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**RECORDED DOCUMENT**

STATE OF OREGON  
COUNTY OF DESCHUTES



\*2000-4425 \* Vol-Page

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**DO NOT REMOVE THIS CERTIFICATE**

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I hereby certify that the attached instrument was received  
and duly recorded in Deschutes County records:

DATE AND TIME:        Feb. 3, 2000; 11:03 a.m.

RECEIPT NO:            16752

DOCUMENT TYPE:        Planned Community  
                                 Subdivision Amendment

FEE PAID:                \$136.00

NUMBER OF PAGES:    22

A handwritten signature in cursive script, reading "Mary Sue Penhollow".

MARY SUE PENHOLLOW  
DESCHUTES COUNTY CLERK

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COURTESY

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AN ACCOMMODATION ONLY.  
NO LIABILITY ACCEPTED FOR  
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**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
BEND RIVER HEIGHTS  
(PLATTED AS "TUMALO HEIGHTS, A PLANNED UNIT DEVELOPMENT")**

2000-4425-1

THIS SECOND AMENDED DECLARATION is made by Tumalo Heights, LLC, an Oregon limited liability company and the following:

David & Elizabeth Ayarra (Lot 14); Jim & Becky Rozewski (Lot 9); Ron & Stephanie Thompson (Lot 19); Bill & Heidi Matthews (Lots 8 & 15); Charles & Michael House (Lot 18); Bruce & Pamela Hughes (Lot 6); Pat & Elizabeth Conway (Lot 16); Bank of the Cascades (Lot 12); Tumalo Heights LLC (Lots 10, 11, 13, & 26); Clint Potter (Lot 5); Tom & Gloria Kingzett (Lot 17); and Matthews Construction, Inc. (Lots 1, 2, 3, 4, 7, 20, 21, 22, 23, 24 & 25).

**RECITALS**

On April 1, 1997, the Declaration of Covenants, Conditions and Restrictions for Tumalo Heights PUD was recorded in the Official Records of Deschutes County, Oregon under Fee No 97-10743; the Declaration subsequently was amended by Addendum executed on March 4, 1998, and recorded under Fee No. 98-08721 in the Official Records of Deschutes County, Oregon (the Declaration, as amended, is referred to herein as the "First Declaration"). Although the First Declaration was executed by Declarant, Benchmark Northwest, Inc., an Oregon corporation, was named as the Declarant in the First Declaration.

On 1st of September, 1998, the Amended and Restated Declaration of Covenants and Restrictions of Bend River Heights was recorded in the official records of Deschutes County, Oregon, under Fee No 98-39010, et seq;

Declarants herein represent the successors to all interests of Tumalo Heights, LLC, and are hereinafter collectively referred to as "Declarant."

The Amended and Restated Declaration of covenants and restrictions for Bend River Heights provides in paragraph 10.5 that it may be amended at any time, by an instrument signed by owners representing not less than 75 % of the votes entitled to be cast. This Second Amended and Restated Declaration has been signed by more than 75 % of the current owners of the property subject to this declaration.

Declarant desires to amend and restate the Amended and Restated Declaration in its entirety.

The property subject to this Second Amended and Restated Declaration is Lots 1 through

26 inclusive as shown on the Plat of Tumalo Heights, a Planned Unit Development, recorded on April 1, 1997, in Book 9, Pages 258 through 262, in the Plat Records of Deschutes County, Oregon (the "Plat"), and (b) the land shown on the Plat as private street giving access to the Lots 1 through 26 and labeled "First Street (Private)." The following areas shown on the Plat are not made subject to the Declaration: (I) Lot 27, which Declarant has dedicated and conveyed to the Bend Metro Parks and recreation District for park purposes; (ii) the land labeled on the Plat as "Area to be dedicated to the city of Bend for rights-of-way of Todd's Crest Drive;" and (iii) the land labeled on the Plat as "Area to be dedicated to the City of Bend for rights-of-way of 1st Street."

The property made subject to this Second Amended and Restated Declaration is sometimes referred to herein as the "Property" or "Bend River Heights."

Declarant desires to provide for the preservation and enhancement of the property values and amenities in Bend River Heights and for the maintenance of the common property and improvements thereon, and to this end desire to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth each and all of which is and are for the benefit of the Property and each owner of any lot thereof.

Declarant has deemed it desirable for the efficient preservation of the values and amenities of Bend River Heights to create a nonprofit corporation, to which will be delegated and assigned the responsibility for maintaining and administering the common property and facilities, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges provided for in this Declaration.

Until replaced by the Association, the members of Architectural Review Committee are Bill Mathews and Jim Rozewski. All communications to the Architectural Review Committee shall be submitted in writing, addressed to the Architectural Review Committee care of Matthews Construction, Inc.

THEREFORE, Declarant declares that the Property is made subject to this (a) Second Amended and Restated Declaration of Covenants and Restrictions (the "Amended Declaration"), (b) the land and improvements constructed and to be constructed thereon are hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration, and (c) the covenants, conditions, restrictions, easements, assessments and liens stated herein or created hereby, or as shown by the Plat shall run with title to the Property and shall be binding on all persons having any right, title or interest in the Property or any part thereof.

