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DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2003-23947

AFTER RECORDING, RETURN TO:  
Three Pines Development, LLC  
9055 Beaverton-Hillsdale Hwy.  
Portland, OR 97225



\$181.00

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\$150.00 \$5.00 \$11.00 \$10.00 \$5.00

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THREE PINES

THIS DECLARATION is made this 3 day of April, 2003 by THREE PINES DEVELOPMENT, L.L.C., an Oregon limited liability corporation ("Declarant").

RECITALS

A. Declarant owns property located in the City of Bend, Deschutes County, Oregon. Declarant proposes to develop portions of this property as a planned unit development to be known as "Three Pines".

B. Declarant has filed the plat of Three Pines, P.U.D., Phase 1 in the plat records of Deschutes County, Oregon. Declarant desires to subject the property described in the attached Exhibit A (the "Property") to the terms of this Declaration for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares that the property described in Exhibit A shall be held, sold, and conveyed subject to the terms of this Declaration, which will run with such property and shall be binding upon all parties having or acquiring any right, title, or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

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

1.1 "Additional Property" means any land, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2 below.

1.2 "Architectural Review Committee" or the "Committee" shall mean the committee appointed pursuant to Article 6 hereof.

1.3 "Assessments" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments as described in Article 10 below.

1.4 "Association" means the nonprofit corporation formed to serve as the Owners' association and known as "Three Pines Owners Association."



- 1.5     “**Building**” shall mean any structure located on a Lot within the Property.
- 1.6     “**Bylaws**” means the bylaws of the Association as such bylaws may be amended from time to time.
- 1.7     “**Common Areas**” means those lots or tracts designated as such on any plat of the Property or in this Declaration including any Improvements thereon, but excluding those areas designated as public streets and public right-of-ways. Common Areas will also include Common Easement Areas, Public Areas, and any Lots converted to Common Areas as provided in Section 3.3 below.
- 1.8     “**Common Easement Areas**” means those easements established for the benefit of all property within Three Pines pursuant to any plat of the Property.
- 1.9     “**Community-Wide Standards**” means the standards of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.
- 1.10    “**Declarant**” shall mean Three Pines Development, L.L.C., an Oregon limited liability corporation, and its successors and assigns if a recorded instrument executed by Declarant assigns to the transferee all of Declarant’s rights under this Declaration.
- 1.11    “**Declaration**” shall mean the Declaration of Covenants, Conditions and Restrictions for Three Pines, as amended or supplemented from time to time.
- 1.12    “**Homesite**” shall mean a Lot as defined herein.
- 1.13    “**Improvement**” shall mean every temporary or permanent structure of any kind, including, but not limited to any buildings, outbuildings, private roads, driveways, parking areas, walkways, fences and barriers, retaining walls, stairs, decks, hedges, windbreaks, planting, planted trees and shrubs, park strip (if any), signs, storage areas and all other structures or exterior landscaping, vegetation or ground cover of every type and every kind above the land surface.
- 1.14    “**Living Unit**” shall mean any portion of a structure situated upon the Property designed and intended for use and occupancy as a residence by a single family.
- 1.15    “**Lot**” shall mean each platted or legally partitioned lot within the Property. Lot does not include Common Areas or Public Areas.
- 1.16    “**Mortgage**” means a mortgage or a trust deed; “mortgagee” means a mortgagee or a beneficiary of a trust deed; and “mortgagor” means a mortgagor or a grantor of a trust deed.
- 1.17    “**Owner**” shall mean the record Owner, including Declarant, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation or a tenant or holder of a leasehold interest. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.18 **“Planned Unit Development”** or “PUD” means a complex of residential, commercial, and/or industrial structures designed and developed as a single development unit, built by a single owner or group of owners and maintained by an association.

1.19 **“Policies and Procedures”** means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.20 **“Property”** shall mean the property described on Exhibit A attached hereto.

1.21 **“Public Areas”** means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration.

## ARTICLE 2

### **PROPERTY SUBJECT TO THIS DECLARATION**

2.1 **Initial Development.** Declarant hereby declares that all the real property described on Exhibit A attached hereto, is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. The initial development contains 28 single-family Lots.

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex to Three Pines as Additional Property any real property now or hereafter acquired by it, and may also from time to time in its sole discretion permit other holders of real property to annex the real property owned by them to Three Pines. The rights reserved unto Declarant to subject additional real property to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional real property to this Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build improvements of any kind. The annexation of such real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. Any such annexation shall be effective upon the filing for record of such declaration unless otherwise provided therein.

(b) The property included in any such annexation shall thereby become a part of Three Pines and this Declaration, and Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property.

(ii) With respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots which Declarant may create or annex to Three Pines, except as may be established by applicable ordinances of the City of Bend, Oregon. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the City of Bend, Oregon.

(e) Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(f) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.8 below.

2.3 **Withdrawal of Property.** Declarant may withdraw property from Three Pines by an amendment to this Declaration executed by Declarant and recorded in the Deed Records of Deschutes County, Oregon. All voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the Common Expenses shall be reallocated to the remaining Lots as provided in Section 10.3. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Property initially subject to this Declaration or Additional Property annexed pursuant to a supplemental declaration at any time prior to the first sale of a Lot in the Property initially subjected to this Declaration, or in the case of Additional Property, prior to the first sale of a Lot in such property so annexed or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Lots. In addition, Declarant may withdraw any real property then owned by Declarant or any Common Areas if such withdrawal is a result of any changes in Declarant's plans for Three Pines, provided that such withdrawal is approved by a majority of the voting rights in the Association.

### ARTICLE 3

#### **DESCRIPTION OF PROPERTY AND CONVERSION AND CONSOLIDATION OF LOTS**

3.1 **Number of Lots.** The Property, consisting of the initial development as described on Exhibit A, contains 28 Lots.

3.2 **Land Classifications.** All land within the Property is included in one or another of the following land classifications as shown on Exhibit A, including but not limited to: Lots, Common Areas, Common Easement Areas and Public Areas

3.3 **Common Facilities.** Declarant does not agree to build any improvements on the Common Areas other than as required by the City of Bend or as shown on any plat of the Property, but may elect, at Declarant's option, to build additional improvements.

3.4 **Conversion of Lots to Common Area.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the Deed Records of Deschutes County, Oregon. Such declaration shall be executed by Declarant and bear a

certificate of the President or Secretary of the Association reciting that the holders of a majority of the voting rights in the Association have approved such conversion to Common Areas.

3.5 **Consolidation of Lots.** Declarant reserves the right to combine any two or more Lots then owned by Declarant upon receipt of any required approvals from the City of Bend, if applicable, and recording an amendment to this Declaration. For Owners other than Declarant, the Owner of two adjoining Lots, with the approval of Declarant and the Architectural Review Committee, may elect to consolidate such Lots into one Lot. The consolidation shall be effected by the Owner's recording in the deed records of Deschutes County a declaration stating that the two Lots are consolidated, which declaration shall include a written consent executed on behalf of the Architectural Review Committee by at least one member of the Committee. Thereafter, the consolidated Lots shall constitute one Lot for all purposes of this Declaration, including voting rights and assessments. Once so consolidated, the consolidated Lot may not thereafter be partitioned nor may the consolidation be revoked.

## ARTICLE 4

### **PROPERTY RIGHTS IN COMMON AREAS**

4.1 **Owner's Easements of Enjoyment.** Subject to the provisions of this article, every Owner and his invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

4.2 **Title to the Common Areas.** Title to the Common Areas, except Common Easement Areas and Public Areas if applicable, shall be conveyed to the Association by Declarant free and clear of monetary liens and encumbrances prior to the date on which Class B membership in the Association ceases and is converted to Class A membership as described in Section 8.3(b).

4.3 **Common Easement Areas.** Common Easement Areas, if any, shall be granted or reserved as signage and visual landscape features, or as otherwise provided in this Declaration, a supplemental declaration, or the plat establishing the Common Easement Area. Such areas are to be maintained by the Association and no changes in landscaping will be permitted without written authorization by the Architectural Review Committee. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas. In the event any Common Easement Area is conveyed to the Association, such Common Easement Area shall then become a Common Area.

4.4 **Extent of Owner's Rights.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) **Easements.** Declarant reserves for itself and grants to the Association for the benefit of Declarant and the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas, including the Common Easement Areas:

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by or with the consent of Declarant or with the approval of the Board of Directors of the Association, and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(iii) An easement for the purpose of making repairs to any Improvements on Common Areas.

Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to governmental entities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving the Property.

(b) **Use of the Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas identifying the Property or identifying trails or identifying items of interest, including directional signs, provided such signs are approved by the Architectural Review Committee and comply with any applicable sign ordinances. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

(c) **Semi-Public Recreational Areas.** The Board of Directors of the Association may elect to designate certain portions of the Common Areas as semi-public recreational areas which may be used by members of the public on a free or fee-paying basis. In such event, Owners shall be permitted to use such facilities for fees that are no higher than those charged to members of the public for an equivalent use. Any net proceeds from such areas shall be paid to the Operations Fund.

