

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
BEND RIVER HEIGHTS  
(PLATTED AS "TUMALO HEIGHTS, A PLANNED UNIT DEVELOPMENT")**

THIS AMENDED AND RESTATED DECLARATION is made by Tumalo Heights, LLC, an Oregon limited liability company ("Declarant").

**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.

Declarant is the successor to all interest of Benchmark Northwest, Inc. in title to the property subject to the First Declaration.

The First Declaration provides that it may be amended with the written consent of the owners of 51% of the lots subject to the First Declaration. Declarant now owns all of the lots subject to the First Declaration with the exception of Lot 14. The owner of Lot 14 (the "Lot 14 Owner") has joined in the execution hereof for the purpose of imposing the terms of this Restated Declaration on Lot 14.

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

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

Declarant desires to provide for the preservation and enhancement of the property value and amenities in Bend River Heights and for the maintenance of the common property and improvements thereon, and to this end desires to subject the Property to the covenants

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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 powers of owning, 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.

THEREFORE, Declarant and the Lot 14 Owner declare that (a) the Property is made subject to this Amended and Restated Declaration of Covenants and Restrictions (the "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; should there be any dispute regarding the boundaries of any Building Envelope, the decision of the Architectural Review Committee on that issue shall be final and binding).

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 a gate and a mailbox area.

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

1.7 **"Declarant"** shall mean Tumalo Heights, LLC, its successors or assigns.

1.8 **"Declarant Control Termination Date"** shall mean the date upon which Declarant has conveyed all of the Lots to third parties, excluding (i) rescinded, terminated or forfeited sales or conveyances and (ii) a bulk sale of Lots to a successor developer to whom Declarant has transferred all of its rights as Declarant under the Declaration.

1.9 **"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.

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

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

1.12 **"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.

1.13 **"Owner"** shall mean the record owner, whether one or more persons or entities, 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.

1.14 **"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.

1.15 **"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 3.3, 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 nonpayment 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. Each Owner shall be entitled to construct Improvements within the Building Envelope situated on such Owner's Lot, subject to the limitations and restrictions set forth in this Declaration and applicable laws.

**2.5.2 Natural Vegetation.** No naturally growing vegetation shall be removed from the area of a 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 thirty-nine (39") inches in diameter.

**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 Vehicles; Parking Restrictions.** Storage of boats, watercraft, 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, or Lot 27, the plans of which must have been reviewed and approved by the Architectural Review Committee prior to construction. Nonoperable motor vehicles or vehicles in an extreme state of disrepair may not be stored or allowed to remain parked upon any Lot or any street 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 determines, 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.** No building may be erected or allowed to remain on any Lot except a Residence designed for occupancy by not more than one family, together with a private garage for not less than two or more than four cars, which garage shall conform generally in architectural design and exterior materials and finish to the Residence to which it is appurtenant. No Residence may exceed the applicable height limits established from time to time by the building codes of the City of Bend. The Architectural Review Committee may allow, in addition to a Residence and garage on a Lot, a gazebo, deck, porch, hot tub or other accessory structure so long as such accessory structure is located within the Building Envelope established for the Lot. No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be erected. Notwithstanding the foregoing, Declarant may erect such structures as Declarant deems appropriate (such as an office) for the purpose of marketing unsold Lots or overseeing construction activities. All structures must comply with all applicable laws, codes and approvals.

**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 provision 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) Fences or other sight-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 six (6) feet in height.

(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, until the plans and

specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee as to compliance with the Declaration and as to the harmony of external design, materials, color and location in relation to surrounding structures, topography and vegetation. 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.

### **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.

**3.4.2 Composition.** Until the Declarant Control Termination Date, the Declarant shall exercise the authority of the Architectural Review Committee and shall designate, from time to time, the members of the Architectural Review Committee. After the Declarant Control Termination Date, the Board of Directors of the Association shall serve as the Architectural Review Committee and shall exercise its authority.

**3.4.3 Procedure.** An Owner wishing to take an action requiring approval under this Article shall give notice of the proposed action to the Architectural Review Committee, together with complete plans and specifications therefor, 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.