## 1. DEFINITIONS

1.1 "Articles" shall mean the Articles of Incorporation of Tumalo Heights Homeowners Association, a nonprofit corporation.

1.2 **"Association"** shall mean Bend River Heights Homeowners Association, its successors and assigns.

1.3 **"Building Envelope"** shall mean that part of each Lot designated as a building envelope on the map attached hereto as Exhibit A and incorporated herein by this reference (the Building Envelope being the quadrangular areas shown within each Lot).

1.4 **"Bylaws"** shall mean and refer to the Bylaws of the Association.

1.5 **"Common Property"** shall mean that area of land shown on the Plat as a private street giving access to Lots 1 through 26 inclusive and labeled "In Street (Private)" and any improvements thereon, including, without limitation, the mailbox area.

1.6 **"Declaration"** shall mean the covenants, restrictions and all other provisions set forth in this Second Amended and Restated Declaration of Covenants and Restrictions.

1.7 **"Declarant"** shall mean Tumalo Heights, LLC, and the other property owners whose names are set forth above.

1.8 **"Improvement"** shall mean any building, garage, storage building, driveway, parking area, fence, retaining wall, stairs, deck, gazebo, hot tub, swimming pool, sign, or any other man-made above ground or below ground structure, including a drainage control system.

1.9 **"Residence"** shall mean a structure situated upon the property designed and intended for use and occupancy as a residence by a single family.

1.10 **"Lot"** shall mean each of the Lots 1 through 26 of Tumalo Heights as shown on the Plat.

1.11 **"Occupant"** shall mean the occupant of a Residence who may be the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.12 **"Owner"** shall mean the record owner, whether one or more persons or entities, holder or holders of the fee simple title to a Lot or a purchaser in possession under a land sale contract. "Owner" does not include a person or entity who holds an interest in a Lot merely as security for the performance of an obligation.

1.13 **"Rules and Regulations"** shall mean the rules, regulations and policies, if any, adopted by the Board of Directors of the Association or the Architectural Review Committee, as the same may be amended from time to time.

1.14 **"Bend River Heights"** shall mean the Property.

Other defined terms set forth elsewhere in this Declaration shall have the designated

meanings.

## **2. USE AND OTHER RESTRICTIONS**

### **2.1 General**

**2.1.1. Governmental Restrictions.** All uses, occupancy, construction and other activities conducted on any Lot shall conform with, and be subject to, valid and applicable zoning, use restrictions, setback requirements, construction and building codes of all local, state and Federal public authorities. In the event any of the terms or conditions of this Declaration conflict with a more restrictive standard or requirement set by a valid and applicable statute, rule, regulation, ordinance or code of a local, state or Federal public authority, the more restrictive standard or requirement shall apply.

**2.1.2. Combination, Division.** No Owner shall divide any Lot. Upon compliance with the requirements of all valid and applicable zoning, building and land use laws, regulations and ordinances, and the architectural requirements of the Declaration and any Rules and Regulations of the Association, an Owner may construct, reconstruct or replace one Residence on two or more Lots.

**2.2 Residential Use.** No Lot shall be used for any purpose other than single family residential purposes. No more than one single family residence shall be erected or placed on a Lot. No commercial, retail or industrial use shall be allowed on a Lot or in any Residence, provided, however, an Owner may rent his or her Residence as permitted by Section 2.3, even though such rental activity is considered a commercial use, and further provided that an Occupant may use a Residence as an office for the conduct of business, so long as customers or business invitees do not visit the Residence.

**2.3 Leases/Rentals.** Each Owner may lease or rent his or her Residence for a period of time equal to or greater than thirty (30) consecutive days, subject to applicable laws, the Articles, Declaration, Bylaws and rules and Regulations of the Association, any rentals for a shorter duration being expressly prohibited. All such leases or rental agreements shall be in writing and shall be deemed to provide that their terms shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws and Rules and Regulations of the Association and that any failure by the lessee or renter to comply with the provisions of such documents shall constitute a default under said lease or rental agreement. The lessee's or renter's use and enjoyment of the Common Property under such lease or rental agreement shall be subject to suspension by the Board of Directors for any of the causes set forth elsewhere in this Declaration, including, without limitation, the non payment of assessments with respect to the Lot occupied by the lessee or renter.

**2.4 Limitation on Transfer.** No Owner shall transfer, either by conveyance, contract of sale or lease any interest in his or her Lot which would result in ownership of such Lot being held by more than ten persons.

## 2.5 Specific Restrictions

**2.5.1 Location of Improvements.** No Improvements shall be constructed, placed, or permitted to remain on a Lot outside the boundaries of the Building Envelope of the Lot, except a driveway giving access to the Lot, unless prior approval of the Architectural Review Committee, and as required, the City of Bend, and any other governmental authority may permit. Each Owner shall be entitled to construct Improvements within the Building Envelope subject to the limitations and restrictions set forth in this Second Amended Declaration and applicable laws.