(d) **Alienation of the Common Areas.** The Association may not encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless such encumbrance, sale or transfer has been approved by a majority of the voting rights in the Association. This requirement shall not apply to the easements described in Section 4.4(a) above.

(e) **Limitation on Use.** Use of the Common Areas by the Owners, their family members, guests, tenants and contract purchasers, shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of any Owner and the Owner's members, guests, tenants and contract purchasers to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend and repeal Policies and Procedures in accordance with this Declaration.

4.5 **Delegation of Use.** Any Owner may delegate, in accordance with any applicable provisions of the Bylaws of the Association, the Owner's right of enjoyment of the Common Areas to the members of the Owner's family and tenants or contract purchasers who reside on the Property, whose use of the Common Areas shall be subject to this Declaration and the Policies and Procedures adopted under this Declaration.

4.6 **Easements Retained by Declarant.** So long as Declarant owns any Lot, Declarant shall retain an easement under, over and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale and rental of Lots or Living Units, including without limitation, the right to use Living Units owned by Declarant as model units, and the right to use a Living Unit as a sales office. In addition, Declarant hereby reserves to itself and for the owners of Lots in all future phases of Three Pines a perpetual easement and right-of-way for access over, upon, and across the Common Areas for construction, utilities, communication lines, drainage, irrigation systems, signs and ingress and egress for the benefit of other property owned by Declarant and future phases of the Property. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by the Owner or the Owner's family, tenants, guests or invitees.

## ARTICLE 5

### **PROPERTY RIGHTS IN LOTS**

5.1 **Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and the Owner shall comply with the restrictions made applicable to such Lot by this Declaration.

5.2 **Easements Granted.** In addition to any easements shown on the recorded plats, in recorded access easements, and as set forth in Article 4, Declarant hereby reserves for itself and grants to the Association the following easements for the benefit of Declarant and the Association:

(a) **Adjacent Common Area.** The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

(b) **Right of Entry.** Declarant, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration. The Owner will be given advance notice if possible. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on or described in the recorded plat. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Notwithstanding the

provisions of this paragraph, no such easements shall exist along adjoining side lot lines on which a party wall exists.

## ARTICLE 6

### DESIGN REVIEW

6.1 **Approval Required.** No Improvement, as defined in Section 1.13 above, shall be erected, placed, altered, maintained, or permitted to remain on any Lot subject to this Declaration, except Lots owned by Declarant, until final plans and specifications have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevation, and to avoid plan repetition. The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases which the Architectural Review Committee consent is required by this Declaration, the provisions of this Article shall apply.

6.2 **Required Documents.** Any Owner proposing to utilize, improve and/or develop real property within the Property shall submit a completed Architectural Review Committee Construction Submittal Form and Application with accompanying application fee and a site plan, floor plans and exterior elevations all in compliance with the Design Guidelines referred to in Section 6.1.

6.3 **Review.** All plans and drawings identified in paragraph 6.2 above shall be submitted to the Architectural Review Committee for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied by a check in the amount of the application fee payable to the order of Declarant or the Architectural Review Committee as designated by the Architectural Review Committee from time to time. No plans shall be reviewed until the design review fee is paid in full and all items specified in this section and the Design Guidelines are submitted. No work may be performed relating to any Improvement unless and until all aspects of all plans required under paragraph 6.2 above have been approved by the Architectural Review Committee. The Committee shall render its decision with respect to the construction application within thirty (30) working days after it has received all material and fees required by it with respect to the application.

6.4 **Design Guidelines.** The development concept for the Property shall be determined by the Architectural Review Committee. Design Guidelines setting forth various aspects of the development concept, in addition to this Declaration, shall be published from time to time by the Architectural Review Committee. The Architectural Review Committee shall have the right to alter, rescind or amend any published Design Guidelines without prior notice to any party; provided, however, that once approval has been given pursuant to Section 6.3 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such Design Guidelines shall be in general conformity with this Declaration. The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the development concept or the design standards that the Committee intends for the Property.

6.5 **Inspection.** All work related to any building, structure or Improvement or any landscaping, vegetation, ground cover or other improvements within the Property shall be performed in



strict conformity with the plans and drawings approved under paragraph 6.3 above. The Architectural Review Committee shall have the right to inspect any such work to determine its conformity with the approved plans and drawings and reserves the right to order a stop to all work if, in good faith, it believes that any such work is nonconforming. In the event that it is determined by the Committee that certain work is nonconforming, a stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of this Declaration. Neither Declarant or the Architectural Review Committee nor any officer, director, employee, agent, member, or servant of Declarant or the Architectural Review Committee shall be responsible for any damages, loss, delay, cost, or legal expense occasioned through a stop work notice given in good faith, even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

6.6 **Waiver.** Any condition or provision of paragraph 6.2 through 6.5 above may be waived by the Architectural Review Committee in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for the Project. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under paragraphs 6.2 through 6.5. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of the Architectural Review Committee and delivered by certified mail to the party claiming the benefit of such waiver.

6.7 **Architectural Review Committee.** The Architectural Review Committee shall consist of as many persons, but not less than three, as the Declarant may from time to time appoint. As long as Declarant owns any Lot, the members of the Architectural Review Committee shall be appointed by Declarant. The Declarant may remove any member of the Committee from office at its discretion at any time and may appoint new or additional members at any time. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. Thereafter, or in the event Declarant fails to appoint a Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee or, if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

6.8 **Majority Action.** Except as otherwise provided herein, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee, without the necessity of a meeting and without the necessity of consulting or notifying the remaining members of the Architectural Review Committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

6.9 **Liability.** The scope of the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, building or zoning code compliance or other similar considerations. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, tenant, occupant, invitee, builder, or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Architectural Review Committee or a member thereof, provided only that the Architectural Review Committee has, or the member has, in accordance with the actual knowledge possessed by the Architectural Review Committee or by such member, acted in good faith.

6.10 **Appeal.** At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Association pursuant to Section 6.7, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

6.11 **Effective Period of Consent.** The Architectural Review Committee's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received an extension of time from the Committee.

## ARTICLE 7

### **RESTRICTIONS ON USE OF RESIDENTIAL LOTS**

7.1 **Structures Permitted.** No structures shall be erected or permitted to remain on any Lot except structures containing Living Units and structures normally accessory thereto the location of which is in conformity with the applicable governmental regulations, is compatible in design with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee.

7.2 **Residential Use.** All Lots shall be used for residential purposes only. No retail or industrial use shall be allowed on any Lot. Except with the consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home or apartment for purposes of sales or rental in Three Pines, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his Living Unit. Commercial use in a residence may be allowed provided only normal residential activities would be observable outside the Living Unit and that the activities would not be in violation of applicable governmental ordinances.

7.3 **Access to Property.** Except as shown on the plat or by recorded easement, no other Lots or private properties may be used for access or parking without that Owner's written permission.

7.4 **Alley Easements.** Certain Lots are encumbered by recorded reciprocal access easements and alley easements as shown on the plat. Included with these recorded easements is a maintenance and use agreement whereby Owners of the Lots sharing such access easements are equally and jointly responsible for the costs of maintenance and repair of the asphalt overlaying the access easement. The Association shall have the right to enforce all of the provisions of the recorded access easements affecting the Lots sharing such access easements. Further, the Association shall have the right to assess the costs for repair and maintenance of the access easements as provided herein as Individual Assessments to the Owners of the Lots sharing such access easements.

7.5 **Antennas.** Only standard TV antennas and satellite dishes shall be permitted on a Lot. All over-the-air reception devices shall comply with the Design Guidelines and any other applicable restrictions adopted by the Architectural Review Committee, the Board of Directors, or the Association, pertaining to the size, means, method and location of TV antenna and satellite dish installation.

7.6 **Appearance.** All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus, heat pumps, air conditioners, and other service facilities located on the Lot shall be screened from view of neighboring lots and streets in a manner approved by the Architectural Review Committee.

7.7 **Building Height Limitation.** Subject to the provisions of Section 7.1, no structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family Living Unit, and no such structure shall exceed the maximum height allowed by the City of Bend and as approved by the Architectural Review Committee.

7.8 **Clothes Drying Area.** No portion of any Lot shall be used as a drying or hanging area for laundry of any kind where it can be viewed from any neighboring property.

7.9 **Completion of Construction.** Home building must be completed, including painting and all exterior finish, within nine (9) months from the start of construction. ("Complete" means obtaining certificate of final inspection from the City of Bend). In the event of undue hardship due to weather conditions or other causes beyond the reasonable control of the Owner, this time period may be extended for a reasonable length of time upon written approval from the Architectural Review Committee.