The Architectural Review Committee shall review the Owner's request within thirty (30) days of receipt and shall render a decision within forty-five (45) days of receipt. If the Architectural Review Committee fails to render a written decision within the time allowed, the request shall be deemed to be approved. Each Owner shall be required to submit a review fee in the amount of \$250 (1998 constant) to the Architectural Review Committee upon submission of plans for any Improvement and an additional \$100 fee (1998 constant) with respect to any material change orders submitted to the Architectural Review Committee for review.

**3.4.4 Appeal.** After the Declarant Control Termination Date, 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. Upon the payment of a reasonable fee established by the Architectural Review Board to cover administrative costs not to exceed Two Hundred Fifty Dollars (\$250) (1998 constant), any Owner may appeal the decision of the Architectural Review Board 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 or ballot 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 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 (including the Declarant exercising the powers of the Architectural Review Committee pursuant to Section 3.4.2), 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 (including the Declarant exercising the power of the Architectural Review Committee pursuant to Section 3.4.2), 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, including Lot 27, 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) Reconstruct 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.
- (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.** The Association shall have two (2) classes of voting members:

**5.2.1 Class A.** Class A Members shall be all Owners of Lots other than the Declarant, and each Class A Member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

**5.2.2 Class B.** The Class B Member shall be the Declarant, its successors and assigns. The Class B Member shall have three (3) votes for each Lot owned. Provided, however, that all Class B memberships shall cease upon the Declarant Control Termination Date.

Thereafter, each Owner, including the Declarant, 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 be equal to 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. The total number of votes as of the Declarant Control Termination Date shall be equal to the total number of Lots.

**5.3 Procedure.** All meetings of the Association, the Board of Directors, the Architectural Review Board, and 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.

## **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 in 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. Utility lines shall be the responsibility of the utility service provider to the extent such lines are owned by the provider. Each Owner shall be responsible for the maintenance, repair and replacement of sanitary sewer lines within and under the Owner's Lot.

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 as more particularly shown on the Plat.

8. **COVENANTS FOR MAINTENANCE ASSESSMENTS/SPECIAL ASSESSMENTS; 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. For the purpose of determining the cap on annual assessments, the estimated assessment shall be determined as provided in ORS 94.570(2).

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 assessment 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 assessment 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.

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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 Assessments; 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 the same 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. **DECLARANT'S SPECIAL RIGHTS**

Until the Residences on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Property and each Lot on the Property, the Declarant shall have the following special rights:

9.1 **Sales Office and Model.** The Declarant shall have the right to maintain a sales office and model on one or more of the Lots which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

9.2 **"For Sale" Signs.** The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, the Common Property.

## 10. GENERAL PROVISIONS

10.1 **Indemnification of Directors, Officers, Employees and Agents.** The Association shall indemnify any Director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he or she is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of no contest or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his or her conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that said person had no right to such payments, to recover the payments from the payee. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefited from the acts which created said liability.

10.2 **Enforcement.** The Association and each Owner 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 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. 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.

10.3 **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.

**10.4 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 10.5. Further provided, however, that if any of the provisions of this Declaration would violate the rule 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.

**10.5 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.

**10.6 Unilateral Amendment by Declarant.** The Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots

**10.7 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.

**10.8 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 not

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.

Declarant and Lot 14 Owner have executed this instrument on the 28<sup>th</sup> day of August, 1998.

**DECLARANT:**

TUMALO HEIGHTS, LLC

By Patrick W. Rauber  
Name PATRICK W. RAUBER  
Title MEMBER

**LOT 14 OWNER:**

Elizabeth J. Ayarra  
Elizabeth J. Ayarra (formerly known as  
Elizabeth J. Parker)

**EXHIBITS:**

A - Building Envelopes

STATE OF OREGON )  
County of Lane ) ss.



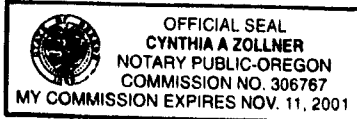
This instrument was acknowledged before me on August 28, 1998, by Patrick Rauber as Member of Tumalo Heights, LLC, a limited liability company on behalf of such limited liability company.