**2.5.2 Natural Vegetation.** No naturally growing vegetation shall be removed from the area of Lot outside the boundaries of the building Envelope of the Lot without the permission of Declarant and the City of Bend, unless the vegetation is dead or dying.

**2.5.3. Tree Cutting and Landscape Maintenance.** All trees, hedges, flowers and grasses growing on a Lot shall be maintained reasonably free of diseases and pests so that they will not be a menace to, or detrimental to the values and aesthetics of, surrounding Lots.

**2.5.4. Utilities.** No above-ground utilities, pipes or wires shall be used to connect Improvements with supplying facilities.

**2.5.5. Signs.** No sign of any kind shall be displayed to public view on or from any Lot without the prior written consent of the Architectural Review Committee, provided, however, that an Owner may display not more than one (1) for sale sign per Lot which has a maximum area not to exceed 750 square inches, the longest dimension being not greater than 30 inches placed not closer than five feet from the front property line.

**2.5.6. Exterior Lighting or Noise Making Device.** The lamp bulb location of any lamp post shall not exceed four (4) feet in height. No other exterior lighting or noise making device shall be placed on a Lot or any portion thereof without prior written consent from the Architectural Review Committee. All exterior lighting shall be selected and oriented in such a manner that the bulbs are (1) less than 60 watts each and concealed behind opaque or opalescent material, or (2) directed down and concealed from view of the occupants of any other Lot or any street.

**2.5.7. Antennas.** No television antenna, radio antenna, satellite dish or other antenna or receiving device (a "Receiving Device") shall be placed on a Lot without the prior written consent of the Architectural Review Committee. No exterior antennas which function as transmitting devices shall be permitted on any Lot. All Receiving Devices shall be screened from public view to the extent reasonably practical, in the judgment of the Architectural Review Committee, and shall be installed at a location approved by the Architectural Review Committee. No satellite dish installed on any Lot shall exceed eighteen (18") inches in diameter. All such satellite dishes already installed shall be considered to have been approved by the Architectural Review Committee.

**2.5.8. Open Burning.** No open burning of any type shall be conducted on the Property.

**2.5.9. Mobile Homes.** No house trailer, mobile home tent, shack, barn, or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot.

**2.5.10. Animals.** No animals of any kind shall be raised, kept or permitted on any Lot other than a reasonable number of fully domesticated household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. No permitted pets shall be allowed to run loose or unattended and shall be kept on a leash or under voice control when not confined to the Lot of its Owner. Any pets which create a nuisance shall be removed from the Property upon demand of the Association.

**2.5.11. Recreational Vehicle; Parking Restrictions.** Storage of boats, watercraft, motor homes, trailers, recreational vehicles, motorcycles, trucks, truck, campers and like equipment shall not be allowed on any part of the Property, including Common Property, except within the confines of an enclosed garage or an area screened such that the vehicle or equipment is not visible at any time from the street or any Lot, the plans of which must have been reviewed and approved by the Architectural Review Committee prior to construction. Motor homes, nonoperable motor vehicle or vehicles in an extreme state of disrepair, may not be stored or allowed to remain parked upon any Lot or the Common Property, for a period in excess of forty-eight (48) hours. A vehicle is in "an extreme state of disrepair" if its presence, in the judgment of the Architectural Review Committee, would offend a reasonable occupant of the neighborhood.

**2.5.12. Waste and Garbage Maintenance.** No part of any Lot may be used or maintained as a dumping ground for rubbish, trash, garbage or any other waste. No garbage, trash or other waste may be kept on any part of a Lot except in a sanitary container located within a building or within a trash enclosure hidden from view. All such waste and garbage must be promptly and periodically removed.

**2.5.13. Nuisances.** No obnoxious, offensive or unsightly conditions or activities shall be permitted or conducted upon any of the Property, nor may anything be done thereon which may be or may become an annoyance or nuisance.

**2.5.14. Fencing.** No fencing of any type shall be allowed upon a Lot. The Architectural Review Committee may, at its sole discretion, approve a screening assembly constructed with materials consistent with the exterior of the home upon a Lot. Such screening is not considered "fencing" under these Declarations.

**2.5.15. View Obstruction.** No Owner shall plant any vegetation which would materially obstruct the easterly view of another Owner, whether such vegetation is planted within the applicable Building Envelope or outside the applicable Building Envelope. In the event that the Architectural Review Committee determine, in its sole judgment, that vegetation of an Owner

violates this provision, then the Architectural Review Committee may issue written notice to the offending Owner requiring removal or pruning of the vegetation in question. If the offending Owner does not take the required action within thirty (30) days of the request for action by the Architectural Review Committee, then the Architectural Review Committee may appoint an arborist to enter upon the subject Lot and remove or prune the applicable vegetation as required. All costs incurred by the Architectural Review Committee in that regard, including the charges of the arborist, shall be paid by the Owner of the applicable Lot and shall bear interest and be secured by a lien in the same manner as assessments are treated under Section 8 of this Declaration. Nothing contained in this provision shall be construed as a requirement to create views which do not exist when a Lot is first purchased by an Owner, nor to require removal or pruning of any naturally occurring vegetation.