7.10 **Driveways and Walkways.** Allowed materials for driveways and walkways include concrete, asphalt and masonry. All driveways shall be finished prior to occupancy. Exceptions may be allowed with Architectural Review Committee approval. Owners are responsible for repair of all driveway cuts, concrete breakage of curbs, sidewalks or sidewalk aprons. The Declarant or Architectural Review Committee representative will monitor and provide written documentation to the offending Owner. All repairs must be completed within a reasonable period of time from receipt of written notification from the Declarant or Architectural Review Committee representative.

7.11 **Exterior Colors and Materials.** All exterior colors and materials including those for trim, windows and doors are subject to approval by the Architectural Review Committee. Clearly indicate on submitted plans the locations of all proposed exterior colors. Samples may be standard manufacturer's paint chip samples or such larger samples as may be required by the Committee. Use of muted, earth related tones are encouraged.

All exposed exterior metals (including vent pipes, fireplace flues and flashing), PVC vents and plumbing pipes must be painted to match or blend with exterior house colors or roofing. This includes the gas furnace and gas fireplace exhausts. All exterior mechanical equipment shall be centralized and screened from view. No T-1 -11 or similar type of siding will be allowed on the exterior walls of any home, garage or any improvement.

7.12 **Exterior Lighting.** No exterior lighting shall be placed on a Lot or any portion thereof without approval by the Architectural Review Committee.

7.13 **Fences and Walls.** No fences shall be placed on any Lot or any portion thereof without approval by the Architectural Review Committee.

7.14 **Firearms and Related Activity.** The Property is subject to the City of Bend Codes for firearms which state, in part: There shall be no... "discharge of any gun or other weapon, including spring or air-actuated pellet guns or a weapon which propels a projectile by use of a bow or sling, explosives or jet or rocket propulsion."

7.15 **Grades, Slopes and Drainage.** Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

7.16 **Landscaping Completion.** Landscaping plans for each Lot shall be submitted to the Architectural Review Committee and shall be in compliance with guidelines as may be established by the Committee from time to time. Each Owner shall attempt to preserve as many trees and shrubs on each Lot as possible. Installation of underground sprinkler systems for front lawns of each home is mandatory on all Lots, and for rear lawns on certain Lots as will be determined by the Architectural Review Committee. The approved landscaping must be completed not later than ninety (90) days from completion of the home. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Review Committee.

7.17 **Livestock, Poultry and Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and do not constitute a nuisance.

The Property is within the City limits of Bend and resident animals are subject to the City of Bend leash laws. Animal nuisance ordinances are also in effect for barking and trash strewing dogs. If an animal is off the Owner's Lot, it must be on a leash. Contact the City of Bend Police Department to report violations. The City of Bend is best equipped to deal with these problems and can enforce stringent fines.

7.18 **Lot Area, Width, Setback Lines.** Lot area, width and setback lines shall be in accordance with the requirements of the applicable City of Bend Zoning and Use Regulations and as shown on the Plat. No Lot shall be further partitioned or subdivided.

7.19 **Mailboxes.** Neither mailboxes nor newspaper receptacles are allowed to be placed on Lots within Three Pines. Mail delivery is made to a central post office box within the Three Pines community.

7.20 **Maintenance of Improvements and Grounds.** Each Lot within the Property shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, fences, walks and other exterior improvements and

glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the Architectural Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Lot neatly trimmed and properly cultivated, and keep all areas of the Lot free of trash, weeds, excess building materials, household items, and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time. Unsightly rear storage is prohibited.

7.21 **Minimum Square Footage.** Within the Property, any single-family residence shall be a minimum of 1,800 square feet in size, not including any enclosed garage. The maximum permissible interior floor area shall be limited only by constraints of the building area and other reasonable limitations as may be established by the Architectural Review Committee.

7.22 **Model/Offices.** Models with sales offices are allowed for any builder with multiple homes for sale with Declarant's approval.

7.23 **Nuisances.** No obnoxious or offensive activity shall be carried on or upon any Lot therein nor shall anything be done thereon which may be an annoyance or nuisance to the other Owners. Fences, walls or hedges as approved by the Committee must be kept in good condition and repair. Lawns must be cut sufficiently and yards maintained at all times so that they do not become eyesores and detrimental to the values of other properties. Trees and shrubs that encroach on any other Lot shall be trimmed and pruned if it is a nuisance to neighbors.

7.24 **Offensive or Unlawful Activities.** No noxious or offensive activity shall be carried on upon any Lot therein nor shall anything be done or placed thereon which interferes with or jeopardizes the enjoyment of the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

7.25 **Occupancy.** No occupancy will be allowed before:

- (a) Final inspection and approval by the Architectural Review Committee and in accordance with approved plans.
- (b) Removal of all construction waste, materials and portable toilet.
- (c) Completion of exterior painting.

No owner shall occupy, use or permit his Lot or any part thereof to be used for any purpose other than a private residence for the Owner, their family or their guests, except that each Owner shall be permitted to rent the unit when he is not in occupancy.

7.26 **Outside Fixtures.** No recreational equipment, including but not limited to, basketball hoops or play structures, are allowed in any street. Other accessory structures or equipment, including but not limited to, tool sheds, play equipment and dog houses are allowed only in locations and with screening as approved by the Architectural Review Committee.

7.27 **Outside Storage.** Woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, unless obscured from view of neighboring property and streets by a fence or

appropriate screen approved by the Architectural Review Committee. Colored tops and covers shall be of a color approved by the Committee. Trash cans and other moveable rubbish containers shall be allowed to be visible from the street or adjacent Lots within the Property only during the days on which rubbish is collected and after 8 p.m. of the preceding evening.

7.28 **Parking, Prohibited Vehicles, and Lot Appearance.** An enclosed garage, of a size appropriate for a minimum of two cars, is required for any Living Unit on a Lot. No parking on any street shall be allowed of any commercial or recreational vehicles, including but not limited to horse trailer, travel trailer, commercial 18-wheel tractor, boat trailer, camper or incapacitated motor vehicle. Boats, trailers, buses, motor homes, commercial vehicles, flat bed pick-up trucks, recreational vehicles, (including campers), disabled vehicles or other similar vehicles shall not be parked or stored on any Lot other than inside an enclosed garage, screened from view in a manner approved by the Architectural Review Committee, or on a temporary basis as allowed in the Association Policies and Procedures which may be amended from time to time. No vehicle shall be parked in the street for more than 24 hours at a time. No stripped down, partially wrecked, inoperative or junk motor vehicle (or sizable part thereof), or other materials, trash, garbage, refuse containers, or other unattractive materials shall be permitted on any Lot, Common Area, or the streets.

7.29 **Required Setbacks.** All Improvements shall be erected, placed, altered and maintained in accordance with all applicable City of Bend setbacks, building height limitations, solar setbacks, building codes and the Architectural Review Committee guidelines for the Property.

7.30 **Roofs.** All roofs and roofing materials shall be limited to quality composition roofs (30-year or better), slate, tile, fiberglass or other acceptable fire resistant materials approved by the Architectural Review Committee. No wood, shake-shingle or other highly combustible roof materials will be allowed. Roof materials shall be of earth tone colors. Colors shall not be bright and outstanding.

7.31 **Sidewalks.** Owners are responsible for clearing sidewalks of snow and debris. Maintenance of the park strip (the landscaped area between a sidewalk and the paved street), if any, shall be the responsibility of the adjacent Lot Owner.

7.32 **Signs.** No sign of any kind shall be displayed to public view on or from any Lot without the Architectural Review Committee's prior written consent; provided, however, that an Owner may display not more than one (1) "for sale" sign or one (1) "for rent" sign per Lot. Said signs shall be limited in size to not more than four (4) square feet.

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

7.34 **Utility Easements.** Easements for installation and maintenance of utilities may be reserved over portions of certain Lots, as shown on the recorded plat. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

7.35 **Vacant Lot.** The Owner of a vacant Lot shall maintain the Lot at all times in a groomed and attractive manner so that the Lot does not become an eyesore or fire hazard and detrimental to the values of other properties.

7.36 **Water and Sewer Supply.** No individual water supply system or sewage disposal system shall be permitted on any Lot.

## ARTICLE 8

### **ASSOCIATION**

Declarant shall organize an association of all of the Owners within Three Pines. Such association, its successors and assigns, shall be organized under the name “**Three Pines Owners Association**” or such similar name as Declarant shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

8.1 **Organization.** Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

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

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

(a) **Lots.** Lots shall be allocated one Voting Unit per Lot. A single-family residential Lot shall be allocated one vote regardless whether the Living Unit has been constructed on such Lot.

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

**Class A.** Class A members shall be all Owners with the exception of the Class B member and shall be entitled to Voting Units for each Lot owned computed in accordance with Section 8.3(a) above. When more than one person holds an interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine. In no event, however, shall more Voting Units be cast with respect to any Lot than as set forth in Section 8.3(a) above.

**Class B.** The Class B member shall be the Declarant and shall be entitled to three times the Voting Units computed under Section 8.3(a) for each Lot owned by Declarant. The Class

B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) Declarant has completed development of all Lots and Common Areas permitted under the City of Bend master plan approval for Three Pines, and Lots representing ninety-five percent (95%) of the Voting Units computed in accordance with this section have been sold and conveyed to Owners other than Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

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

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

(c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act, whether or not such Act is applicable to the Association.

