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DESCHUTES COUNTY OFFICIAL RECORDS
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After Recording Return To:

Stew Stone
PKS Development-Lancaster I, LLC
1220 20th St SE
SALEM, OR 97302

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

DIAMOND BAR RANCH, A SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DIAMOND BAR RANCH, A SUBDIVISION (the "**Declaration**"), is made on Aug. 11th, 2004, by **PKS DEVELOPMENT-LANCASTER I, LLC**, an Oregon limited liability company (hereinafter the "**Declarant**") effective upon the date of recordation of this instrument in the real property records of Deschutes County, Oregon.

RECITALS:

- A. Declarant is the owner of certain real property located in Deschutes County, Oregon which is described as follows:

The Southeast Quarter of the Northwest Quarter (SE ¼ NW ¼) of Section 3, Township 15 South, Range 13, East of the Willamette Meridian, Deschutes County, Oregon.
- B. Declarant proposes to create a subdivision to be known as Diamond Bar Ranch (the "**Subdivision**"), composed of Declarant's Realty, to be subject to this Declaration and recorded by Declarant for that purpose. A plat of the Subdivision is to be recorded in the real property records of Deschutes County, Oregon.
- C. Declarant has deemed it desirable for the preservation of the value and desirability of the real property in the Subdivision, to subject the real property in the Subdivision to the following covenants, conditions, restrictions to promote the health, safety, and welfare of the Subdivision.

NOW, THEREFORE, the Declarant hereby declares that each parcel of real property in the Subdivision shall be sold, conveyed, owned and occupied subject to the provisions of this Declaration. Each person or entity, upon acceptance of a deed or land sale contract to DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (*DIAMOND BAR RANCH*)

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purchase, covenants and agrees to comply with said provisions of this Declaration.

1. Recitals

The recitals set forth above are incorporated herein by this reference.

2. Covenants with the Land

All of the Covenants contained in this instrument shall run with the land described in the recitals as the Subdivision. No land, parcel, or lot within the Subdivision shall be conveyed, except subject to all this Declaration. The Declaration is declared inserted by reference in any and all deeds to any part of Subdivision. The Declaration is for the benefit of the owners of land within the Subdivision.

3. Governing Law

Diamond Bar Ranch is not a "planned community" under Oregon Law and, therefore, is not subject to the Oregon Planned Community Act.

4. Architectural Control Committee

There is hereby established an Architectural Control Committee ("**ACC**") for the Subdivision. The ACC shall have the powers and duties as provided herein.

4.1 Members

There shall be one (1) or more members of the ACC. The Declarant shall serve as or appoint the initial ACC, who shall serve until the last home is built or any earlier time Declarant chooses. At such time, the Declarant shall call a meeting of the homeowners for the purpose of turning over administrative control of the ACC to the homeowners and, following such date, Declarant will no longer have any responsibility or right to serve on or appoint the ACC. Determinations to be made by the ACC shall be final and may not be overturned by legal action except in the case of fraud, bad faith, or failure to exercise honest judgment by so many members of the ACC as would result in a different result if the actions of the members engaged in fraud, bad faith, or failure to exercise honest judgment was disregarded. The burden shall be on the party alleging such fraud, bad faith or failure to exercise honest judgment to prove the existence of facts establishing the fraud, bad faith or failure to exercise honest judgment by clear and convincing evidence.

4.2 Prior Approval Plans

No owner of any land within the Subdivision shall erect, place or alter any building or other structure in this Property until the building plans, specifications, exterior design, color and plot plan have been approved in writing by the ACC. The ACC review shall include, but be not limited to, review of the size, conformity, value, location, and harmony of the external design with the existing structures in the Subdivision, and as to the location of the building with respect to the topography and finished ground elevation.

The ACC shall have the right to require all applications for approval be submitted on forms to be provided by the ACC, or in a format which facilitates its

review of proposed structures. The ACC may charge a fee for the review of applications submitted pursuant to this Section. All plans applications submitted to the ACC shall be deemed approved if the ACC does not advise the applicants in writing of objections within thirty (30) days following submission.

4.3 Building Materials

All building materials to be incorporated into the structure of any single family dwelling or other structure in the Subdivision may be regulated by the ACC. The following materials and standards shall be required on structures within the Subdivision unless other materials or standards are approved in advance by the ACC:

- 4.3.1 All roofing material shall be of wood (shake or shingle), tile, or a thirty (30) year or better composition architectural shake with ridge caps. Ridgeglass and Dura Ridge are pre-approved ridge caps.
- 4.3.2 All siding materials shall be natural wood, brick or stone. If other man-made lap siding materials are used, the material must be pre-approved by the ACC, but Hardi Plank siding is the preferred lap siding material. Siding material must be nailed on 16-inch centers. No T1-11 or other vertical plywood type siding will be applied.
- 4.3.3 All exterior finishes shall be approved in advance by the ACC. The ACC shall have fifteen (15) days following receipt of a color sample of all exterior finishes to grant approval. Approval of bright colors will not be granted. Earth tone colors are preferred. A minimum of ten percent (10%) of front elevation (not counting windows and doors) must consist of brick, masonry stone, dryvit (e.f.i.s.), or other design features, such as porches, decorative rails, posts, columns, or siding material acceptable to ACC.
- 4.3.4 Forced air heating will be the preferred method of heating the living areas of all single family dwelling in the Subdivision. Radiant heat, electric baseboard heaters and wall heaters shall not be incorporated into the living area of any single family dwelling in the Subdivision without the written prior approval of ACC.