### **3. ARCHITECTURAL CONTROLS**

**3.1 Permitted Structures.** The Architectural Review Committee may allow, in addition to a residence and a garage on a Lot, the gazebo, deck, porch, hot tub, or other necessary structures so long as the accessory structure is located within the Building Envelope established for the Lot, or any such installation has received the prior approval in writing of the Architectural Review Committee and, whenever required, the City of Bend or other governmental authority. No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be erected.

**3.2 Restrictions.** The following restrictions apply to the construction and maintenance of all Improvements:

A. Each Residence shall have a minimum total floor area of 1,700 square feet (exclusive of porches, patios, basements and garages).

B. All buildings must be of double wall construction, have a tile, concrete tile, slate, non-reflective metal (approved by the Architectural Review Committee) or architectural composition roof (any composition roof to be a high quality, "Architectural Style," with a 30 year life or better), unless prior written approval of different materials or construction is obtained from the Architectural Review Committee. The building exterior shall be of stone, brick, stucco, or non-laminated, natural wood siding, unless otherwise approved in writing by the Architectural Review Committee.

C. Exterior lighting must conform to Section 2.5.6. and must be approved, prior to installation, by the Architectural Review Committee.

D. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within 365 days of the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provisions may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area and surrounding



streets and sidewalks shall be kept reasonably clean and in workmanlike order during the construction period. All unimproved Lots shall be kept in a neat and orderly condition, free of debris, and shall be mowed at sufficient intervals to prevent creation of a nuisance.

E. The Building Envelope of each Lot shall be fully landscaped within 60 days from the completion of the Residence constructed on such Lot. In the event of undue hardship due to weather conditions, this period may be extended for a reasonable length of time upon written approval by the Architectural Review Committee.

F. Site-obscuring screens shall not exceed eight (8) feet in height. The maximum height of a sight-obscuring hedges ~~or other planted vegetation~~ shall not exceed eight (8) feet in height. *BO*

G. At the time of construction of a Residence on a Lot, the Owner shall plant a Hedge Maple (*Acer campestre*) on the Lot along N.W. 1st Street and shall thereafter prune, water, care for and replace the Hedge Maple as needed.

H. Driveways shall be constructed of concrete or asphalt, unless otherwise approved in writing by the Architectural Review Committee.

I. Garage doors shall not exceed nine (9) feet in height.

J. The location, color, size, design, lettering and other particulars of mail or paper delivery boxes shall be regulated by the Architectural Review Committee.

K. No outdoor overhead wire or service drop for the distribution of power, telecommunication purposes or any other purpose, nor any pole, tower or other structure supporting said outdoor overhead wires, shall be erected, placed or maintained.

**3.3 Approval Required.** No improvement shall be constructed, placed, or permitted to remain upon the Property, and no exterior addition to, change in painting or staining of, or alteration of any Improvement on the Property of any type shall be made, without the prior approval in writing of the Architectural Review Committee. The Architectural Review Committee shall have the authority to promulgate and issue design guidelines and thereafter to make reasonable amendments to the design guidelines from time to time. Such guidelines (the "Design Guidelines") shall be supplied in writing to all Owners, shall be fully binding on all Owners as if set forth in this Declaration, and shall be applied by the Architectural Review Committee in reviewing and approving or denying proposed Improvements. In the event of a conflict between the guidelines and declarations and covenants set forth herein, the declaration and covenants shall prevail.

### **3.4 Architectural Review Committee.**

**3.4.1 Authority.** The Architectural Review Committee shall have the authority

to regulate the external design, appearance and location of Improvements on the Property, subject to this Declaration, and subject to valid and applicable statutes, rules, regulations, ordinances and codes of local, state and Federal authorities. All questions regarding the boundaries of the "Building Envelope" shall be referred to the Architectural Review Committee, whose decision, or disposition, shall be final.

**3.4.2 Composition.** The Board of Directors of the Association shall appoint in accordance with its bylaws and rules the persons to serve as the Architectural Review Committee, which shall thereafter exercise its authority.

**3.4.3 Procedure.**

I. An Owner wishing to take an action requiring approval under this Article shall give notice of the proposed action to the Architectural Review Committee.

II. Any major construction project which entails significant alterations of existing structures, or initial construction development of a Lot or Lots within the property, shall be submitted for approval to the Architectural Review Committee, together with complete plans and specifications therefore, including, as applicable:

A. A professionally prepared site plan showing the location, size, configuration and layout of the proposed Improvement, including all proposed vehicular and pedestrian circulation, in compliance with the requirements of the Design Guidelines.

B. Professionally prepared plans and drawings showing the nature, style, and dimensions of the proposed Improvement, including the exterior material types, colors, and appearance. The scale of plans shall be one inch = 20 feet or larger.