(d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

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

8.5 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Community-Wide Standards, Rulemaking.** The Association, through the Board of Directors, shall have the right to make, establish, promulgate, amend and repeal Community-Wide Standards and any Policies and Procedures governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the Policies and Procedures, upon adoption, and a copy of each amendment or modification shall be furnished to each Owner and shall be binding upon all Owners and occupant of all Lots upon the date of delivery.



(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) **Enforcement.** Subject to the provisions of Article 11, the Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Policies and Procedures adopted by the Association, including without limitation, enforcement of the decisions of the Architectural Review Committee.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas, subject to Section 4.4 above, and encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interest within the property conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.4 above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) **Joint Use and Maintenance Agreements.** The Board of Directors of the Association may enter into joint use and maintenance agreements with other associations, entities or persons relating to the joint use and maintenance of semi-public recreational areas or other facilities, including the joint use of the Common Areas.

8.6 **Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member of the Association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

8.7 **Interim Board.** Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the next annual meeting following termination of Class B membership. At such meeting, the interim directors shall resign and be replaced by their successors, who shall be designated as provided in this Declaration and the Bylaws of the Association.

8.8 **Turnover Meeting.** Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after Lots representing ninety-five (95%) of the Voting Units computed in accordance with Section 8.3(a) above have been sold and conveyed to Owners other than Declarant. If the Declarant fails to call the turnover meeting as required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.9 **Declarant Control After Turnover.** After the turnover meeting described in Section 8.8 above, Declarant shall continue to have the voting rights described in Section 8.3 (b) above and the right to appoint interim directors as provided in Section 8.7 until termination of the Class B membership.

8.10 **Appointment of Directors.** Effective as of the next annual meeting following termination of Class B membership, the Board of Directors of the Association will be composed of three (3) to seven (7) directors, all of whom shall be elected by the Owners.

## ARTICLE 9

### MAINTENANCE, UTILITIES AND SERVICES

9.1 **Maintenance and Lighting of Common Areas.** The Association shall be responsible for exterior lighting (if any) for and perform all maintenance upon the Common Areas, Common Easement Areas, and landscaping within dedicated rights of way, including but not limited to grass, trees, entrance signs, street lighting and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to carry out the purpose for which such areas are intended.

9.2 **Maintenance of Alley Easements.** As provided in recorded reciprocal access easements, the Association shall be responsible for maintenance of the asphalt overlaying the access easements. Such areas shall be maintained in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The costs of such maintenance and repair shall be assessed equally to the Owners of the Lots sharing the access easement as Individual Assessments as provided in Section 10.7 herein.

9.3 **Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for maintaining utility lines within his Lot.

9.4 **Services.** The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including without limitation, garbage and trash removal for Common Areas.

9.5 **Owner's Responsibility.** Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and all structures, landscaping, parking areas, and other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in accordance with the Community-Wide Standard of Three Pines. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner

if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board of Directors shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within 30 days after mailing of such written notice, then the Association may proceed. The expenses of such maintenance by the Association, including administrative costs as determined by the Board of Directors, shall be reimbursed to the Association by the Owner, together with interest as provided in Section 11.7 below. Such charges shall be Individual Assessments and a lien on the Lot as provided in Sections 10.7 and 11.4 below.

## ARTICLE 10

### ASSESSMENTS

10.1 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of Three Pines and for the improvement, operation and maintenance of the Common Areas.

10.2 **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments and Individual Assessments, all as more particularly described below.

10.3 **Apportionment of Assessments.**

(a) **Lots Owned by Declarant.** Lots owned by Declarant shall not be subject to Annual Assessments, Special Assessments or Emergency Assessments until such time as the Lot is occupied for residential use, except that Annual Assessments for reserves as described in Section 10.10 below shall begin accruing for all Lots, including Lots owned by Declarant, from the date the Lot becomes subject to this Declaration. Declarant, however, may defer payment of the accrued reserve assessments for a Lot until the date the Lot is conveyed to a person other than Declarant, or a successor Declarant, but not beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assumed administrative control of the Association. The books and records of the Association shall reflect the amount owing from Declarant for all reserve assessments.

(b) **Other Lots.** All Lots other than Lots exempt from Assessments pursuant to paragraph 10.3(a) above shall be subject to assessment and shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments commencing upon the date such Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Lots subject to Assessment. A Lot shall be obligated to pay such Assessments regardless of whether the Living Unit has been constructed on the Lot. Notwithstanding the provisions of this section, however, Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence.

10.4 **Annual Assessments.** The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall take into account the number of Lots as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number

of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until the assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.10 below. Annual Assessments for such operating expenses and reserves ("**Annual Assessments**") shall then be apportioned among the Lots as provided in Section 10.3 above. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.5 **Special Assessments**. In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("**Special Assessment**"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to twenty (20%) percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights as provided in the Bylaws. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

10.6 **Emergency Assessments**. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors of the Association shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("**Emergency Assessment**"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to twenty (20%) percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights as provided in the Bylaws. Emergency Assessments shall be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.

10.7 **Individual Assessments**. Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("**Individual Assessment**"). Individual Assessments include, without limitations, charges for services provided under Section 9.2 relating to maintenance of access easements and under Section 9.5 herein. Individual Assessments shall also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Policies and Procedures of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to Individual Assessments.

10.8 **Annexation of Additional Property**. When Additional Property is annexed to Three Pines, the Lots included therein shall become subject to Assessments from the date of such annexation to the extent provided in Section 10.3. The Board of Directors, however, at its option may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recompute Annual Assessments for all Lots, including the new Lots, for the balance of the fiscal year.

10.9 **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.10, separate and apart from its other funds, in an account to be known as the "**Operations Fund.**" The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated on the Property, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 9.
- (b) Payment of the cost of insurance as described in the Bylaws of the Association.
- (c) Payment of taxes assessed against the Common Areas and any improvements thereon.
- (d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

10.10 **Reserve Fund.** The Declarant shall establish a reserve fund for replacement of those items to be maintained by the Association all or a part of which will normally require replacement in more than three (3) and less than thirty (30) years ("**Reserve Fund**"). Such Reserve Fund shall be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement cost over time. The Reserve Fund shall be used only for replacement of common property as determined by the Board of Directors and shall be kept separate from the Operations Fund. Any interest earned on funds deposited in the Reserve Fund, however, may either be accumulated in the Reserve Fund or deposited in the Operations Fund. The Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments or Emergency Assessments. Nothing in this section shall prohibit prudent investment of the reserve account. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.11 **Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by Declarant within the Property, hereby covenants, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 11.7, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

## ARTICLE 11

### ENFORCEMENT

11.1 **Remedies.** This Declaration shall be specifically enforceable by Declarant or by any Owner of any Lot. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal, or enjoining of any offending Improvements or condition.

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

11.3 **Nonqualifying Improvements and Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on the Owner's Lot, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot, the Improvements thereon and the use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within thirty (30) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have the right to do any or all of the following.

(a) Assess fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done including administrative costs as determined by the Board of Directors, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings, or;

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

11.4 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event, the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

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

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

11.5 **Notification of First Mortgagee.** The Board of Directors shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days after notice of default to the Owner.

11.6 **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

11.7 **Interest, Expenses and Attorneys' Fees.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the prevailing Portland, Oregon prime rate at the time, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed thirty percent (30%) of such Assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due under this Declaration or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

11.8 **Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 11, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's

obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Lot, or any part thereof, to do the same or similar acts.

11.9 **Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

11.10 **Dispute Resolution.**

(a) **Mediation/Arbitration.** Any claim, controversy or dispute by or among Declarant, the Association or one or more Owners, or any of them, arising out of or related to this Declaration shall be first subject to mediation and, if not timely settled by mediation, resolved by arbitration in accordance with this Section 11.10. Any party may at any time opt to forego mediation and submit the matter directly to arbitration as provided in this Declaration. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Deschutes County, Oregon pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action (“*lis pendens*”).

(b) **Selection of Arbitrator.** The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the Presiding Judge of the Circuit Court of Deschutes County, Oregon shall designate the arbitrator.

(c) **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration.

(d) **Discovery.** The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Deschutes County Circuit Court. The arbitrator shall have all of the authority of the Court incidental to such discovery, including without limitation authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to



impose appropriate sanctions including without limitation award against a party for failure to comply with any order.

(e) **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where any of the parties is absent in default or has waived its right to be present.

(f) **Excluded Matters.** Notwithstanding the foregoing, actions to enforce any order, decision or award rendered by arbitration pursuant to this Section 11.10 shall not be subject to mediation or arbitration under this Section 11.10 (but shall be subject to the applicable provisions of Section 11.10(g) below). The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Section 11.10.

