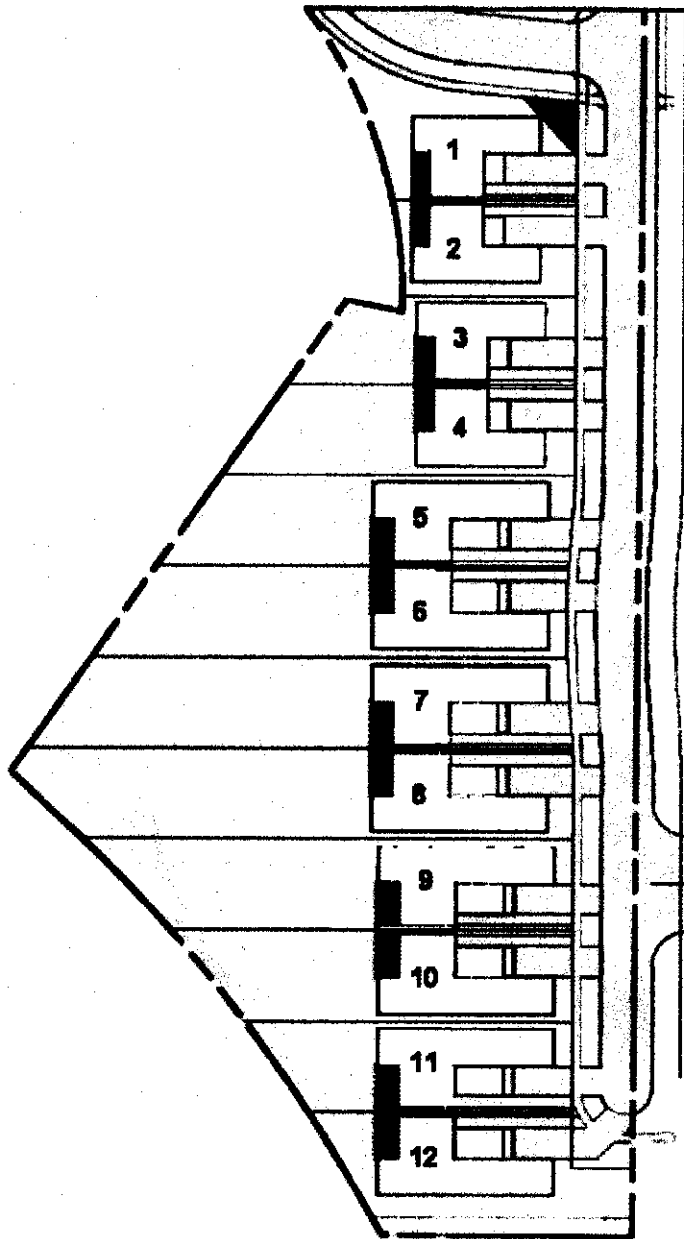
STATE OF OREGON )  
 ) SS  
COUNTY OF Deschutes )

This instrument was acknowledged before me on December 18, 2006, by Stephen J. Robertson as President of Pennbrook Homes Inc., Manager of Shevlin Reserve, L.L.C.



  
Notary Public for Oregon  
My commission expires: Sept 23, 2010

# EXHIBIT A



**Lot Identification numbers for Shevlin Reserve, located in the Southwest Quarter of the Southwest Quarter, of Section 25, Township 17 South, Range 11 East, Willamette Meridian, City of bend, Deschutes County, Oregon as dated August, 2005**