

94-28480

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR BIG SKY SUBDIVISION

These COVENANTS, CONDITIONS, AND RESTRICTIONS are made this 19th day of JULY, 1994, by SUNBIRD, INC. as the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions for the benefit of said property, and its present and subsequent owners, and will convey said property subject thereto.

Now, therefore, Declarant hereby declares that all of the subject property is and shall be held, sold, and conveyed upon subject to the following easements, conditions, covenants and restrictions and reservations. These are for the purpose of protecting the value and desirability of the property and shall run with the real property. They shall be binding on all parties having any right, title, or interest in the described properties or any part thereof, and shall inure to the benefit of and be limitations upon all future owners.

ARTICLE I: DEFINITIONS

- 1.1 **BIG SKY:**
The term "BIG SKY" shall mean all of the real property as platted within the subdivision made subject to this declaration.
- 1.2 **DECLARANT:**
The term "DECLARANT" shall mean SUNBIRD, INC. or successors in interest.
- 1.3 **LOT:**
The term "LOT" shall mean each lot described on a subdivision map or any alteration thereof as may be made by a valid lot line adjustment.
- 1.4 **HOMESITES:**
The term "HOMESITES" shall mean the location of a house deemed by Declarant.
- 1.5 **OWNER:**
The term "OWNER" shall mean and refer to either all holders of fee title to any lot, or any other person or persons entitled to possession of the lot.

FIRST AMERICAN TITLE CO.
OF DESCHUTES COUNTY
P. O. BOX 323
BEND, OREGON 97709

No-134442 Mue 9/10/09

1.6 IMPROVEMENTS:

The term "IMPROVEMENTS" shall include, but not be limited to, any structures on the property including buildings, fencing, barriers, driveways, storage areas.

1.7 BY LAWS shall refer to the By-Laws of BIG SKY.

ARTICLE II: ARCHITECTURAL CONTROLS**2.1 ARCHITECTURAL CONTROL COMMITTEE:**

An Architectural Control Committee (Committee) is hereby established. It shall initially be the Declarant and/or his designated appointee.

At the point where one hundred percent of the lots have been sold, three resident owners shall be designated as the continuing committee. A majority of the committee may designate a Representative to act for it. In case of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed. In the event that deaths or resignations of all members of the committee occurs without successors having been appointed, the owners shall have the power to designate successors.

At any time, the present owners of a majority of the lots shall by written and signed order, have the power through a duly recorded instrument to change the membership of the Committee, withdraw from the Committee, or restore to it any of its powers and duties or change the Covenants contained herein.

2.2 DUTIES AND RULES: The Committee shall consider and act on all matters submitted to it pursuant to this Declaration. The Committee, by unanimous vote, from time to time and at its sole discretion, adopt, amend, and repeal rules and regulations to be known as the Committee rules establishing its operation procedures. Such rules shall have the same effect as if set forth herein.

2.3 APPROVALS REQUIRED:

No improvement shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the Architectural Control Committee.

2.4 PROCEDURE:

Any owner proposing to construct any improvements within the BIG SKY subdivision (including any exterior modification, alteration, addition, destructions or modification thereof) shall follow the procedures as required by paragraphs 2.5 and 2.6 below. Failure to follow these procedures shall be deemed a breach of this Declaration.

2.5 REQUIRED DOCUMENTS:

- (a) A site plan showing the location, size, configuration, and layout of any structure or improvement (or, where applicable, any alteration, addition, modification, or destruction thereof).
- (b) Architectural plans and drawings showing the nature, style, and elevations and dimensions of any improvement including the material types, colors and appearance.
- (c) A landscape plan showing the nature, size, type, layout, and site lighting.

2.6 REVIEW:

All plans and drawings shall be submitted to the Committee for review prior to the performance of any work. Within 30 days of the receipt and acknowledgment of all documents, the Committee shall review and inform the owner in writing whether the plans conform to the development concept of SUNBIRD. In the event they do not conform, then the owner may make the required alterations and re-submit. Any plans that require the approval of any governmental agency (such as Deschutes County) must bear the approval of the Committee prior to submitting the plans to the County or its agencies.

2.7 NON-WAIVER:

Consent by the Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

2.8 LIABILITIES:

Neither the Committee or any member thereof shall be liable to any owner for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Committee or member thereof provided that only the member, in accordance with actual knowledge possessed by him, has acted in good faith.

2.9 WAIVER:

The Committee may waive the requirement for review of proposed improvements on any lot by taking no action within thirty (30) days of any application for approval of plans by lot owner.

