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**RECORDED DOCUMENT**

STATE OF OREGON  
COUNTY OF DESCHUTES



•1999-37081 • Vol-Page

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**DO NOT REMOVE THIS CERTIFICATE**

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received  
and duly recorded in Deschutes County records:

DATE AND TIME:        Jul. 29, 1999; 3:08 p.m.

RECEIPT NO:            9214

DOCUMENT TYPE:        Covenants,  
                                 Conditions & Restrictions

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A handwritten signature in cursive script, reading "Mary Sue Penhollow".

MARY SUE PENHOLLOW  
DESCHUTES COUNTY CLERK

55  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR FAIRHAVEN, A SUBDIVISION

THIS DECLARATION is made on July 22, 1999 by Living Water Development, LLC (hereinafter referred to as the "Declarant", which is the Owner of certain real property located in Redmond, Oregon described as: FAIRHAVEN, Phase II.

These Covenants, Conditions and Restrictions for FairHaven, Phase II supercede and replace previous CC&R's found in the Deschutes County, Oregon official records, Book 460, Page 3004.

Th: Declarant hereby proclaims that the above-described property is subject to the following Covenants, Conditions and Restrictions for the purpose of protecting and enhancing the value, attractiveness and desirability thereof.

**I. DEFINITIONS**

**BUILDABLE AREA** shall mean and refer to that portion of a lot, which lies solely within the building footprint lines as defined herein and on the Master Plan

**DECLARANT** shall mean and refer to Living Water Development, LLC.

**FAMILY** shall mean and refer to one or more persons occupying a single housekeeping unit and using common housekeeping facilities; provided, unless all members are related by blood, marriage, adoption or partnership, no family consists of over five persons.

**LOT** shall mean and refer to any plot of land shown on a recorded plat, which subdivides the Property.

**OWNER** shall mean and refer to the record owner or contract buyer of the fee simple title to any lot which is a part of the Property, excluding those having such interest merely as security for the performance of an obligation. For the purposes exercising the rights granted by this Declaration, each lot may have only one vote, regardless of the number of persons who may have an co-ownership interest therein.

**PROPERTY** shall mean and refer to the above-described real property and any real property annexed hereto.

**SOLAR ENCROACHMENT ZONE** shall mean and refer to the area above a horizontal line two (2) feet in height on a dwelling's exterior wall, above which shade cast by buildings or non-solar friendly vegetation located on another lot may not encroach.

**SOLAR FRIENDLY VEGETATION** shall mean and refer to any vegetation which by nature of its leaf fall patterns, branching structure or shape casts a shadow at noon on December 21 which covers no more than 25% of its outline.

**STREET** shall mean and refer to the private right of way as shown on a recorded plat of the Property.

**II. PURPOSE AND BINDING EFFECT**

The purpose of this Declaration is to enhance and protect the value and desirability of the Property for residential use. This Declaration shall run with the Property, shall be binding upon and insure to the benefit of, enjoin and pass to all parties having or acquiring any right, title or interest in the Property, their heirs, successors in interest and assigns as a servitude in favor of and enforceable by the Declarant, its vendees, successors and assigns during the term hereof.

99.57291.2

### III. ARCHITECTURAL REVIEW COMMITTEE

No structure, fence, retaining wall, tree or other improvement of any kind may be constructed, placed, altered, removed or allowed to remain on, under or on any portion of the Property until the plans for said structure, fence, retaining wall, tree or other improvement plans can be evaluated, the Declarant hereby creates the FairHaven Subdivision Architectural Review Committee.

#### A. PURPOSE OF THE ARCHITECTURAL REVIEW COMMITTEE

The purpose of the Architectural Review Committee shall be to evaluate and approve or disapprove plans and specifications of improvements to be constructed on the Property for consistency and harmony with other existing or proposed improvements elsewhere on the Property, and for adherence to the restrictions and guidelines contained in this Declaration. It is neither the purpose nor duty of the Committee to enforce any provision of this Declaration, said enforcement having been specifically reserved for the benefit of the Declarant and subsequent Owners.