(g) **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, to obtain a judicial construction of any provision of the Declaration, to rescind this Declaration or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute, as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard, or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

(h) **Survival.** The mediation and arbitration agreement set forth in this Section 11.10 shall survive the transfer by any party of its interest or involvement in the Property and any Lot or Living Unit therein and the termination of this Declaration.

## ARTICLE 12

### **DECLARANT'S IMMUNITY**

The Declarant has a non-exclusive right and power to enforce the covenants, conditions, and restrictions contained in this Declaration, but the Declarant has no legal obligation to enforce or attempt to enforce the provisions hereof. In the event Declarant refuses, neglects, fails or is negligent in enforcing or attempting to enforce the Declaration, there shall not exist or be created any cause of action or claim against Declarant, and each Owner or any person or entity claiming by, through or from said Owner hereby releases Declarant from and against any claim arising in connection with the development

of the Property or related to Declarant's acts or omissions in preparing, filing or enforcing this Declaration and shall be stopped from making or enforcing any such claim.

## ARTICLE 13

### MORTGAGEES

13.1 **Reimbursement of First Mortgagees.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

13.2 **Right of First Mortgagees Relating to Maintenance.** At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as provided in this section, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 13.2 and shall be sent postage prepaid by certified U.S. mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

## ARTICLE 14

### MISCELLANEOUS PROVISIONS

14.1 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent, or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by an affirmative vote or written consent not less than six (6) months prior to the intended termination date of Owners owning not less than 75 percent of the Lots in the Property.

14.2 **Amendment.** This Declaration or any provision thereof may be terminated, extended, modified or amended, as to the whole of said Property or any part thereof with written consent of the Owners of at least seventy-five (75%) of the Lots in the Property; provided, however, that as long as Declarant owns any of the Lots, no such termination, extension, modification, or amendment shall be effective without the written approval of Declarant. Any such approved amendment must be certified by the President and Secretary of the Association as being adopted in accordance with the Declaration as provided in ORS 94.590. Notwithstanding the foregoing, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home 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 corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of seventy-five (75%) of the voting rights of the Lots in the Property.

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

14.4 **Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Lot shall give the Association written notice within seven (7) days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the Transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Association, notwithstanding the transfer of title.

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

14.6 **Construction; Severability; Number; Captions.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

14.7 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, to 9055 Beaverton-Hillsdale Highway, Portland, Oregon 97225; if to an Owner, at the address given by the Owner at the time of purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided in this section.

14.8 **Recording.** Any amendment, deletion or repeal of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 3<sup>rd</sup> day of April, 2003.

THREE PINES DEVELOPMENT, L.L.C., an Oregon limited liability corporation ("Declarant")

By: [Signature]  
Its: Managing Member

**CONSENT BY BENEFICIARIES:**

COMMUNITY FIRST BANK, Beneficiary

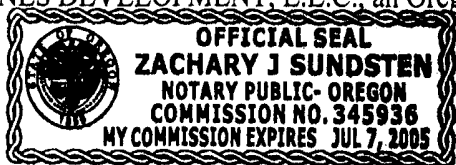
DAVID W. MCCLAIN, Beneficiary

BY [Signature]  
Its Executive Vice President

[Signature]  
David W. McClain

STATE OF OREGON )  
 )Ss.  
County of Deschutes )

The foregoing instrument was acknowledged before me on April 3, 2003 by SAS DIVANSEE as MANAGING MEMBER for THREE PINES DEVELOPMENT, L.L.C., an Oregon limited liability corporation.



[Signature]  
Notary Public for Oregon  
My commission expires: 7-7-05

STATE OF OREGON )  
 )Ss.  
County of Deschutes )

The foregoing instrument was acknowledged before me on April 3, 2003 by Jim Tindle as EXECUTIVE V.P. for COMMUNITY FIRST BANK.



[Signature]  
Notary Public for Oregon  
My commission expires: 7-7-05

STATE OF OREGON )


)Ss.

County of Deschutes )

The foregoing instrument was acknowledged before me on April 3, 2003 by

David W. McClain..



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

My commission expires: 7-7-05

**EXHIBIT A TO  
Declaration of Covenants, Conditions and Restrictions for Three Pines**

<b><u>Land Classification:</u></b>	<b><u>Property Description</u></b>
<b><u>Lots:</u></b>	Lots 1- 20 and Lots 23 - 30 as shown on the plat of THREE PINES, P.U.D., PHASE 1 recorded in Deschutes County, Oregon.
<b><u>Common Areas:</u></b>	The following common tracts as shown on the plat of THREE PINES, P.U.D., PHASE 1 recorded in Deschutes County, Oregon: Common Tract "B" Common Tract "C" Common Tract "D" Common Tract "E"
<b><u>Common Easement Areas:</u></b>	None
<b><u>Public Areas:</u></b>	The following roads on which public access is granted as shown on the plat of THREE PINES, P.U.D., PHASE 1 recorded in Deschutes County, Oregon: N.W. Mt. Hood Drive N.W. Mt. Jefferson Place N.W. Mt. McLoughlin Lane N.W. Mt. Shasta Drive;

111 ↓  
After recording, return to:  
Three Pines Development, LLC  
9055 Beaverton-Hillsdale Hwy.  
Portland, OR 97225

**INITIAL BYLAWS  
OF  
THREE PINES OWNERS ASSOCIATION**

17  
X  
These **INITIAL BYLAWS OF THREE PINES OWNERS ASSOCIATION** are adopted as of the 17<sup>th</sup> day of April, 2003 by **THREE PINES DEVELOPMENT, LLC**, an Oregon limited liability corporation (the "Declarant").

**RECITALS**

A. Declarant is the declarant under the Declaration of Covenants, Conditions and Restrictions for Three Pines recorded April 11, 2003 in the Records of Deschutes County, Oregon as Document No. 2003-023947-2 (the "Declaration").

B. Article 8 of the Declaration provides that Declarant shall establish an Association for Three Pines, adopt Articles of Incorporation and initial Bylaws for the Association and supervise the organization of the Association.

C. Declarant has established Three Pines Owners Association (the "Association") as a Class I Planned Community under the Oregon Planned Community Act, ORS 94.550 to 94.783. In connection therewith, Declarant has adopted and filed Articles of Incorporation for the Association.

**NOW, THEREFORE**, Declarant hereby adopts the bylaws attached hereto as "Exhibit A" as the Initial Bylaws of the Association and has caused such Bylaws to be recorded in the Real Property Records of Deschutes County, Oregon, pursuant to ORS 94.625(c).

**THREE PINES DEVELOPMENT, LLC,**  
an Oregon limited liability corporation

By: [Signature]  
Its Managing Member

STATE OF OREGON           )  
  )ss.  
County of Deschutes       )

This instrument was acknowledged before me this 17<sup>th</sup> day of April, 2003 by Saj Jivanjee, as Managing Member of Three Pines Development, LLC, an Oregon limited liability corporation, on its behalf.



[Signature]  
Notary Public for Oregon  
My commission expires: 10-17-2004

**DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK**

**2003-25272**



**\$111.00**

Three Pines Bylaws

After recording, return to  
Amerititle  
15 OREGON AVENUE, BEND 1

04/17/2003 04:02:14 PM

D-BY Cntw1 Strw11 JEFF  
\$85.00 \$11.00 \$10.00 \$5.00

→ LR

**“EXHIBIT A”**

**BYLAWS OF**

**THREE PINES OWNERS ASSOCIATION**

**ARTICLE 1.**

**DEFINITIONS**

1.1 **Association.** "Association" shall mean **THREE PINES OWNERS ASSOCIATION**, a nonprofit corporation organized and existing under the laws of the State of Oregon.

1.2 **Articles of Incorporation.** "Articles of Incorporation" shall mean the Articles of Incorporation of the Association.

1.3 **Declaration.** The "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for Three Pines recorded on April 11, 2003 in the Deed Records of Deschutes County, Oregon as Document No. 2003-023947-2, as the same may be subsequently amended or supplemented pursuant to the terms thereof.

1.4 **Incorporation by Reference.** Except as otherwise provided herein, the terms which are defined in Article I of the Declaration are used in these Bylaws as therein defined.

**ARTICLE 2.**

**MEMBERSHIP**

2.1 **Membership.** Every Owner of one or more Lots within the Property shall, during the entire period of such ownership, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership,

2.2 **Membership List.** The Secretary shall maintain at the principal office of the Association a membership list showing the name and address of the Owner of each Lot. The Secretary may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Board of Directors.



## ARTICLE 3.

### MEETINGS AND VOTING

3.1 **Place of Meetings.** Meetings of the members of the Association shall be held at such reasonable place convenient to the members as may be designated in the notice of the meeting.

3.2 **Turnover Meeting.** Declarant shall call the first meeting of the Owners to organize the Association within ninety (90) days after Lots representing ninety-five percent (95 %) of the Voting Units have been sold and conveyed to Owners other than the Declarant. Notice of such meeting shall be given to all Owners as provided in Section 3.5. If the Declarant fails to call the meeting, the meeting may be called and notice given by any Owner or mortgagee of a Lot. The expense of giving notice shall be paid or reimbursed by the Association. In the event of lack of quorum at such Turnover Meeting, it may be adjourned to the time of the first annual meeting. Nothing in this section shall be construed as preventing the Declarant from calling the Turnover Meeting prior to such date, or from calling informal, informational meetings of the Owners.