C. If the proposed Improvement is the first Residence to be constructed on a Lot, a professionally prepared landscape plan showing the nature, type, size, location and layout of all landscaping, vegetation, ground cover, landscape and site lighting, walks, major existing vegetation and irrigation and drainage systems proposed to be planted or installed (or, where applicable, removed or destroyed), all in compliance with the requirements of the Design Guidelines and the City of Bend, including the installation of any dry wells required by the City of Bend.

D. A detailed drawing and cross-section showing the location of driveway access for the proposed house design upon the Lot. The drawing shall include additional architectural detail with engineering calculations in the instances where driveway access shall cross fill material.

E. If the proposed Improvement is the first Residence to be constructed on a Lot, the plans shall show the location and provide an architectural detail of the proposed streetscape for the Improvement and specifications for driveway approach design and lighting, all

in compliance with the Design Guidelines.

All other requested modifications or deviations from these declarations shall be submitted in writing to the Architectural Review Committee. The Architectural Review Committee may, as appropriate, require such additional documentation as in its sole discretion it believes necessary to permit an intelligent and fair decision.

The Architectural Review Committee shall review the owners request submitted in accordance with Paragraph I above within 20 days of receipt and those submitted in accordance Paragraph II within 30 days of receipt, and shall render a decision not less than 15 days thereafter. If the Architectural Review Committee fails to render a written decision within the time allowed, the request shall be deemed to be approved.

**3.4.4 Appeal.** The decision of the Architectural Review Board under this Article (including any failure to approve or disapprove within the time allowed) shall be subject to appeal by any Owner as set forth in this article. Any Owner may appeal the decision of the Architectural Review Committee to the Association members. The appeal shall be made in writing and shall be filed with the Secretary of the Association within thirty (30) days of the decision of the Architectural Review Board. The Board of Directors shall call a special meeting of the Association to be held after ten (10) days notice and within thirty (30) days after the appeal has been filed with the Secretary of the Association. The decision of the Architectural Review Board may be reversed by a majority vote of the Association members.

**3.4.5. Inspection.** Construction of Improvements shall conform to the plans and specifications approved pursuant to the declaration. The Architectural Review Committee shall have the right to inspect the Lot and the construction to determine whether the Improvements are being constructed in conformity with approved plans and specifications. In the event it is determined in good faith by the Architectural Review Committee that the work is nonconforming, the Committee may issue a written stop work notice without necessity of a court order, which shall require the Owner to correct the nonconforming work specified in the notice before the remainder of the Improvement may be completed. Continued work without correction of the nonconforming item shall be deemed a breach of the Declaration.

**3.4.6. Exculpation.** The Architectural Review Committee and its members, officers, directors, employees or agents, shall have no liability for damage, loss, delay, cost or legal expense arising from the good faith exercise of authority conferred in this Declaration. The Architectural Review Committee and its members, officers, directors and agents shall have no liability to Owners for having approved requests or plans and specifications pursuant to this Declaration, regardless of whether the Improvement conforms to this Declaration, so long as the committee acted in good faith.

#### **4. EROSION CONTROL**

**4.1 Erosion Control.** Each Lot shall include catch basins to provide collection of

storm drainage. The location, capacity, and architectural/engineering detail(s) shall be noted on the architectural drawings submitted to the Architectural Review Committee and to the City of Bend. Design of storm collection system shall be sufficient to contain drainage upon the subject Lot.

During construction of a Residence, the Owner shall employ the use of straw-bale berms on the downslope of the Building Envelope on the Lots located on the east side of N.W. 1st Street. This technique of erosion control may be required for specific Lots located on the west side of N.W. 1st Street if the Architectural Review Committee or the City of Bend determines the Lot slope or architectural design warrant the use of straw-bales.

**4.2. Inspection Rights.** The Architectural Review Committee and the City of Bend may enter any Lot to monitor and enforce erosion control methods or take any of the following actions.

A. Inspect the installation, maintenance and effectiveness of the required erosion control methods.

B. Direct reconstruction any erosion control facilities, if and when the City or the Architectural Review Committee determines that such action is reasonably necessary.

C. Remove erosion and/or construction debris and/or restore and revegetate the site and/or perform other similar types of remediation if and when the City or the Architectural Review Committee reasonably determines that such action is necessary. Any costs thus incurred shall be the responsibility of the owner or owners of the Lot or Lots which were involved.

D. Inspect and maintain the sanitary pump station and sewer facilities on the Property.

## **5. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**5.1. Members.** Each Owner shall be a mandatory member of the Association. Membership in the Association shall be to appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and Rules and Regulations of the Association and any amendments thereof.

### **5.2 Voting Rights**

Each Owner, shall be entitled to one (1) vote for each Lot owned, with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall not be greater than the total number of Lots.

When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast

as they shall determine, but in no event will fractional voting be allowed. Fractionalized or split votes shall be disregarded.