#### B. MAKEUP OF THE COMMITTEE

The initial Architectural Review Committee shall consist of the Declarant, the Project Architect and Contractor. Membership on the Architectural Review Committee shall be by appointment by the Declarant. The Architectural Review Committee may consist of as many members as the Declarant may appoint.

#### C. APPOINTMENTS AND RESIGNATIONS

Appointments to and resignations from the Architectural Review Committee shall be evidenced by the recordation in the Deschutes County Public Records of a statement by the Declarant attesting to said appointment and the statement shall contain the current mailing address of the appointee. Any member of the architectural review Committee may resign or be discharged by the Declarant at anytime. Resignation or discharge from the Architectural Review Committee shall be evidence by recordation in the Deschutes County Public Records of a statement by the resign or the Declarant attesting to said resignation or discharge.

#### D. METHOD OF APPLICATION FOR APPROVAL BY THE COMMITTEE

All applications for action by the Architectural Review committee shall be in writing and in duplicate, and shall be deemed to have been made when deposited for delivery with the United States Postal Service as Certified Mail, with a return receipt requested, or when personally delivered to a member of the Committee

#### E. PRE-APPLICATION DESIGN APPROVAL

Submissions of preliminary designs to the Committee are encouraged. Such submissions, if identified as "preliminary" are intended for the convenience of the applicant, and shall not be deemed a formal application for design approval. Committee approval of a preliminary design shall not be deemed a waiver to enforce subsequently discovered violations of the design criteria contained in this Declaration.

99-3781-3

F. INFORMATION REQUIRED FOR APPROVAL BY THE COMMITTEE

In order to gain approval for an action of the Architectural Review Committee for which approval is required, the applicant must submit to the Committee preliminary drawings and written description for the proposed improvements. Each submission must include three copies of the following documents, which must be prepared in a manner so as to be reasonably legible to the Committee:

1. A fully-dimensioned site plan, drawn to an accurate scale of at least 1" = 20', which shows the property corners, right of way and easements, and all of the existing and proposed improvements including existing and proposed grades, existing and proposed curbs and gutters, utilities, driveways, sidewalks, parking areas, fences, trees, shrubs and grown covers,
2. Elevations, sections and floor plans, drawn to an accurate scale of at least 1/4" = 1',
3. Specifications which include a list of the type of all exterior materials and actual samples of all exterior colors.
4. Landscape plan showing plant materials, paving materials, drainage, exterior lighting, decks, utilities, irrigation and garbage enclosure.

Any applications which do not include the above-listed information will be rejected by the Committee. Such rejection will be deemed to be disapproved by the Committee

G. DECISIONS OF THE COMMITTEE

All decision of the Architectural Review Committee shall be in writing, and shall be deemed to have been taken when a written decision is deposited for delivery with the United States Postal Service as Certified Mail, with a return receipt requested, or by personal delivery to the applicant. A majority of the Committee may render a binding decision. Interpretation and application of this Declaration and the design criteria contained herein shall be within the sole and exclusive discretion of the Architectural Review Committee and Board of Directors.

H. TIMING OF COMMITTEE APPROVAL

In the event of Architectural Review Committee fails to approve or disapprove a properly submitted and completed request for action within Thirty calendar days after the request is made, the party submitting the request may record a Notice of Intent to Construct an Unapproved Improvement in the Deschutes County Public Records, and if no objection to the proposed construction is recorded in the Deschutes County Public Records within fifteen days of recordation of said Notice, the request will be deemed to have been approved by the Architectural Review Committee.

I. CONSISTENCY OF CONSTRUCTION WITH APPROVED PLANS

Improvements must be constructed in accordance with the plans and specifications approved by the Architectural Review Committee. Approval of plans and specifications may be withdrawn by the Committee in the event improvements are not constructed in substantial conformance with the plans and specifications approved therefor. The Declarant shall have the right to enter premises under construction during daylight hours for the purpose of inspecting construction to determine conformance to the approved plans.