3.3 **Annual Meeting.** The annual meeting of the members for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors, or if the Board should fail to designate a date by the first day of May, then at 7:30 pm. on the third Saturday in May. The first annual meeting shall be held within one year from the date of the Turnover Meeting.

3.4 **Special Meetings.** A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called upon receipt of a written request stating the purpose of the meeting from members having thirty percent (30%) of the Voting Units entitled to be cast at such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

3.5 **Notice of Meeting.**

(a) Written or printed notice stating the place, day and hour of the meeting, the items on the agenda, including the general nature of any proposed amendment to the Declaration, Articles of Incorporation, or these Bylaws, any budget changes, any proposal to remove a director or officer and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than (50) days before the date of the meeting. Such notice shall be given either personally or by mail, by or at the direction of the President, or the Secretary, or the persons calling the meeting, to each member entitled to vote at such meeting, and to all mortgagees who have requested such notice. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at his most recent address as it appears on the records of the Association or to the mailing address of his Lot.

(b) When a meeting is adjourned for thirty (30) days or more, or when a redetermination of the persons entitled to receive notice of the adjourned meeting is required by

law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases, no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

3.6 **Quorum.** At any meeting of the Association, members having twenty percent (20%) of the Voting Units entitled to be cast at such meeting, present in person or by proxy, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time not less than forty-eight (48) hours nor more than thirty (30) days from the time the original meeting was called until a quorum is present.

3.7 **Voting Rights.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners with the exception of the Class B member and shall be entitled to Voting Units for each Lot owned computed in accordance with paragraph 8.3(a) of the Declaration. When more than one person holds an interest in any Lot, all such persons shall be members. Except as may otherwise be specified in the declaration annexing such Lot to Three Pines, the vote for such Lot shall be exercised as they among themselves determine. In no event, however, shall more Voting Units be cast with respect to any Lot than as set forth in Section 8.3(a) of the Declaration.

**Class B.** The Class B member shall be the Declarant and shall be entitled to three times the Voting Units computed under Section 8.3(a) of the Declaration for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) Declarant has completed development of all Lots and Common Areas permitted under the City of Bend Master Plan approval for Three Pines, and Lots representing ninety-five percent (95 %) of the Voting Units computed in accordance with the Declaration have been sold and conveyed to Owners other than Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

3.8 **Fiduciaries and Joint Ownership.** An executor, administrator, guardian or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided that such person shall satisfy the Secretary that he or she is the executor, administrator, guardian or trustee, holding such Lot in such capacity. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote or proxy of such Lot may be exercised by any one of the Owners then present, in the absence of protest by a co-Owner. In the event of disagreement among the co-Owners, the vote of such Lot shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

3.9 **Tenants and Contract Vendors.** Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Lot shall be exercised by the Owner. Unless

otherwise stated in the contract, all voting rights allocated to a Lot shall be exercised by the vendee of any recorded land sale contract on the Lot.

3.10 **Proxies.** Every member entitled to vote or to execute any waiver or consent may do so either in person, by absentee ballot or by written proxy duly executed and filed with the Secretary of the Association. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over the meeting. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date unless the proxy specifies a shorter term. Mortgagees may designate a representative to attend any meeting of the Association.

3.11 **Majority Vote.** The vote of a majority of the Voting Units entitled to be cast by the members present or represented by absentee ballot or proxy, at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

3.12 **Rules of Order.** Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

3.13 **Ballot Meetings.**

(a) At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every member who is entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each action.

(b) The Board of Directors shall provide Owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. If, at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Owners petition the Board of Directors requesting secrecy procedures, a written ballot must be accompanied by a secrecy envelope, a return identification envelope to be signed by the Owner, and instructions for marking and return the ballot. Notwithstanding the applicable provisions of paragraph (c) of this section, written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(c) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of Lot Owners has voted, and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected. If approval of a proposed action otherwise would require a meeting at which a specified percentage of Lot Owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and

such required percentage has not been met. Except as otherwise provided in paragraph (b) of this section, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(d) All solicitations for votes by written ballot shall state the number of responses needed to meet any applicable quorum requirement and the total percentage of votes needed for approval. All such solicitations for votes shall specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of (i) the date on which the Association has received a sufficient number of approving ballots to pass the proposal, (ii) the date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage, or (iii) a date certain by which all ballots must be returned to be counted. A written ballot may not be revoked.

## ARTICLE 4.

### DIRECTORS: MANAGEMENT

4.1 **Qualification.** The affairs of the Association shall be governed by a Board of Directors of three (3) to seven (7) persons. All directors, other than interim directors appointed by Declarant, shall be Owners or co-Owners of Lots. For purposes of this section, the officers of any corporate Owner and the partners of any partnership shall be considered co-Owners of any Lots owned by such corporation or partnership.

4.2 **Interim Directors.** Upon the recording of the Declaration, the Declarant shall appoint an interim board of three (3) directors, who shall serve until replaced by Declarant or their successors have been replaced by the Owners as provided below.

4.3 **Transitional Advisory Committee.** Unless the Turnover Meeting described in Section 3.2 above has already been held, Declarant shall call a meeting of the Owners for the purpose of forming a Transitional Advisory Committee. The meeting shall be called within sixty (60) days of conveyance to persons other than Declarant of Lots representing fifty percent (50%) of the Voting Units in the Association. Declarant shall give notice of the meeting as provided in Section 3.5, above. The committee shall consist of two (2) or more members elected by the Owners other than Declarant and not more than one representative of Declarant. The members shall serve until the Turnover Meeting. The Transitional Advisory Committee shall be advisory only and its purpose shall be to enable ease of transition from control of the administration of the Association by Declarant to control by the members. The committee shall have access to any information, documents and records which Declarant must turn over to the members at the time of the Turnover Meeting. If Declarant fails to call the meeting to elect a Transitional Advisory Committee within the time specified, the meeting may be called and notice given by any Owner. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

4.4 **Election and Tenure of Office.** At the next annual meeting following termination of the Class B membership, the interim directors shall resign and the directors specified in Section 8.10 of the Declaration shall be elected as provided in such section. The first directors elected by the Owners shall serve staggered terms of one year, two years and three years as they among themselves shall determine. Thereafter, all directors shall be elected for

three year terms. All directors shall hold office until their respective successors have been elected as provided in such section. Election shall be by plurality.

4.5 **Vacancies.** A vacancy in the board of directors shall exist upon the death, resignation or removal of any director. Vacancies in the board of directors, other than interim directors, shall be filled by vote of the remaining directors until the next annual meeting, at which time its vacancy shall be filled by election in the manner described in Section 8.10 of the Declaration. Each such director shall hold office for the balance of the unexpired term and until his or her successor is elected. Vacancies in interim directors shall be filled by Declarant.

4.6 **Removal of Directors.** Any director, other than interim directors, may be removed, with or without cause, at any meeting of the members entitled to vote on the election of such director by vote of a majority of the number of votes entitled to be cast at the election of such director. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

4.7 **Powers.** The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to those set forth in Section 8.5 of the Declaration and the following:

- (a) Carry out the maintenance program described in the Declaration and these Bylaws.
- (b) Determination of the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.
- (c) Preparation of a budget for the Association, and assessment and collection of the Assessments.
- (d) Employment and dismissal of such personnel as necessary for such maintenance, upkeep and repair.
- (e) Employment of legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75 %) of the Voting Units present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of these Bylaws. To the extent required by the Oregon Planned Community Act, the Board shall notify the Owners before instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the Board shall periodically report to the Lot Owners as to the status (including settlement offers), progress, and method of funding

such litigation. Nothing in this paragraph shall be construed as requiring the Board to disclose any privileged communication between the Association and its counsel.

(f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Preparing or causing to be prepared and filed any required income tax returns or forms for the Association.

(h) Purchasing Lots at foreclosure or other judicial sales in the name of the Association, or its designee.

(i) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with Lots acquired by the Association or its designee.

(j) Obtaining insurance or bonds pursuant to the provisions of these Bylaws, and reviewing such insurance coverage at least annually.

(k) Making additions and improvements to, or alterations of, the Common Areas.

(l) From time to time adopt, modify, or revoke such Policies and Procedures governing the conduct of persons and the operation and use of the Lots and the Common Areas as the Board of Directors may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Such action may be modified by vote of not less than seventy-five percent (75 %) of the voting rights of Class A members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of Policies and Procedures will be under consideration, together with the consent of the Class B member.

(m) Enforcement by legal means of the provisions of the Declaration, these Bylaws and any Policies and Procedures adopted thereunder.

(n) In the name of the Association, maintain a current mailing address of the Association.