ARTICLE III: ARCHITECTURAL GUIDELINES

- 3.1 (a) Building Location: No building shall be erected any portion of which is nearer than fifty (50) feet from a front lot line, nor nearer than fifty (50) feet from a rear lot line, nor nearer than twenty-five (25) feet from a side lot line.
- (b) Building size: No residence shall be constructed of any less than 1500 square feet of living area, exclusive of garages. Each residence is required to have a minimum two-car garage.
- (c) Building Completion: Once actual construction has begun, the owner must complete construction, ready for occupancy, within one year.
- (d) Roofs: Roofs shall be required to have a Class A fire rated covering.
- (e) Exterior Walls: Shall be approved by the Committee. No metal, or plywood siding will be allowed.
- (f) Exposed Masonry: Shall be reviewed by the Committee for compatibility. No concrete or concrete block will normally be allowed.
- (g) Colors: It is the intention that exterior colors shall be compatible with neighboring homes.
- (h) Fences: Shall be no more than six (6) feet in height measured from the natural contour of the ground. All fences will be approved by the committee.
- (j) Appearance: All garbage, trash, cuttings refuge, garbage containers, and clothe drying apparatus shall be screened from view of neighboring lots. Each lot and its improvements shall be maintained in a clean and attractive fashion so as not to create a fire hazard or visual nuisance to the neighborhood.
- (k) Exterior Lighting: Shall be of a type and so placed as to eliminate glare and annoyance to adjacent property owners and passersby.

**ARTICLE IV
RESTRICTIONS ON USE OF PROPERTY**

- 4.1 No offensive or commercial activity shall be permitted nor anything be done which may be or become an annoyance to the other owners.
- 4.2 No animals, livestock, or poultry of any kind shall be raised, kept, bred, or maintained for any commercial purpose.
- 4.3 No parking or storage of incapacitated motor vehicles for longer than ten days. No overnight parking of vehicles greater than one ton used for commercial purposes unless screened from view.
- 4.4 No fireworks of any kind, whether legal or illegal, may be used within the subdivision.
- 4.5 No mobile homes or trailers may be used as a residence.
- 4.6 Motorcycles and all terrain vehicles cannot be used, driven or operated on any of the lots, other than for the purpose of transporting them from their location to land outside of the subdivision, provided that they are equipped with factory installed mufflers and spark arresters. To the extent that motorcycles and all terrain vehicles constitute an offensive activity to other residents of this subdivision, they shall not be allowed.

**ARTICLE V
GENERAL PROVISIONS**

- 5.1 **ENFORCEMENT:** Any owner or the owner of any recorded mortgage of any lot shall have the right to enforce, by any proceeding at law or in equity, all conditions, covenants, and restrictions now or hereinafter imposed by the provisions of this Declaration. Failure of any owner to enforce any covenant or restriction herein contained shall in no manner be deemed a waiver of the right to do so thereafter.
- 5.2 **SEVERABILITY:** Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any provision which shall remain in full force and effect.
- 5.3 **NO RIGHT OF REVISION:** Nothing contained in this Declaration

- 5.3 **NO RIGHT OF REVISION:** Nothing contained in this Declaration or in any form of deed which may be used by Declarant, its successors or assigns, in selling said property or any part thereof, shall be deemed to vest or reserve in Declarant any right of reversion or re-entry for breach of violation of any one or more of the provisions thereof.
- 5.4 **REMEDY:** Any owner or the owner of record of any recorded mortgage upon any part of said property shall have the following remedy in the event of discovery of violation of restrictions and covenants. Upon discovery of a violation, any owner may give written notice by registered mail to the owner of the lot in breach. If the owner in breach then fails to correct such violation within ninety (90) days, the owner may enter upon the property and cause such work or changes to be made in order to bring offending property into compliance. The owner may then cause the expense of such work to be filed as a lien against the offending property.
- 5.5 **RECOVERY:** In the event that legal suit or action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover reasonable attorney's fees and court costs.

**ARTICLE VI
EFFECT OF DECLARATION**

The covenants, conditions, and restrictions of this Declaration shall run with the land and shall bind, benefit, and burden each lot in BIG SKY. The terms of this Declaration shall inure to the benefit and shall bind Declarant, all successors and assigns of Declarant, and all owners of any lot in BIG SKY, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees, or any other party claiming or deriving any right, title, or interest or use in or to any real property in BIG SKY. The use restrictions and regulations of this Declaration shall be binding upon all owners, lessees, licensees, occupants and users of the property and their successors in interest, including any person who holds such interests as security for the payments of any obligation including the mortgagee or other security holder in actual possession of any lot by foreclosure or otherwise any other person taking title from such security holder.

IN WITNESS THERETO, the undersigned, the owner of all said property has hereunto caused these present to executed this 19th day of July, 1994.

SUNBIRD, INC

By: [Signature]
David R. Madrigal
President

State of Oregon, County of Deschutes:
The foregoing instrument was acknowledged before me this 19th
day of July, 1994.

By: Mary Fulbright
Notary Public for Oregon

My Commission expires: 11-16-96

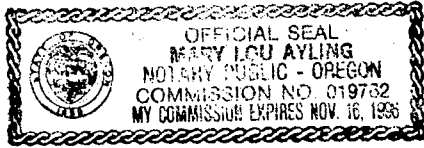


EXHIBIT "A"

LOTS 1 through 7 in BIG SKY SUBDIVISION, DESCHUTES COUNTY, OREGON

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

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

94 JUL 19 AM 11:28

MARY SUE PENHOLLOW
COUNTY CLERK

BY: T. Moore DEPUTY

NO. 94-28480 FEE 40.00

DESCHUTES COUNTY OFFICIAL RECORDS