The Architectural Review Committee shall have the authority to grant variances to the architectural standard promulgated in this Declaration. Consent by the Committee to any variance of these architectural standards shall not constitute a precedent or in any way impair its rights to withhold approval of subsequent similar requests.

99.37081-4

J. NOTICE

The Architectural Review Committee shall mail, by certified mail, notice of final design approval for any improvements for which approval is required to each lot owner within ten (10) days following issuance of the approval. The notice shall identify the lot upon which the improvement is to be located and the type of improvement. The notice shall provide that any lot owner may review the design review application at the office of Living Water Development, LLC for a period of ten (10) days following the date of the notice.

K. LIMITATION ON LIABILITY OF COMMITTEE

Neither the Architectural Review Committee nor any of its members shall be liable to any party for damages incurred or claims arising from any action or failure to act pursuant to the provisions of this Declaration.

L. DECLARANT EXEMPTION

Notwithstanding the foregoing in this Section III, neither the Declarant, its successors or assigns, nor any entity in which Declarant or its successor or assign holds not less than fifty percent (50%) ownership, shall be required to comply with the application and approval procedures set out in this Section, but Declarant shall be obligated to comply fully with the substantive restrictions contained in Section IV-X, inclusive.

IV. ARCHITECTURAL RESTRICTIONS

A. GENERAL STANDARDS

Improvements constructed on the Property shall adhere to and be reasonably consistent with FairHaven neighborhood standards.

B. ANTENNAS

No television, radio antenna, or amateur radio antennas shall be erected or placed anywhere on the Property except for those provided by the Association. Satellite dishes may be no larger than 18" in diameter and may not be installed within view of a street without the approval of the Architectural Review Committee.

C. MECHANICAL EQUIPMENT

Mechanical equipment or machinery such as air conditioning units, solar panels and other such mechanical equipment which protrudes outside or above the roof or walls of a building may not be installed within view of a street without the approval of the Architectural Review Committee.

D. EXTERIOR COLORS

Exterior colors shall be limited to traditional "craftsman style" colors. Deep, but not bright or garish exterior colors are allowed for trim.

E. ANIMAL ENCLOSURES

Certain lots may have one animal enclosure. Animal enclosures may only be constructed within fenced back yards, and may not be constructed in a side yard or a front yard. They are limited to 200 square feet in area and must be located a minimum of five (5) FEET FROM ANY PROPERTY LINE.

99.3701-5

F. FOUNDATIONS

The design of foundations and slopes (whether retained or un-retained) shall conform to the recommendations published by the Project Architect.

G. FENCING

Fences may not be constructed along front property lines. Fences constructed around trash enclosures, private decks or hot tubs may not exceed 3 feet in height nor may they enclose more than 60 sq. ft. of area. Side yard and rear yard fences may not exceed 6 feet in height and must be approved by the Architectural Review Committee. Fencing material must be cedar and conform to neighborhood design standards.

V. FIRE SAFETY RESTRICTIONS

Ownership, use and occupancy of any portion of the property are subject to the following fire safety restrictions.

A. BUILDING STANDARDS

All buildings constructed on the Property shall have roofing which has a fire rating of Class A or better. All eaves, attics and under floor openings shall be screened or otherwise enclosed. Any chimney or stovepipe connected to a device burning solid or liquid fuel shall be equipped with a screen constructed of non-flammable materials with a mesh no coarser than one half inch over its outlet. All decks within three feet of ground shall be screened from under floor to ground. No overhead electrical, telephone or television lines are permitted anywhere on the Property.

B. WATER SUPPLY

Each dwelling shall have a water supply that meets city requirements. Each building shall have a minimum of 2 (two) garden hose outlets.