**5.3 Procedure.** All meetings of the Association, the Board of Directors, the Architectural Review Committee, and the Association committees shall be conducted in accordance with the Bylaws and such rules of order as may from time to time be adopted by the Board of Directors.

**5.4** The Association's officers will establish and maintain appropriate records, bank accounts and books, and shall be responsible for payment out of assessments of all bills and expenses necessarily incurred by the Association.

## **6. COMMON PROPERTY; UTILITIES**

**6.1 Obligations of the Association.** The Association shall hold title to the Common Property, subject to the rights of Owners set forth in this Declaration. The Association shall be responsible for the exclusive management and control of the Common Property, and shall keep the same in good, clean, attractive and sanitary condition, order and repair, including, but not limited to, the removal of snow, trash and debris.

**6.2 Owners' Easement of Enjoyment.** Subject to the provisions of this Declaration, the Bylaws, and Rules and Regulations of the Association, every Owner, for the benefit of the Owner and his or her family members, guests, tenants, contractors, agents and other invitees, shall have a nonexclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot.

**6.3 Damage or Destruction of Common Property by Owner.** In the event any Common Property is damaged or destroyed by an Owner or any of his or her family members, guests, tenants, contractors, agents or other invitees, the Association may repair the damage at the expense of the Owner. The Association shall repair the damage in a good and workmanlike manner as originally constituted or as the area may be modified or altered subsequently by the Association at the discretion of the Association. The reasonable cost of the repairs shall become a special assessment upon the Lot of the Owner who caused or is otherwise responsible for such damage.

**6.4 Utility Maintenance, Repair and Replacement.** The Association shall have no responsibility for the maintenance, repair and replacement of sanitary sewer, water, electric, natural gas, telephone or other utility lines in Bend River Heights. Ownership, maintenance, replacement and repair of utility lines shall be the responsibility of the utility service provider.

## **7. ACCESS EASEMENT**

Lots 14, 15, and 16 shall be subject to private easements for utilities and access for the benefit of Lots 13, 14, and 15, all more particularly shown on the Plat.

## **8. COVENANTS FOR MAINTENANCE ASSESSMENT/SPECIAL ASSESSMENT; AND COMMON PROFITS**

**8.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner shall pay the Association (1) annual assessments for common expenses, and (2) special assessments as provided in Section 8.4. All such assessments, together with interest thereon at the rate established from time to time by resolution of the Board of Directors, and together with all other costs, fees, charges, and fines allowed by law, shall be a personal obligation of the Owner and shall be a lien and charge on the Lot and improvements thereon against which each such assessment is made. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law.

**8.2 Limitation on Annual Assessments.** In no event shall annual assessments exceed \$300 per year per Lot unless an increase in the annual maximum assessment has been approved by a majority of the votes entitled to be cast by members, provided, however, that the aggregate assessment for all Lots shall not in any event exceed the greater of 2% of the estimated value of all Lots against which the assessment will be levied or the product of \$360 multiplied by the total number of Lots.

**8.3 Purpose of Assessments.** The assessments levied under this Article shall be used exclusively for the purpose of (i) repairing, maintaining and improving the Common Property, including the funding of a replacement reserve for those items for which the Association has maintenance responsibility, and (ii) paying other expenses as authorized by the Board of Directors for the benefit of the Association or the common benefit of the Owners or to satisfy obligations of the Association under this Declaration.

**8.4 Method of Assessment.** The Board of Directors shall determine the annual assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. The board shall set the date(s) such assessments shall become due. The Board may provide for collection of assessments annually, monthly, quarterly or semi-annually; provided, however, upon the default in the payment of any one or more installments, the entire balance of such assessments may be accelerated at the option of the Board and be declared due and payable in full, together with interest and attorneys fees and costs as hereinafter provided.

Notwithstanding any other provisions of this Section 8.4, the annual assessments of the Association may not be increased by more than twenty percent (20%) in any one year without approval of a majority of the votes cast by Owners at a meeting at which a quorum exists, or a majority of the votes entitled to be cast by Owners, if the vote is taken by written ballot.

**8.5 Date of Commencement of Annual Assessments.** The annual assessments with respect to the Lots shall commence at the time the Directors declare, or the interim management specifies.

**8.6 Special Assessments.** The Board of Directors shall have the power to levy special

assessments in the following manner for the following purposes:

8.6.1 To collect amounts due to the association from an Owner for breach of the Owner's obligations under the Declarations, these Bylaws, or the Association's rules and regulations, by vote of a majority of the Board;

8.6.2 Upon vote of a majority of the Board of Directors, to make repairs or renovations to the Common Property for which the Association has maintenance responsibility if sufficient funds are not available from the operating budget or replacement reserve accounts; or

8.6.3 to make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes entitled to be cast by Owners.

**8.7 Effect of Non-Payment of Assessment; Violation of These Covenants; Remedies of the Association.** In addition to any other remedies provided by law, the Association may bring an action at law against the Owner personally obligated to pay any such assessment and/or foreclose a lien upon the Property. No such action or a judgment entered therein shall be a waiver of the lien of the Association. No Owner may avoid liability for the assessments provided for herein by non-use of the Common Property or abandonment of his or her Lot.

