

94-20508

**DECLARATION OF RESTRICTIONS**

This declaration of Building Restrictions and Architectural Control made this first day of May, 1994, by John L. Prian and Peggy A. Prian, hereinafter called "Grantor".

**WITNESSETH**

WHEREAS, John L. Prian and Peggy A. Prian are the owners of all that certain real property, located in the City of Redmond, County of Deschutes, State of Oregon, described as:

Lots 1 through 42, inclusive to Country Park Subdivision City of Redmond, County of Deschutes, State of Oregon,

which said property is hereinafter for convenience referred to as "real property", and

WHEREAS, it is the intention of the Grantor to convey undivided interest in this property and to impose on the real property mutually beneficial restrictions under a general plan for the benefit of all future owners of the real property, and;

WHEREAS, the Grantor desires to subject all of said real property to certain conditions and restrictions for the protection and benefit of all future owners of the real property, or any portion thereof.

NOW, THEREFORE, in consideration of the premises, Grantor hereby certifies and declares that Grantor has established and does hereby establish the following general plan for the protection and benefit of all of said real property, and has fixed and does hereby fix the following conditions and restrictions upon and subject to which each and all of the lots in said real property shall be hereafter held, used, occupied, leased, sold and /or conveyed. All of the limitations, covenants, restrictions and conditions shall run with the real property or interest therein, and shall be binding upon all parties having or acquiring any rights, title, or interest in the described real property, or any part thereof, and shall be for the benefit of each owner of any interest in the real property, and shall insure to the benefit of and be binding upon each successor in interest of the owners thereof.

TO BE RECORDED IN BOOK 1146 PAGE 340

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SAID CONDITIONS AND RESTRICTIONS ARE AS FOLLOWS, to wit:

1. **DEFINITIONS.** The property interest conveyed by Deed to a Grantee is designated an ownership the Grantee (or the Grantees) is designated an owner, the area in which the Grantee is given the exclusive right of use and occupancy is designated a unit, and the owner of the other attached living unit located on the adjoining lot shall be known as the adjoining owner.

2. **RESIDENTIAL PURPOSES ONLY.** That said Lots shall be used for residential purposes only and that no other building or buildings shall be erected, constructed, altered, or maintained on any of the said lots other than one single family dwelling or a duplex containing Two Single Family Dwellings, together with customary outbuildings, as permitted from time to time by the City of Redmond Zoning Ordinances.

3. **ARCHITECTURAL COMMITTEE.** There shall be an Architectural Committee, consisting of three (3) persons. The initial Committee is to be appointed by Grantor, each of said persons so appointed being subject to removal at Grantor's discretion. All vacancies on said Committee shall be filled by appointment of Grantor. Upon the sale by Grantor of all ownerships or after two years, members shall be elected by a majority of fifty-one percent (51%) of the ownership owners, each ownership being entitled to one(1) vote. Upon such election, the powers shall cease. In the event of the death, resignation, or incapacity to serve of a member or members so elected, a successor or successors within 30 days of such death, resignation or incapacity to serve, the remaining member or members of the Committee shall appoint a successor or successors from among those persons qualified to vote as above provided.

4. **NEW BUILDINGS ONLY.** That no building of any kind shall be moved from any other place onto any said lots or from one lot onto another lot, without the prior written permission of the Architectural Committee.

5. **HEIGHT LIMIT OF DWELLINGS.** That no dwelling without the written approval of the Architectural Committee shall be more than two stories in height.

6. **PLANS AND SPECIFICATIONS.** That no building or other structure or improvement shall be commenced upon any said lots until the location and the complete plans and specifications, including the color scheme, and type of roofing material, of each building, fence and/or wall to be erected upon the lot have been approved in writing by the Architectural Committee, and no building shall be located on any lot in front of the setback line as shown on the recorded plot.