C. UTILIZATION OF OUTDOOR SPACE

No open fires are permitted at any time. Barbecues and other outdoor cooking facilities shall be continuously attended while in use. Firewood and other materials which could provide fuel to a fire shall be stored a minimum of thirty feet away from buildings, inside buildings, or covered with a fire-resistant protective covering.

VI. USE RESTRICTIONS

Ownership, use and occupancy of any portion of the Property are subject to the following use restrictions:

A. LAND USE

The Property may be used only for single family residential purposes with homes not exceeding 4 bedrooms and legal home occupations.

B. FURTHER SUBDIVISION

Not lot platted by the Declarant may be further subdivided.

99.37001-6

C. COMMENCEMENT OF BUILDING CONSTRUCTION

All dwelling construction shall be commenced within two years from the date of lot purchase, and shall be completed within one year of the commencement of construction. In the event an owner fails to commence construction within said two year period, the Declarant shall have the right to repurchase that owner's lot or lots at that owner's original purchase price, less real estate commissions paid by the Declarant, with no allowance for taxes paid by the owner prior to the repurchase. The terms of said repurchase shall be identical to the terms of the original purchase by which said owners acquired the lot. This right of repurchase shall be the exclusive remedy for failure to commence construction within two years of the purchase of a lot and shall inure solely to the Declarant, and not to those claiming under it. The Declarant, its stockholders, directors, officers and related parties shall be exempt from the requirement to commence dwelling construction within two years as contained in this paragraph.

VII. SOLAR ACCESS

In order to preserve each lot's solar access and view potential, the following regulations are adopted:

1. No non-solar friendly tree may be planted on any lot which may, during its life span, shade more than 40% of the Buildable Area of the lot upon which it is planted by the shade cast noon on December 21.
2. No tree may be planted or structure placed on any lot which may, at any time, interfere with the unobstructed exposure to direct sunlight of any portion of another lot's Solar Encroachment Zone.
3. No tree may be planted or structure placed on any lot which may, at any time, completely block the view from another lot of any point on the ground more distant than two thousand (2000) feet from the property.

A. COMPLETION OF LANDSCAPING

Landscaping visible from the street shall be considered a part of the dwelling construction process, and shall be completed within six (6) months of initial dwelling occupancy, unless said completion is precluded because of weather conditions.

B. PERMITS REQUIRED

All building, structure or fence construction shall be performed pursuant to any required permits obtained from the public entity claiming jurisdiction over the issuance of such permits.

C. EASEMENTS

Easements for the installation and maintenance of utilities, slopes, signs, pedestrian ways, wildlife movement and drainage facilities are reserved as shown on the recorded plat or as described herein. All easements are subject to the use restrictions which are recorded therewith.

D. STRUCTURE TYPE AND SIZE

No building shall be altered, placed, constructed or permitted to remain on any lot except for one permanent single family detached house and a garage or carport constructed contemporaneously therewith. Residential accessory structures such as a hot tub or spa enclosures, garden sheds and greenhouses are permissible. Each dwelling must contain a habitable floor area, exclusive of open porches, of at least 1,100 square feet.

99.37081-7

E. TEMPORARY STRUCTURES

No temporary structure, trailer, camper, motor home, basement, partially completed dwelling, garage, accessory building tent, shack or other enclosure may be used on any lot at any time as a temporary or permanent residence. The temporary and occasional parking of a camper, trailer or recreational vehicle on a lot shall be allowed. For the purpose of this section, the term "temporary" shall mean a single period not to exceed two weeks in length, and the term "occasional" shall mean up to and including four occurrences of any length per year.

F. PARKING

Except as provided elsewhere in this paragraph, no lot or street adjacent thereto may be used as a parking place for trucks, equipment, materials or commercial vehicles except during the course of construction of a dwelling thereon. Construction vehicles, materials and equipment shall, when allowed to remain on a lot or adjacent street during construction of a dwelling, not interfere with or restrict the movement or safety of normal vehicular or pedestrian traffic. Except for temporary and occasional situations, trailers, motor homes, campers, boats, disabled vehicles, materials, chattels, supplies, fuel or machinery may only be parked or stored within the confines of a garage or other enclosure, and must be completely screened from public view at all times.