Laura A. Kennett  
Notary Public for Oregon  
My commission expires: 3-17-2001

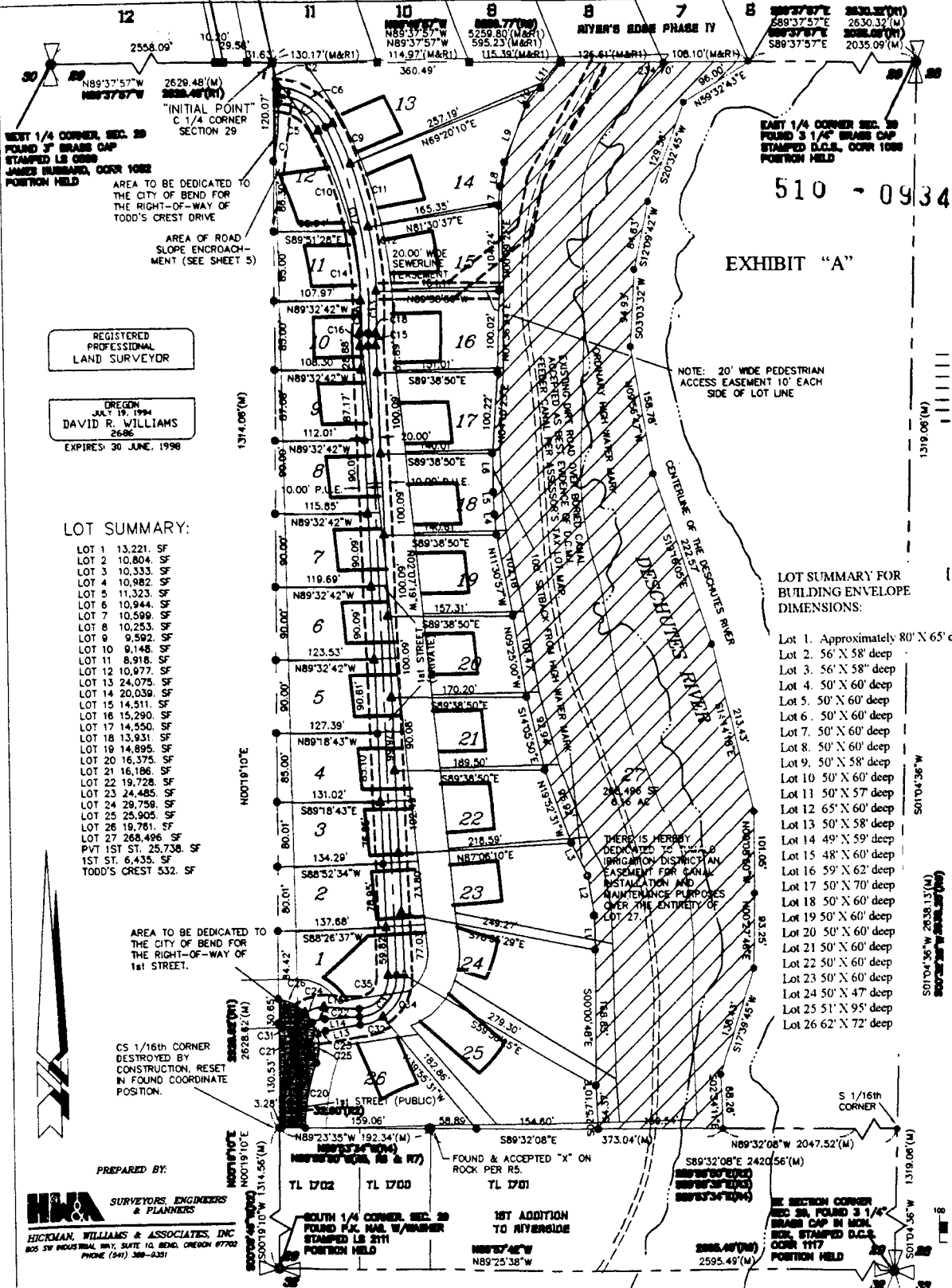


STATE OF OREGON            )  
County of Deschutes    ) ss.

This instrument was acknowledged before me on September 1, 1998, by Elizabeth J. Ayarra.




Cynthia A. Zollner  
Notary Public for Oregon  
My commission expires: Nov. 11, 2001



STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

98 SEP -1 PH 3:01  
MARY SUE PENHOLLOW  
COUNTY CLERK

BY:  DEPUTY  
NO. 98-39010 FEE 100 -  
DISCHUTES COUNTY OFFICIAL RECORDS