7. **EXTERIOR ALTERATIONS.** That no alteration shall be made in the exterior design or color of any structure without the prior written approval of the Architectural Committee. The exterior of each adjoining Duplex shall match in color scheme, including type and color of roofing material.

8. **NO TENTS, SHACKS, ETC.** That no tent, shack trailer, basement, garage or outbuilding shall at any time be used on any lot as a residence either temporarily or permanently; nor shall any residence of a temporary character be constructed, placed or erected on any lot.

9. **NO SIGNS.** That no signs of any kind or for any use or purpose whatsoever other than signs of customary and reasonable dimension advertising the property for sale, shall be erected, posted, pasted, painted or displayed upon any building or other structure thereon, without the prior written permission of the Architectural Committee.

10. **NO STORAGE OF RECREATIONAL VEHICLES.** That no recreational vehicle including, but not limited to: boats, campers, motor homes, snowmobiles, and trailers shall be stored on the city street or on any lot in that area between the city right of way and the front building line of the structure for more than three days of any given week.

11. **NO NON-OPERATING MOTOR VEHICLES.** That no non-operating motor vehicle shall be stored or parked on the city street or on any lot in that area between the city right of way and the front building line of the structure.

12. **EXTENSIONS OF CONDITIONS AND RESTRICTIONS.** Each and all of the foregoing conditions and restrictions shall terminate on May 1, 2014 unless the owners of a majority of said lots have executed and recorded at any time within six (6) months prior to May 1, 2014, in the manner required for a conveyance of real property, a writing in which they agree that said Conditions and Restrictions shall continue for a further specified period and providing therein a similar provisions for the further extension of said Conditions and Restrictions, or some of them, provided also, that the above and foregoing Conditions and Restrictions may be modified after said termination date at the time and in the manner hereinabove provided for the extensions of said Conditions and Restrictions in force at the time for such extension or modifications.

13. **NOTICE OF CLAIM OF BREACH.** That the grantor, or the Architectural Committee may at any time that the Grantor or the Architectural Committee deems a breach of these conditions and restrictions has occurred, execute acknowledge and record in the Recorder's Office of Deschutes County a Notice of Claim of Breach setting forth the facts of such breach, describing the lot or lots upon which such breach has occurred and setting forth the names of the owner or owners thereof.

Such notice upon being recorded, shall be notice to all persons as such breach, provided an action has been commenced within such sixty (60) days after the recording of such notice to establish such breach, and, if no such action has been commenced within such sixty (60) day period, then in that event such notice shall be of no force and effect whatsoever and the breach set forth in said notice shall be presumed to have been remedied.

**14. FAILURE TO COMPLY WITH ORDER OF ARCHITECTURAL COMMITTEE.**

In the event of the failure of any owner to comply with a written directive or order from the Architectural Committee, then in such event the Architectural Committee shall have the right and authority to perform the subject matter of such direction or order and the cost of such performance shall be charged to the owner in question and may be recovered by the Architectural Committee in and action at law against such individual owner.

**15. NOTICES.** Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States Mail, postage prepaid, certified mail, addressed to each such persons at the resident address of such person.

**16. MECHANIC'S LIENS.** In case there should be filed a notice of Mechanic's Lien against any individual lot for or purporting to be for labor or material alleged to have been furnished or delivered on said lot, the unit owner, causing the same shall forthwith cause such lien to be discharged within five (5) days within date of notice from the adjoining unit owner. If not so discharged, then the adjoining unit owner may cause such lien to be discharged by payment, bond or otherwise, without investigation as to the validity thereof, or any offset or defenses thereto, and shall have the right to collect all amounts so paid, at all costs and expenses paid or incurred in connection therewith, including reasonable attorney's fees and disbursement, together with the interest thereon at the legal rate from the time or times of payment, unless the unit owner causing the Mechanic's Lien within the period of five (5) days determines to contest any such action with due diligence, and furnish to the adjoining unit owner security in the form of cash equal to one-hundred fifty percent (150%) amount claimed