G. TRASH

No lot shall be used as a dumping ground for waste, trash, yard trimmings or garbage. Residential refuse must be kept in sanitary containers which are screened from view, maintained in a sanitary condition and emptied weekly. No incinerators may be used on any lot at any time.

H. ANIMALS

No livestock or poultry may be raised, bred or kept on any lot. Other household pets are permitted, provided however, that no household pet of any kind may be allowed to constitute or become a hazard or annoyance to other residents of the property. No animal of any kind may be kept, bred or raised on any lot for commercial purposes.

I. TREE CUTTING

Except as required to comply with other provisions contained in this Declaration, no tree with a diameter greater than six inches at a point four and one half (4.5') feet above the ground at the trunk shall be cut or willfully damaged without first obtaining permission of this committee and any required permits from Deschutes County or other public entity claiming jurisdiction over tree cutting on the property.

J. SIGNS

No sign visible to public view may be displayed on any lot, except the following:

1. One "Block Parent" sign
2. One "Neighborhood Watch" sign, or equivalent;
3. One home occupation sign no larger than one hundred forty four (144) square inches in area and attached to a dwelling; and
4. One temporary "For Sale" or "For Rent" sign no larger than five hundred seventy six (576) square inches in area advertising the property upon which the sign is placed.

The Declarant is exempt from this paragraph of this Declaration, and may erect or maintain such signs and advertising devices as it deems necessary for the conduct of its business.



99.37091-8

K. YARD OR GARAGE SALES

No more than two (2) yard or garage sales may be conducted on any lot during a calendar year. No yard or garage sale may exceed three (3) days in duration.

L. NUISANCE

No noxious or offensive activity shall be conducted on any lot, nor shall anything be done on any lot which may be or become a nuisance or annoyance to any resident or any lot.

VIII. PROPERTY MAINTENANCE

A. STANDARD OF MAINTENANCE

Each and every lot, whether vacant or improved, must be maintained in a reasonably neat, orderly and inoffensive manner at all times. All lots must be kept free of brush, invasive or offensive weeds and dead plant material. All improvements including walks and driveways, exterior building surfaces, fences and landscaping shall be kept in good repair at all times. Roofs and gutters shall be kept clear of leaves and conifer needles. Damage caused by fire, flood, storm, earthquake, riot, vandalism or other causes shall be promptly repaired by the Owner of the affected lot.

B. RIGHT OF DECLARANT OR OWNER TO PERFORM MAINTENANCE AND/OR REPAIRS

In the event an Owner or resident of any lot shall fail to maintain and/or repair the lot or improvements situated hereon in a manner which is consistent with the majority of the other lots or which adversely affects the safety or desirability of surrounding lots, the Declarant or any five Owners, their agents or employees shall have the right, fifteen calendar days after giving notice as provided herein, to enter onto the offending property and perform such maintenance and/or repairs as are necessary in order to ameliorate the offensive condition.

C. NOTICE OF INTENTION TO PERFORM MAINTENANCE AND/OR REPAIRS

Notice of intention to perform maintenance and/or repairs shall be deemed to have been given when it is addressed to the last known mailing address of the Owner of the lot upon which the maintenance and/or repairs are needed and deposited for delivery with the United States Postal Service as Certified Mail, with a return receipt requested. Such notice must contain the name (s) and address (es) of the party (ies) giving the notice, a detailed list of maintenance and/or repairs which must be performed, and the date upon which, if not performed by the Owner of the offending lot, the maintenance and/or repairs will be performed by the party (ies) giving the notice.