**8.8 Subordination of the Lien to Mortgages.** The lien with respect to any assessment provided for herein shall be prior to any homestead exemption and all other liens and encumbrances on a Lot, except:

A. A first mortgage of record; and

B. A lien for real estate taxes and other governmental assessments or charges;  
and

C. Liens and encumbrances recorded before the recordation of this Declaration.

Sale or transfer of any Lot shall not affect the assessment lien.

## **9. GENERAL PROVISIONS**

**9.1 Insurance.** The Association shall procure and maintain insurance for the purpose of protecting the officers or directors of the Association from any lawsuit or claim arising solely out of their proper, good and faithful service as an officer or director of the Association. The cost of such insurance shall be paid by the Association.

**9.2 Enforcement.** The Association shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereafter imposed by any of the provisions of this Declaration as may pertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by the Association to enforce any covenant or

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

**9.3 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

**9.4 Duration.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of fifty (50) years from the date of the recording of this Declaration and thereafter shall be deemed to have been perpetually renewed for consecutive, additional periods of ten (10) years each, unless rescinded by an affirmative vote of at least ninety percent (90%) of the votes entitled to be cast by Owners after expiration of such 50-year period. Amendments which do not constitute rescission or termination of the Declaration may be adopted as provided in Section 9.5. Further provided, however, that if any of the provisions of this Declaration would violate the rules against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or, in the event the rule against perpetuities applies, until twenty-one (21) years after the death of the last survivor of the now living descendants of Bart Bardwell.

**9.5 Amendment.** This Declaration may be amended at any time by an instrument signed by Owners representing not less than seventy-five percent (75%) of the votes entitled to be cast. Any amendment must be executed and recorded as provided by law. Provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or the Articles of Incorporation without compliance with the provisions of such documents, and the Oregon Non-Profit Corporation Act. Provided further, no amendment affecting any right of the Declarant contained herein may be effected without the express written consent of the Declarant.

**9.6 Resolution of Document Conflicts.** In the event of a conflict among any of the provisions in the documents governing Bend River Heights, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Plat;
2. Declaration;
3. Articles of Incorporation;
4. Bylaws;
5. Rules and Regulations.

**9.7 Constants.** Whenever a constant is referred to herein (e.g., "1998 constant" or



"measured in 1998 dollars"), the Consumer Price Index for the Portland, Oregon Metropolitan Area published by the U.S. Department of Labor (or a comparable index if that index is no longer published) shall be utilized to gauge the inflationary rate to be applied to determine the sum of money in then current dollars that is equivalent to the applicable amount of dollars circa 1998.

DECLARANTS have executed this instrument this 31<sup>st</sup> day of JANUARY 2000.

**DECLARANT:**

TUMALO HEIGHTS, LLC

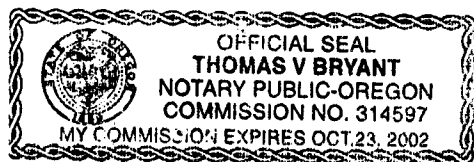
By: Patrick W. Rauber

Name: PATRICK W. RAUBER

Title: MEMBER

STATE OF OREGON )  
County of Deschutes ) ss.

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of JANUARY 2000, by PATRICK W. RAUBER as Member of Tumalo Heights, LLC, a limited liability company on behalf of such limited liability company.



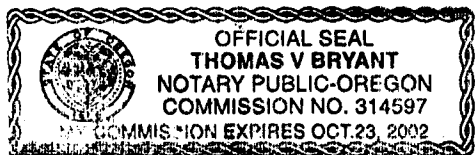
Thomas V. Bryant  
Notary Public for Oregon

David Ayarra  
David Ayarra (Lot 14)

Elizabeth J. Ayarra  
Elizabeth J. Ayarra (Lot 14)

STATE OF OREGON )  
 ) ss.  
County of DESCHUTES )

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of  
JANUARY 2000, by David Ayarra and Elizabeth J. Ayarra.



Thomas V Bryant  
Notary Public for Oregon

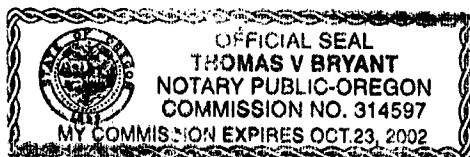
\*\*\*\*\*

Jim Rozewski  
Jim Rozewski (Lot 9)

Becky Rozewski  
Becky Rozewski (Lot 9)

STATE OF OREGON )  
 ) ss.  
County of DESCHUTES )

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of  
JANUARY 2000, by Jim Rozewski and Becky Rozewski.