**17. LIENS.** There is hereby created a lien, with power of sale, on each ownership and unit running in favor of the adjoining owner of each unit to secure payment of any amounts that may be assessed or levied against the total lot, and which is not paid by any owner of any individual unit. No action shall be brought to foreclose each lien or proceed under the power of sale less than thirty (30) days after a notice of claim of lien is mailed to the owner of the unit in default, and a copy thereof is record in the Office of the Recorder of Deschutes, Oregon. Such notice of claims of lien or exercise the power of sale shall be paid by the owner shall be filed and an action may be brought to foreclose a lien or exercise the power of sale by the adjoining owner of the units as Trustee.

Reasonable attorney's fees and expenses in connection with correction of debt secured by the lien. The lien and rights to foreclosure and sale shall be brought and secured by the lien. The lien and rights to foreclosure and sale shall be in addition to and not in substitution for all other rights and remedies which the owner may have hereunder and by law. A certificate executed and acknowledged by an adjoining owner stating the indebtedness secured by the lien upon any ownership in unit shall be compulsive upon the owner as to the amount of such indebtedness on the date of the certificate in favor of all persons who rely thereon in good faith and such certificate shall be furnished to any owner upon request.

**18. TAXES AND ASSESSMENTS.** Each owner shall execute such instruments and take such action as may be reasonably necessary in the future to obtain separate assessment of each ownership. Each owner shall be obligated to pay the taxes or assessments, assessed by the County Assessor against his unit, or personal property, or ownership. In the event the assessment by the County Assessor is made on the basis on one lot with two living units, each owner of each unit shall be obligated to pay his prorata share of said tax bill. All payment for taxes shall be paid prior to delinquency of such tax or assessment. In the event of failure of and owner to pay his share of a tax bill, the adjoining owner shall have the right to have a lien as created by Paragraph 20 in the event said adjoining owner in obligated to pay or does pay the proportionate share of the tax bill attributable to the other owner.

**19. PAINTING, MAINTENANCE AND REPAIRS.** In the event that the Architectural Committee in its sole discretion, determines that painting, maintenance or repair, hereinafter referred to as "work", of a unit is reasonable and necessary to preserve the appearance and value of such unit or the appearance or value of an adjoining unit, the Architectural Committee shall give written notice of the necessity of said work to the owner of such unit in which event said owner shall be obligated, at his sole cost and expense, to perform said work.

If the owner of said unit shall have failed or refused to perform said work within a reasonable time after the aforesaid written notice, the Architectural Committee shall execute and cause to be recorded, a Certificate of Assessment stating that the painting, maintenance or repair which it has been determined to be necessary as aforesaid shall not have been so performed within a reasonable time after such a written notice. Upon recordation of said Certificate, the owner of the adjoining unit, without investigation as to the validity thereof, may, but shall be under no obligation to, cause the work to be performed, and to incur such costs or expenses as may be necessary. Upon the recordation of the above mentioned Certificate, there shall arise a lien, with power of sale, on such unit, running in favor of the adjoining owner to secure payment of such amount which may be so expended.

Reasonable attorney's fees and expenses in connection with the collection of debt secured by the lien or rights to foreclosure and sale be in addition to and not in substitution for all other rights and remedies which the owner may have hereunder and by law. A Certificate executed and acknowledged by an adjoining owner stating the indebtedness on the date of the Certificate, in favor of all persons who rely thereon in good faith and such certificate shall be furnished to any owner upon request.

**20. USE OF UNITS IN COMMON AREA.** The unit in common area shall be occupied and used as follows:

A. Nothing shall be done or kept in any unit which will increase the rate of insurance on total building, without the prior written consent of the adjoining owner. No owner shall permit anything to be done or kept in his unit which will result in the cancellation or insurance on the total dwelling unit, or which would be in violation of any law.

B. No obnoxious or offensive activity shall be carried on in any unit, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners.