IX. CREATION OF MAINTENANCE

In the event Declarant or its designee performs maintenance and/or repairs to a lot belonging to another party pursuant to the provisions of this Declaration, the cost of performing said maintenance and/or repairs shall be paid by the Declarant or its designee and assessed to the Owner of the lot upon which the work was performed, and shall be in a lien which shall encumber the offending lot and benefit the party (ies) recording the lien. This lien may be foreclosed in the manner, provided by Oregon law for construction liens.

99.3 1081-9

## X. GENERAL PROVISIONS

### A. ENFORCEMENT

Except in the case of design review and approval decisions issued by the Architectural Review Committee, the Declarant, its vendees, successors and assigns or any Owner shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration and any amendments to this Declaration, including any liens created pursuant hereto. This right specifically includes the right to seek injunctive relief for the prevention of a violation of any portion of this Declaration.

### B. DESIGN REVIEW AND APPROVAL

1. Notwithstanding paragraph A, above, the sole and exclusive procedure and remedy for any challenge to a design approval decision of the Architectural Review Committee shall be a suit in equity against Declarant or its successors or assigns.
2. Any judicial action or proceeding brought to challenge a final decision of the Design Architectural Review Committee shall be commenced within thirty days after issuance of the Committee's final decision of approval. Such proceeding shall be brought against Declarant, or its successors or assigns, and shall be the sole and exclusive judicial remedy available to any party.
3. All decisions of the Architectural Review Committee concerning construction or interpretation, application of any design criteria or standard contained in this Declaration shall be binding and conclusive on the parties and shall be within the sole discretion of the Board.
4. No party, including the Declarant and the Architectural Review Committee, shall have a duty to enforce any provision of this Declaration. No party, including the Declarant and the Architectural Review Committee, shall have any personal liability for acting or failing to act to enforce any provision of this Declaration. This limitation of personal liability shall not limit the right of a party to enforce any provisions of this Declaration or to recover any damages which may be suffered as a result of a violation of any provision of this Declaration.
5. Should suit or action be commenced to enforce any provision of this Declaration, the prevailing party shall be entitled to recover from the other party such reasonable attorney fees, costs and disbursements as are fixed by the courts in which said suit or action, including any appeal from decisions rendered therein, is tried or heard.

### C. SEVERABILITY

Invalidation of any portion of this Declaration by judgment or court order shall in no way affect the validity or enforceability of any other portion of this Declaration, which shall remain in full force and effect.

### D. AMENDMENT

This Declaration shall run with and bind the land in perpetuity. So long as the Declarant owns a lot or holds a security interest in a lot, this Declaration may not be altered without the written consent of the Declarant. After such time as the Declarant no longer owns a lot and no longer holds a security interest in a lot, this Declaration may, at any time, be amended or rescinded by an instrument executed by two thirds of the Owners.

99-37081-10

E. TRANSFER OF DECLARANT'S RIGHTS

The Declarant shall have the right to transfer or assign any or all of its rights under this Declaration to another party.

F. INTERPRETATION

If the Coverants, Conditions and Restrictions contained herein do not apply to a situation, then regulations promulgated by Deschutes County shall control the interpretation or decision. If a conflict arises as to the proper interpretation of the covenants, Conditions and Restrictions of this Declaration, the opinion of the Architectural Review Committee shall be final in resolving the conflict.

IN WITNESS WHEREOF, the undersigned Declarant has signed this Declaration of Covenants, Conditions and Restrictions on July 27th, 1999.

LIVING WATER DEVELOPMENT, LLC

By [Signature]  
Gary Blake, Member-Manager

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF Oregon  
COUNTY OF Deschutes

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On this 27th day of July, 1999, before me, the undersigned Notary Public, personally appeared Gary Blake Member, by Gary Blake, of Living Water Development, LLC, an Oregon Limited Liability Company, and known to me to be a member or designated agent of the limited liability company that executed the document herein and acknowledged the document to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this document and in fact executed the document on behalf of the limited liability company.

BY: [Signature] Residing at Redmond, Oregon  
Notary Public in and the the State of Oregon My commission expires: 10-15-00