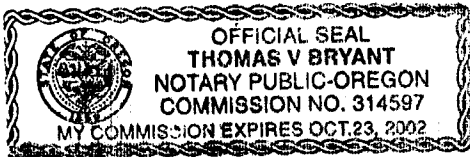
Thomas V Bryant  
Notary Public for Oregon

R Thompson  
Ron Thompson (Lot 19)

Stephanie Thompson  
Stephanie Thompson (Lot 19)

STATE OF OREGON                   )  
  ) ss.  
County of DESCHUTES           )

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of  
JANUARY 2000, by Ron Thompson and Stephanie Thompson.



Thomas V Bryant  
Notary Public for Oregon

\*\*\*\*\*

Bill Matthews  
Bill Matthews (Lots 8 & 15)

Heidi Matthews  
Heidi Matthews (Lots 8 & 15)

STATE OF OREGON                   )  
  ) ss.  
County of DESCHUTES           )

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of  
JANUARY 2000, by Bill Matthews and Heidi Matthews.

Thomas V Bryant  
Notary Public for Oregon

Susan C. House

Michael House (Lot 18)

Charles House

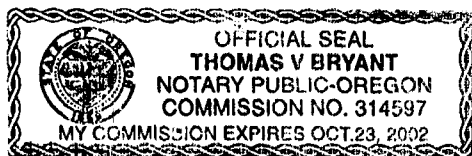
Charles House (Lot 18)

STATE OF OREGON )

County of DESCHUTES )

) ss.

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of JANUARY 2000, by Charles House and Michael House.



Thomas V. Bryant  
Notary Public for Oregon

\*\*\*\*\*

Bruce Hughes (Lot 6)

Pamela Hughes (Lot 6)

STATE OF OREGON )

County of \_\_\_\_\_ )

) ss.

THIS INSTRUMENT was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2000, by Bruce Hughes and Pamela Hughes.

Notary Public for Oregon

\_\_\_\_\_  
Pat Conway (Lot 16)

\_\_\_\_\_  
Elizabeth Conway (Lot 16)

STATE OF OREGON                    )  
  ) ss.  
County of \_\_\_\_\_ )

THIS INSTRUMENT was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_ 2000, by Pat Conway and Elizabeth Conway.

\_\_\_\_\_  
Notary Public for Oregon

\*\*\*\*\*

\_\_\_\_\_  
Tom Kingzett (Lot 17)

\_\_\_\_\_  
Gloria Kingzette (Lot 17)

STATE OF OREGON                    )  
  ) ss.  
County of \_\_\_\_\_ )

THIS INSTRUMENT was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_ 2000, by Tom Kingzett and Gloria Kingzett.

\_\_\_\_\_  
Notary Public for Oregon

Clint Potter  
Clint Potter (Lot 5)

STATE OF OREGON )  
County of DESCHUTES ) ss.

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of JANUARY 2000, by Clint Potter.

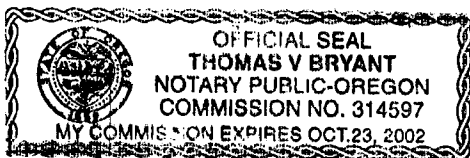
Thomas V. Bryant  
Notary Public for Oregon

\*\*\*\*\*

~~BANK OF THE CASCADES~~  
Lot 12) BessAnn DAVIS  
Nelson DAVIS  
By: BessAnn DAVIS  
Name : \_\_\_\_\_  
Title : \_\_\_\_\_

STATE OF OREGON )  
County of DESCHUTES ) ss.

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of JANUARY 2000, by BESS ANN DAVIS as a ~~representative~~ NEW OWNERS of Bank of the ~~Cascades~~.



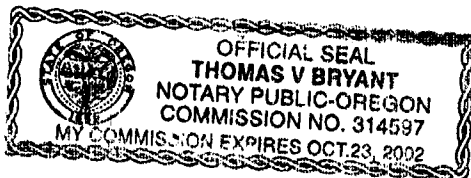
Thomas V. Bryant  
Notary Public for Oregon

MATTHEWS CONSTRUCTION, INC.  
(LOTS 1, 2, 3, 4, 7, 20, 21, 22, 23, 24 & 25)

By: William J. Matthews  
Name: William J. MATTHEWS  
Title: President

STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_ )

THIS INSTRUMENT was acknowledged before me this 31<sup>st</sup> day of JANUARY 2000, by William J. Matthews as Member of Tamato Heights, LLC, a limited liability company on behalf of such limited liability company.  
PRESIDENT OF MATTHEWS CONSTRUCTION, INC.

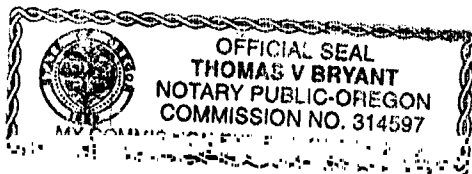


Thomas V Bryant  
Notary Public for Oregon

STATE OF OREGON } ss  
County of Deschutes }

This instrument was acknowledged before me January 31, 2000 by Ernest M. DeCorte, acting as attorney in fact for GUY DE CORTÉ.

Ernest M. DeCorte by Ernest M. DeCorte  
attly in fact



Thomas V Bryant