C. Nothing shall be done in any unit, or to the common area, which will impair the structural integrity of the building unit, or which would structurally change the building, except as otherwise provided herein.

D. Nothing shall be altered or constructed in or removed from the common area, except upon the written consent of both unit owners.

**21. ENTRY FOR REPAIRS.** The adjoining owner of a unit may enter the opposite adjoining unit when necessary in connection with any maintenance or construction connected with the common area. Such entry shall be made with as little inconvenience to the adjoining owner as practicable, and any damage caused thereby shall be repaired by the entering adjoining owner at his expense.

**22. DAMAGE AND DESTRUCTION.** If the building unit is damaged by fire or any other casualty which it is insured against and said damage is limited to single unit, the insurance proceeds shall be paid to the owner of such unit, and such owner shall use the same to rebuild or repair such unit.

If such damage extends to both units, or extends to any part of the common area, this paragraph shall apply.

A. If the insurance to be paid as a result of loss or damage does not exceed fifty percent (50%) of the insurance coverage, the proceeds shall be paid to the owners jointly, and the owners jointly shall thereupon contract to repair or rebuild the damaged portions of the property, including the units so damaged as well as the common area. If the insurance proceeds are insufficient to pay all the costs of repairing, the unit owners shall make up any deficiency on a prorated basis of excess building costs to ownership of the area so damaged.

B. If sub-paragraph (A) inapplicable, the insurance proceeds shall be paid to such bank or trust company as may be designated by the owners of the two units acting jointly, to be held for the benefit of the two owners and their mortgages as their respective interest shall appear. In the event one of the owners fails to comply with this paragraph, the adjoining owner is hereby authorized and directed to enter into such agreement on behalf of both the owners, consistent with these restrictions with such insurance trustee relating to its powers, duties and compensation.

The insurance trustee and the joint owners shall then determine whether or not the insurance proceeds shall be used for rebuilding, and upon which terms and conditions said rebuilding should be accomplished. If it is decided that rebuilding is not desired, the insurance trustee as soon as reasonably possible, and as agent for both owners, shall sell the entire property in its then condition on terms satisfactory to the joint owners. The net proceeds of the sale, together with the insurance proceeds shall thereupon be distributed to the owners, and to the mortgages of, or holders of deeds of trust upon the interest of such owners, as their interest may appear. The proceeds shall be divided among each owner on basis of the original cost of each ownership to the total cost of all ownership. The provision of this paragraph can be amended or modified by the written consent of both owners of any adjoining unit.

23. **ARBITRATION.** In the event a dispute occurs between an owner and an adjoining owner over the application of these restrictions, operation, maintenance, repair, insurance or any other matter in connection with said premises, the same shall be submitted to the Architectural Committee which shall act as an arbitrating tribunal.

The arbitrating tribunal shall have complete control of the conduct of the arbitration and may specify rules and/or regulations with reference thereto not to conflict herewith. The decision of a majority shall be the decision of the arbitrating tribunal, and shall be final. The technical rules of evidence shall be waived in the discretion of the tribunal. The parties are entitled to be represented by counsel and to be heard, provided however, that nothing herein contained shall limit the power of the arbitrating tribunal to control the manner, method and conduct of the proceedings and the presentation of the evidence, subject always to the requirement that the parties be given a fair and impartial hearing. Where not inconsistent herewith, the rules of the American Arbitration Association apply.

All hearings shall be held within the city limits of the City of Redmond.

In any arbitration, the arbitrators shall have the broadest possible power permitted by law to frame their award or decision so as to do substantial justice between or among the parties. The grantees herein agree that they will faithfully observe the contents of this document and the rules that will abide by and perform any award or decision rendered pursuant to this agreement, and a judgment of the court having jurisdiction may be entered upon the award.