(o) Subject to Article 8 of the Declaration, enter into management agreements with professional management firms. The professional manager may include Declarant or an affiliate of Declarant.

#### 4.8 **Meetings.**

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other persons calling the meeting.

(b) Annual meetings of the Board of Directors shall be held within sixty (60) days following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two directors.

(d) Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Board of Directors shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

#### 4.9 **Open Meetings; Notice.**

(a) All meetings of the Board of Directors shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (a) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (b) personnel matters, including salary negotiations and employee discipline; and (c) the negotiation of contracts with third parties. Except in the case of an emergency, the Board of Directors shall vote in an open meeting on whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. Meetings of the Board of Directors may be conducted by telephonic communication, except that if a majority of the Lots are principal residences of the occupants, then: (a) for other than emergency meetings, notice of each Board of Directors' meeting shall be posted at a place or places on the property at least three (3) days prior to the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Owners of such meeting; (b) emergency meetings may be held without notice, if the reason of the emergency is stated in the minutes of the meeting; (c) only emergency meetings of the Board of Directors may be conducted by telephonic communication.

(b) Notice of the time and place of special meetings shall be given to each director orally or delivered in writing personally or by mail or telecopy at least twenty-four (24) hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or telecopied not less than seventy-two (72) hours before the meeting. Notice mailed or telecopied shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the person giving the notice. Such notice may need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned.

(c) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

#### 4.10 **Quorum and Vote.**

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

4.11 **Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

4.12 **Compensation.** No director shall receive any compensation from the Association for acting as such.

## ARTICLE 5.

### OFFICERS

5.1 **Designation and Qualification.** The officers of the Association shall be the President, the Secretary and the Treasurer and such Vice Presidents and subordinate officers as the Board of Directors shall from time to time appoint. The President shall be a member of the Board of Directors, but the other officers need not be directors. Officers need not be members of the Association. Any two offices may be held by the same person except the offices of President and Secretary.

5.2 **Election and Vacancies.** The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one year and until their respective successors are elected. If any office shall become vacant by reason of death, resignation, removal, disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

5.3 **Removal and Resignation.**

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever in their judgment the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

(b) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective, provided that the Board of Directors may reject any post-dated resignation by notice in writing to the resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.



5.4 **President.** The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and affairs of the Association. He shall preside at all meetings of the members and of the Board of Directors. He shall be ex officio a member of all the standing committees, including the executive committee, if any, shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.5 **Vice Presidents.** The Vice Presidents, if any, shall perform such duties as the Board of Directors shall prescribe. In the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Senior Vice President as designated by the Board of Directors.

5.6 **Secretary.**

(a) The Secretary shall keep or cause to be kept a Book of Minutes of all meetings of directors and members showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at directors' meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

(b) The Secretary shall give or cause to be given such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. The Secretary shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) If there are no Vice Presidents, then in the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary.

5.7 **Treasurer.** The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of the Treasurer's transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

5.8 **Compensation of Officers.** No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members. The Board of Directors may fix any compensation to be paid to other officers.

## ARTICLE 6.

### EXECUTIVE AND OTHER COMMITTEES

Subject to law, the provisions of the Articles of Incorporation and these Bylaws, the Board of Directors, by a vote of a majority of the directors in office, may appoint an executive committee and such other standing or temporary committees as may be necessary from time to time, consisting of not less than two of the directors in office and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

## ARTICLE 7.

### ASSESSMENTS, RECORDS AND REPORTS

7.1 **Assessments.** As provided in the Declaration, the Association, through its Board of Directors, shall do the following:

- (a) Assess and collect from the Owners the Assessments in the manner described in the Declaration.
- (b) Keep all funds received by the Association as Assessments, other than reserves described in Section 10.10 of the Declaration, in the Operations Fund and keep all reserves collected pursuant to Section 10.10 of the Declaration in the Reserve Fund, and use such funds only for the purposes described in the Declaration.
- (c) From time to time, and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred with adequate allowance for reserves, and determine whether the Annual Assessment should be increased or decreased. Within thirty (30) days after adopting a proposed annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt a budget, the last annual budget shall continue in effect.
- (d) Fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of any Assessment shall be sent to every Owner subject thereto and to any first mortgagee requesting such notice. The due dates shall be established by the Board of Directors, which may fix a regular flat Assessment payable on a monthly, quarterly or annual basis. The Board of Directors shall cause to be prepared a roster of the Lots showing Assessments applicable to each Lot. The roster shall be kept in the Association office and shall be subject to inspection by any Owner or mortgagee during regular business hours. Within ten (10) business days after receiving a written request, and for a reasonable charge, the Association shall furnish to any Owner or mortgagee a recordable certificate setting forth the unpaid Assessments against such Owner's Lot. Such certificate shall be binding upon the Association, the Board of Directors, and every Owner as to the amounts of unpaid Assessments.
- (e) When Additional Properties are annexed, the Board of Directors shall assess any Lots included therein in accordance with Section 10.8 of the Declaration.

(f) Enforce the Assessments in the manner provided in the Declaration.

(g) Keep records of the receipts and expenditures affecting the Operations Fund and Reserve Fund and make the same available for examination by members and their mortgagees at convenient hours, maintain an Assessment roll showing the amount of each Assessment against each Owner, the amounts paid upon the account and the balance due on the Assessments, give each member written notice of each Assessment at least 30 days prior to the time when such Assessment shall become due and payable; and for a reasonable charge, promptly provide any Owner or mortgagee who makes a request in writing with a written certificate of such Owner's unpaid Assessment.

7.2 **Records.** The Association shall keep correct and complete financial records sufficiently detailed for proper accounting purposes, shall keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors, and retain all documents, information and records turned over to the Association by Declarant. All documents, information and records delivered to the Association by Declarant pursuant to ORS 94.616 shall be kept within the State of Oregon.

7.3 **Statement of Assessments Due.** The Association shall provide, within ten (10) business days after receipt of a written request from an Owner, a written statement that provides: (a) the amount of assessments due from the Owner and unpaid at the time the request was received, including regular and special assessments, fines and other charges, accrued interest, and late-payment charges; (b) the percentage rate at which interest accrues on assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed-rate charge for late payment. The Association is not required to comply with this section if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

7.4 **Inspection of Books and Records.** During normal business hours or under other reasonable circumstances, the Association shall make available to Owners, prospective purchasers and lenders, and to holders of any mortgage of a Lot, current copies of the Declaration, Articles, Bylaws, Rules and Regulations, amendments or supplements to such documents and the books, records, financial statements and current operating budget of the Association. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. In addition, the Association shall make all other records of the Association available for examination by an Owner or any mortgagee. The Association may charge a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs for furnishing the documents, information or records.

7.5 **Payment of Vouchers.** The Treasurer or managing agent shall pay all vouchers for all budgeted items and for any nonbudgeted items up to \$1,000 signed by the President, managing agent, manager or other person authorized by the Board of Directors. Any voucher for nonbudgeted items in excess of \$1,000 shall require the authorization of the President or a resolution of the Board of Directors.

7.6 **Execution of Documents.** The Board of Directors may, except as otherwise provided in the Declaration, Articles of Incorporation or these Bylaws, authorize any officer or

agent to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or for any amount.

7.7 **Reports and Audits.** An annual financial statement consisting of a balance sheet and income and expense statement for the preceding year shall be rendered by the Board of Directors to all Owners and to all mortgagees who have requested the same within ninety (90) days after the end of each fiscal year. From time to time, the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the members. At any time any Owner or holder of a mortgage may, at their own expense, cause an audit or inspection to be made of the books and records of the Association.

## ARTICLE 8.

### INSURANCE

8.1 **Types of Insurance.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

(a) **Property Damage Insurance.**

(i) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

(ii) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible.

(iii) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association.

(b) **Liability Insurance.**

(i) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, and the managing agent, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out

of acts or omission of such Owner and liability incident to the ownership and/or use of the part of the property as to which such Owner has the exclusive use or occupancy.

(ii) Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single-limit basis.

(iii) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Bonds or Insurance.**

(i) The Board of Directors may cause the Association to maintain blanket fidelity bonds or insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. In the event the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity bonds or insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association.

(ii) The total amount of fidelity coverage required shall be based upon the best business judgment of the Board of Directors.

(iii) Such fidelity bond or insurance shall name the Association as obligee and shall contain waivers by the bond issuers or the insurer of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds or insurance shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium,) without at least 10 days' prior written notice to the Association.

8.2 **Insurance by Lot Owners.** Each Owner shall be responsible for obtaining, at his or her own expense, homeowner's insurance covering the Improvements on the Owner's Lot and liability resulting from use or ownership of the Lot, unless the Association agrees otherwise. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained under this section by the Owners.

8.3 **Planned Community Act Requirements.** The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780.

## ARTICLE 9.

### GENERAL PROVISIONS

9.1 **Seal.** The Board of Directors may, by resolution, adopt a corporate seal.