The ACC may, from time to time, provide written guidance to owners concerning approved building materials and techniques. Such written guidance may include a list of pre-approved substitute materials for roofing and siding, together with the approved applications of those materials.

4.4 Completion of Improvements

All structures (including flat work and landscaping) constructed within the Subdivision shall be erected and completed within one year after the commencement of construction. All remodeling, reconstruction, or enhancement of structures shall be completed within one year of the commencement of construction. Commencement of construction shall be deemed to be the date upon which a building permit was first issued for the construction, or, if no building permit was obtained, the date on which lot clearing, demolition or remodeling commenced.

Breach of this provision will result in a fine imposed on the offending lot owner by the Declarant. The minimum fine shall be Five Hundred Dollars (\$500.00) per month or part of a month in which any structure is deemed incomplete by the Declarant after one (1) year following commencement of construction.

5. Use Restrictions and Obligations

5.1 Size of Structures

All buildings within the Subdivision shall be single family residences or ancillary structures customarily constructed in conjunction with a single family residence. No multiple unit structures shall be built within the Subdivision, except duplexes, which shall only be allowed with the prior written approval of the ACC.

No dwelling house shall be commenced, erected or completed which occupies fewer square feet of livable floor area than is specified in the following table without prior approval of the ACC:

ONE STORYa minimum of 1,250 square feet, plus a two car garage.

TWO STORYa minimum of 1,500 square feet, plus a two car garage.

All setbacks are to comply with applicable government laws and rules.

5.2 Interference with Other Lots

Owners or occupants within the Subdivision shall not engage in nor continue uses that unreasonably interfere with the use of other lots within the Subdivision. Such interference can be monitored or enforced by affected homeowners or the ACC. The following activities shall conclusively be deemed to unreasonably interfere with the other lots in the Subdivision:

5.2.1 construction and maintenance of flag poles more than eighteen (18) feet tall, radio transmission and reception towers and antenna;

5.2.2 construction and maintenance of exterior radio and television antennae and other receptors (satellite dish type antennae larger than 24 inches in diameter must be screened from street view in the Subdivision);

5.2.3 outdoor laundry visible from a street; and

5.2.4 placement of a window or wall-mounted air conditioning unit visible from any street.

5.3 Landscape, Hedges, Drainage, and Fences

All front and side yards including landscape strips between curb and sidewalk must be completely landscaped within six (6) months of initial occupancy or one (1) year from commencement of contraction on the lot, whichever is earlier. All grounds

and related structures shall be maintained in harmony with surrounding landscaping. No weeds, noxious plants, or unsightly vegetation shall be allowed to grow.

No property may be altered which would result in blocking the flow of water across that property and/or affecting the drainage on other property. The drainage swales must be kept free of all debris and in conformance with their original shape so that storm water will be unobstructed and in its natural state.

Subject to location standards set out in any governmental code or rule, fences shall not exceed six (6) feet in height, provided, however, that any fencing closer to the street than the garage shall not exceed three (3) feet in height and, in addition, shall comply with any "clear vision area" requirements of any governmental code or rule. Fences shall be well constructed of suitable materials and shall not detract from the appearance of the adjacent structures and buildings. No cyclone fences shall be allowed without approval of the ACC.

No high output exterior lighting, including but not limited to mercury vapor and halide lights, shall be installed without prior approval of the ACC.

5.4 No Animals

No animals of any kind shall be raised, bred or kept in the Subdivision, except dogs or cats or other household pets may be kept so long as they are not bred, maintained or kept for commercial purposes. No animal of any kind, including dogs and cats, shall be allowed to interfere with the quiet enjoyment of the other residents in the Subdivision, or permitted untended upon the streets or upon premises of other occupants of the Subdivision.

5.5 No Commercial Use

No property in the Subdivision shall be used for business or commercial purposes. No occupant of property within the Subdivision shall park, nor permit to be parked, any commercial vehicle such as log trucks, dump trucks, tractor trailer rigs, or any other vehicle except passenger automobiles (including pickups) upon property, including streets, in the Subdivision. No owner or occupant shall permit, initiate, or carry on any obnoxious or offensive activities within the Subdivision nor allow conditions on the lot or parcel owned or occupied to become a nuisance or annoyance to the neighborhood.