24. **INTERPRETATION.** The provisions of this declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the real property. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

25. **PROTECTION FOR MORTGAGES AND TITLE INSURANCE COMPANIES.**

That the owner of any encumbrance made for value of any said lot or lots and any corporation insuring the lien of such encumbrance may conclusively presume that no breach exists under these conditions and restrictions provided such encumbrance is recorded in the Office of the County Recorder of Deschutes prior to the commencement of any action to establish any such breach and not within sixty (60) days after the recording of any Notice of Claim of Breach, anything contained herein to the contrary notwithstanding.

Provided that a breach of any of the foregoing conditions and restrictions, shall not affect, impair, defeat, or render invalid the lien charge or encumbrance of any mortgage or deed of trust made for value which may then exist upon said land, which said mortgage or deed of trust shall be and is hereby declared to be a prior and superior lien to the rights in favor of any person or persons under and by virtue of these conditions and restrictions; provided, however, that in the event of foreclosure of any such trust deed or mortgage acquires title to said land in any manner whatsoever in satisfaction with indebtedness, then any purchaser at the foreclosure of Trustee's Sale, or any said note owner acquiring title as aforesaid agrees that said property so acquired by them shall immediately upon said acquisition become subject to each and all of the conditions and restrictions and rights herein contained, but free from the effects of any breach occurring prior thereto.

26. **AMENDMENT.** Subject to the provisions of Paragraph 12 and 24, and the provisions of these restrictions, other than this paragraph, may be amended by an instrument in writing signed and acknowledged by record owners of at least seventy-five percent (75%) of the units located on the real property, which amendment shall be effective upon recordation in the Office of the Recorder of Deschutes, Oregon.



27. SEVERABILITY. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity of enforceability or any other provision hereof.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 16th day of May, 1994.

By [Signature]  
John L. Prián  
By [Signature]  
Peggy A. Prián

STATE OF CALIFORNIA }  
COUNTY OF Ventura } S.S.

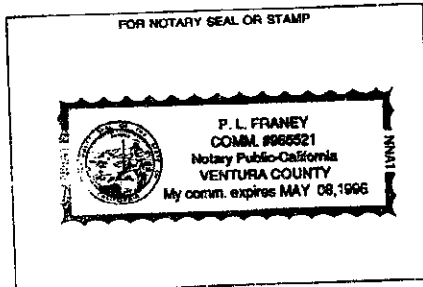
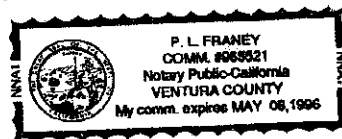
On May 16, 1994 before me,  
P. L. FRANEY

a Notary Public in and for said County and State, personally appeared  
JOHN L. PRIAN AND PEGGY A. PRIAN

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature [Signature]  
P 2492 (5-91)



CERTIFICATE OF ACKNOWLEDGEMENT

DATED THIS 24<sup>th</sup> DAY OF MAY, 1994.

340 - 1155

OWNERS OF RECORD OF LOTS NINE (9) and TEN (10) COUNTRY PARK  
PHASE I, DESCHUTES COUNTY, STATE OF OREGON.

Jeffrey M. Heath  
JEFFREY M. HEATH

Susan C. Heath  
SUSAN C. HEATH

STATE OF OREGON )  
                          ) ss.  
COUNTY OF DESCHUTES )

The foregoing instrument was acknowledged before me this  
24<sup>th</sup> day of May, 1994, by JEFFREY M. HEATH and SUSAN C. HEATH.



Karen Sue Headrick  
NOTARY PUBLIC FOR OREGON  
MY COMMISSION EXPIRES: 12-4-96

STATE OF OREGON ) ss.  
COUNTY OF DESCHUTES )

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 MAY 24 PM 1:14  
MARY SUE PENHOLLOW  
COUNTY CLERK

BY: M. Bavelo DEPUTY  
NO. 94-20508 FEE 5.00  
DESCHUTES COUNTY OFFICIAL RECORDS