9.2 **Notice.** All notices to the Association or to the Board of Directors shall be sent care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time. All notices to members shall be sent to the member's Lot address or to such other address as may have been designated by the member from time to time in writing to the Board of Directors.

9.3 **Waiver of Notice.** Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, a waiver of notice in writing signed at any time by the person entitled to notice shall be equivalent to the giving of the notice.

9.4 **Action Without Meeting.** Any action which the law, the Declaration, the Articles of Incorporation or the Bylaws require or permit the members or directors to take at any meeting may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the members or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the members or directors, shall be filed in the records of minutes of the Association.

9.5 **Conflicts.** These Bylaws are intended to comply with the Oregon Nonprofit Corporation Law, the Declaration, the Articles of Incorporation and the Oregon Planned Community Act. In case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

## ARTICLE 10.

### AMENDMENTS TO BYLAWS

10.1 **How Proposed.** Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or by members holding at least thirty percent (30%) of the voting rights entitled to be cast for such amendment. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or be attached to any request for consent to the amendment.

10.2 **Adoption.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members and may be approved by the membership at a meeting called for that purpose or by ballot vote. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by members holding a majority of the voting rights, together with the written consent of the Class B member, if any. Amendment or repeal of any provision of these Bylaws that is also contained in the Declaration or Articles of Incorporation must be approved by the same voting requirement for amendment of such provision of the Declaration or Articles of Incorporation.

Notwithstanding the provisions of the preceding paragraph, until termination of the Class B membership, Declarant shall have the right to amend these Bylaws in order to comply with the requirements of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community. After the termination of Class B membership, any such amendment shall require the approval of a majority of the voting rights of the Association, voting in person, by proxy, or by ballot, at a meeting or ballot meeting of the Association at which a quorum is represented.

10.3 **Execution and Recording.** An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws and ORS 94.625 and recorded in the Deed Records of Deschutes County, Oregon.



\$51.00

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\$25.00 \$11.00 \$10.00 \$5.00

Recorded by AmeriTitle as an  
accommodation only. No liability  
is accepted for the condition of  
title or for the validity, sufficiency,  
or effect of this document.

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**AFTER RECORDING, RETURN TO:**

→ Three Pines Development, LLC  
9055 Beaverton-Hillsdale Hwy.  
Portland, OR 97225

**AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
2003-25272  
THREE PINES**

This amendment to the **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THREE PINES PUD** is made this 23 day of **October, 2006** by **THREE PINES DEVELOPMENT, L.L.C.**, an Oregon limited liability corporation ("Declarant").

**RECITALS**

A. Declarant owns property located in the City of Bend, Deschutes County, Oregon. Declarant is developing portions of this property as a planned unit development to be known as "Three Pines".

B. Declarant has filed the plat of Phase's 7-10 of the Three Pines PUD in the plat records of Deschutes County, Oregon. Declarant desires to subject the property described in the attached **Exhibit D** (for the "Phase 7-9 Property") to the terms of the Three Pines Declaration Recorded on April 3, 2003 for the benefit of such property and its present and subsequent owners.

**NOW, THEREFORE**, pursuant to Article 2.2 **Annexation of Additional Property** of the Three Pines Declaration of April 3, 2003, Declarant hereby amends the Declaration to:

1. include as additional property the lots in Phase 7-10 of the Three Pines PUD as described in Exhibit D and
2. declare that the lots described in Exhibit D shall become a part of Three Pines and the Declaration, and
3. establish that the Declarant and the Association shall have and shall accept and exercise administration of the amended Declaration with respect to the Additional Property in Phase 7-9 described in Exhibit D, and
4. the lots in Phase 7-9 shall be held, sold, and conveyed subject to the terms of the Declaration, which will run with such property and shall be binding upon all parties having or acquiring any right, title, or interest in such property or any part thereof and shall inure to the benefit of each owner thereof, and
5. establish additional architectural requirements as described in Exhibit D.

After recording, return to  
Amerititle  
15 OREGON AVENUE, BEND



Phase 5 Lots, so annexed, shall be entitled to voting rights as set forth in Section 8.3 of the Declaration. The formula to be used for reallocating the common expenses and the manner of reapportioning the common expenses during a fiscal year are set forth in Section 10.8 of the Declaration. This Amendment of the Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 23 day of October \_\_\_\_\_, 2006.

**THREE PINES DEVELOPMENT, L.L.C.**, an Oregon limited liability corporation  
("Declarant")

By: \_\_\_\_\_  
Its: Managing Member

STATE OF OREGON                    )  
                          WASH.                                    )Ss.  
County of ~~Deschutes~~                    )



The foregoing instrument was acknowledged before me on Oct 23, 2006 by  
Saj Jivanjee as \_\_\_\_\_ for  
THREE PINES DEVELOPMENT, L.L.C., an Oregon limited liability corporation.

Mary Kathryn Anderson  
Notary Public for Oregon  
My commission expires: July 12, 2009

**CONSENT BY BENEFICIARIES:**

**COLUMBIA RIVER BANK , Beneficiary**

BY Shelle Paek

Date 11-8-06

Title Comm'l Loan officer, AVP



STATE OF OREGON )  
County of Deschutes ) )Ss.

The foregoing instrument was acknowledged before me on November 8<sup>th</sup>, 2006 by Shelle Paek as Commercial Loan officer, AVP for

COLUMBIA RIVER BANK.

Trisha Bartkowski  
Notary Public for Oregon  
My commission expires: 6-23-09

**DAVID W. MCCLAIN, Beneficiary**

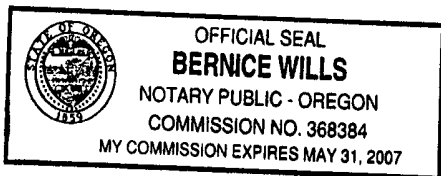
David W. McClain

Date 10-25-06

STATE OF OREGON )  
County of Washington ) )Ss.  
~~Deschutes~~

The foregoing instrument was acknowledged before me on October 25, 2006 by David W. McClain..

Bernice Wills  
Notary Public for Oregon  
My commission expires: May 31, 2007



**EXHIBIT C TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THREE PINES**

<u>Land Classification:</u>	<u>Property Description</u>
<u>Lots:</u>	Lots 56 and 59 and Lots 63 through 67 as shown on the plat of Three Pines P.U.D., PHASE 7-10 recorded in Deschutes County
<u>Common Areas:</u>	The following common tracts as shown on the plat of Three Pines P.U.D. PHASE 7-10 recorded in Deschutes County Oregon: Common Tract "M"
<u>Storm Water Retention Areas and Landscape Easement :</u>	Storm Water Retention Areas are located in Common Tract "N" to be conveyed to the Bend Parks and Recreation District. The Three Pines Owners Association shall have the right and obligation through a storm water easement to enter on to "Storm Water Retention area on Common Area "N" to repair the retention areas and the landscape walls and landscaping.
<u>Storm Water Drainage Restrictions:</u>	<p>Lots 62, 63, 64, 65, 68, and 69 are subject to storm water drainage restrictions. Owners are restricted from allowing storm water from roof drains and other hard surfaces from draining onto adjacent lots except as provided herein:</p> <p>Lot 62 shall provide for a storm water drainage pipe from Lot 62 to Mt. Shasta Drive along sewer easement "G" as shown on the Plat of Three Pines P.U.D., Phase 7-10 recorded in Deschutes County Oregon.</p> <p>Lot 69 shall provide for a storm water drainage pipe from Lot 69 to Mt. Shasta Drive along sewer easement "H" as shown on the Plat of Three Pines P.U.D., Phase 7-10 recorded in Deschutes County Oregon.</p> <p>Lot 64 and Lot 65 are required to provide for as part of the landscape plan a common drainage swale along the common property line of Lots 64/65, draining to Mt. Shasta Drive.</p> <p>Lot 65 and Lot 68 are required to provide for as part of the landscape plan a common drainage swale along the common property line of Lots 65/68, draining to Mt. Shasta Drive.</p>
<u>Public Areas</u>	<p>The following roads to which public access is granted as shown on the plat of Three Pines, P.U.D., PHASE 5 recorded in Deschutes County, Oregon</p> <p>N.W. Mt. Shasta Drive N.W. Mt. Theilsen Drive N.W. Mt. Jefferson Court</p>

<p><b>Landscape Restriction</b></p>	<p>Lots 56, 57 and 58 are subject to a landscape restriction along the northern lot line 10 ft. from Common Area "M". Owner is restricted from major modification of the 10 ft. area except as noted in a landscaping plan reviewed and approved by the Three Pines Architectural Review Committee. The landscape plan for the lot must include a detail restricting landscaping within this area to native plants only. Structures such as play equipment and water features are prohibited in this area. Steps and trails leading to Common Area "M" are allowed by the Architectural Review Committee.</p>
<p><b>Architectural Guidelines</b></p>	<p>Lots 56 -59 and 63-67 are subject to the Phase 7 through 9 Additional Specifications developed on October <u>23</u>, 2006.</p>