No commercial signs shall be erected on the Subdivision, except "for sale" signs of not more than four (4) square feet advertising property within the Subdivision for sale, and "for rent" signs, so long as only one (1) "for rent" sign is placed on any lot and placed inside a house visible through a window.

5.6 Screening

Trash, garbage and other waste shall not be kept except in sanitary containers, screened from public view. No lot shall be used as a dumping ground for trash, garbage, waste or debris.

All heat pumps and condenser units (or other utilities and devices commonly placed out of doors) shall provide both visual screening and noise attenuation.

All boats, trailers, recreational vehicles, equipment, campers and the like must be parked off the streets of the Subdivision in a garage, on a concrete pad beside a garage, or in a rear yard.

6. Declarant's Easements

Easements for the installation and maintenance of utilities, drainage facilities, recreation facilities, and other facilities are reserved for Declarant or the City of Redmond, as shown on the plat of the Subdivision. Within these easements no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the purpose of the easement, or obstruct the flow of waters in any drainage channel or pipeline. 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 may be responsible.

7. Creation of Park

Declarant may dedicate or convey to the City of Redmond a portion of the Subdivision for use as a city park following the effective date of this Declaration. Any property so dedicated as a city park shall not be part of the Subdivision nor subject to this Declaration unless such property is reacquired by Declarant or any other party.

8. No Rezoning or Redivision

Except as provided above in the case of the creation of a city park, no property within the Subdivision property may be rezoned or redivided, nor may a lot line or boundary line of a lot be altered, without the prior written consent of the ACC.

9. Right of Entry

The Declarant or any member of the ACC may at any reasonable time during the construction phase enter upon any unit within the Subdivision for the purpose of determining whether or not the use of such unit or improvement thereon is then in compliance with this Declaration. This right of entry shall cease upon issuance of occupancy permits.

10. General Provisions

10.1 No Homeowners' Association

As provided in Section 3, the Subdivision is not governed by the Oregon Planned Community Act, and therefore a homeowners' association shall not be created to govern the Subdivision and/or administer this Declaration.

10.2 Enforcement

The Declarant, the owners of lots within the Subdivision, and/or the holder of any recorded mortgage on any lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to said bodies or Owners by any proceeding at law or in equity. Failure by any of them to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorneys' fees and costs in such suit or action to be fixed by the trial court, and in the event of a appeal, the cost of the appeal, together with reasonable attorneys' fees, to be set by the appellate court.

10.3 Joint owners

In any case in which two or more persons share the ownership of any unit, regardless of the form of ownership, the responsibility of such persons to comply with the provisions of this Declaration shall be a joint and several responsibility. 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 that 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 Declarant, 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.

10.4 Waiver

Election by the Declarant to pursue any remedy provided for the violation of any provision of the Declarations of the Subdivision shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder or which is permitted by law. The remedies provided in this Declaration are not intended to be exclusive but shall be in addition to all other remedies, including actions for damages or suits for injunctions or for specific performance available under applicable law.

10.5 Notices

Any notice permitted or required by the Covenants may be delivered either personally or by mail. Delivery by mail shall be deemed to have been accomplished twenty-four (24) hours after the notice has been deposited as certified or registered mail in the United States mail, with the postage prepaid, addressed as follows:

10.5.1.1 If to the ACC or the Declarant of Diamond Bar Ranch Subdivision:

Stew Stone
PKS Development-Lancaster I, LLC

1220 20th St SE
Salem, OR 97302

- 10.5.1.2 If to a unit owner, at the address given by him at the time of his purchase of a unit or at the address of his unit within the Subdivision, at the option of the person giving the notice.
- 10.5.1.3 The address of any person may be changed by him at any time by notice in writing delivered as provided herein.

10.6 Severability

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

10.7 Term

These covenants are to run with the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they automatically extend for successive periods of ten (10) years each unless resigned by a vote of at least seventy-five percent (75%) of the owners. This Declaration shall be binding on all parties and all persons coming under them from the date this Declaration is recorded.

11. Amendments to Declaration

11.1 Amendment by Owners

The Declaration may be amended by affirmative vote of not less than seventy-five percent (75%) of all owners; provided, however, that until such time as all of the lots have been sold to someone other than the Declarant, no amendment shall be effective without the approval of the Declarant.

11.2 Declarant's Right to Amend

Notwithstanding the provisions of Section 10.1, the Declarant may amend the Declaration in order to comply with requirements of any department, bureau, board, commission or agency of the United States or the State of Oregon.

11.3 Recordation of Amendments

Amendments to the Declaration shall be executed by all of the Owners approving such amendments and recorded in the deed records of Deschutes County.

12. Voting

For the purpose of voting on any change in these covenants or termination of this Declaration, there shall be one for each lot, and a person who is the record owner of more than one lot may cast one vote for each such lot. The buyer under a land sale

