

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
NEWPORT HILLS

These Covenants, Conditions and Restrictions are made this 28<sup>th</sup> day of July, 1994, by BNH Construction Corp., an Oregon corporation ("BNH"), hereinafter referred to as "Declarant", as owner of the real property in the City of Bend, Deschutes County, State of Oregon, described in Exhibit "A" attached hereto.

Newport Hills is a residential community currently being developed. Except where this Declaration conflicts with applicable law, this Declaration shall be binding upon all real property and Owners subject to this Declaration and their successors in interest as set forth herein. In the event any of the development standards or use restrictions contained within this Declaration or adopted pursuant to it should conflict with a more restrictive standard or requirement of an applicable zoning or building ordinance, the more restrictive standard or requirement shall apply.

Section 1. DEFINITIONS

- 1.1 Newport Hills: The term "Newport Hills" shall mean all of the real property now or hereafter made subject to this Declaration.
- 1.2 Declarant: The term "Declarant" shall be BNH Construction Corp., or its successors in interest.
- 1.3 Lot: The term "Lot" shall mean each lot described on (1) any Newport Hills subdivision plat or partition map including Phase I or any later phase, or (2) any other subdivision or partition map on adjacent land which Declarant adds to the Newport Hills project pursuant to subsection 2.2 below, all as adjusted by any valid lot line adjustment. The term Lot includes all improvements located upon each such Lot.
- 1.4 Declaration: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions.
- 1.5 Owner: "Owner" shall mean all holders of the fee title to any Lot.
- 1.6 Improvements: The term "Improvements" shall include, but not be limited to, any structures, buildings, outbuildings, private roads, driveways, parking areas, R.V. enclosures, fences and barriers, garbage can enclosures, dog runs or enclosures, retaining walls and stairs, decks, railings,

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deck privacy screens, hedges, windbreaks, planting, landscaping, vegetation or ground cover of every type and every kind above the land surface and any modifications to the land surface.

Section 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEWPORT HILLS

2.1 General Declaration Creating Newport Hills:

All of the real property located in Deschutes County, Oregon, described in Exhibit "A", together with any other real property made subject to this Declaration, is and shall be subject to this Declaration. The provisions herein are established for the purpose of protecting the desirability and attractiveness of Newport Hills. These Covenants, Conditions and Restrictions run with all of the real property and with each such Lot for all purposes. They shall be binding upon and inure to the benefit of Declarant and all Owners and their successors in interest as set forth in this Declaration.

2.2 Addition of Other Real Property by Grantor:

- a. During the term of this Declaration, Declarant may from time-to-time subject additional real property to this Declaration. Additional real property need not be denoted "Newport Hills" on its subdivision or partition map. The addition shall be effective upon the recording of a notice of addition of real property as set forth below. The provisions of this Declaration shall fully apply to such added land with the same effect as if it were originally covered by this Declaration, unless the notice of addition specifically states otherwise. Thereafter, to the extent this Declaration is made applicable thereto, the rights, powers and responsibilities of Declarant, Owners of parcels within such added land, and all other Owners shall be the same as in the case of the land described in Exhibit "A".
- b. The notice of addition of real property referred to above shall contain at least the following provisions:
  - (1) A reference to this Declaration stating the date of recording and the recording information;
  - (2) A statement that the provisions of this Declaration or some specified part thereof shall apply to such added real property; and
  - (3) A legal description of the additional real property.

## Section 3. ARCHITECTURAL CONTROLS

## 3.1 Approval Required.

No Improvement (including any exterior alteration, a change in exterior color beyond that authorized in subsection 3.7 below, or any addition, destruction, or modification to any such Improvement) shall be constructed, erected, placed, altered, maintained, or permitted to remain on any Lot until final plans and specifications have been submitted to and approved in writing by Declarant in accordance with the procedures and requirements set forth in subsections 3.2 through 3.7 below.

## 3.2 Required Documents.

To obtain the consent of Declarant, the Owner shall submit the following items for review:

- a. A site plan showing its location, size, configuration and layout, including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation;
- b. Architectural plans and drawings showing its nature, style and dimensions, including the exterior material types, colors and appearance; and
- c. A landscape plan showing the nature, type, size, location and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

## 3.3 Review.

All plans and drawings identified in paragraph 3.2 above, shall be submitted to Declarant for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied by a reasonable architectural review fee in an amount to be determined by Declarant from time to time. No plans shall be reviewed until the architectural review fee has been paid in full and all items specified in this section have been submitted. Within 30 days following receipt of such plans and drawings and the architectural review fee, Declarant shall review the plans and shall inform the Owner in writing whether the plans conform to Declarant's development concept for Newport Hills, this Declaration and the rules and architectural guidelines developed under this Declaration. In the event any of the plans do not conform, the Owner may make appropriate changes and then resubmit those nonconforming portions of the plans for re-review. No work shall be performed unless and until all aspects of all plans required under paragraph 3.2 above have been approved by Declarant. Any site plans, construction plans or similar plans and

drawings submitted to the City of Bend in connection with the construction of any Improvement in Newport Hills must bear the prior written approval of Declarant. It shall be the responsibility of the Owner to obtain any necessary building permits from public agencies, consent by Declarant pursuant to this Section 3 does not substitute for or obviate the need for building permits where required.

### 3.4 Architectural Guidelines.

The development concept for Newport Hills shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by Declarant, but Declarant shall not be required to do so and Declarant's failure to do so shall not in any way affect or limit Declarant's rights or the procedures to be followed specified above in this Section 3. Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any party; provided, however, that once approval has been given pursuant to paragraph 3.3 above, work may proceed in accordance with the approved plans and drawings notwithstanding any subsequent changes in the development concept.

### 3.5 Inspection.

All work shall be performed in strict conformity with the plans and drawings approved hereunder as well as all applicable law and building codes. Declarant 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 any or all work if, in good faith, Declarant believes that any such work is nonconforming. In the event that it is determined in good faith by Declarant that certain work is nonconforming, a stop work notice may be issued without necessity of court order, which notice shall require the Owner to correct all nonconforming work specified in the notice before continuing with the remainder of the proposed work. Continuation of such work without correction of all of such nonconforming items shall be deemed a breach of this Declaration. Declarant may also record in the office of the County Recorder a notice to the effect that work has been done in violation of these Declarations which remains uncorrected and may mail a copy of such recorded notice to any person or entity claiming an interest in such Lot, including as a lienholder. Neither the Declarant nor any officer, director, employee, agent or servant of Declarant shall be responsible for any damage, loss, delay, cost or legal expense occasioned through a stop work notice given in good faith, or the good faith recording or mailing of a notice of violation, even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

## 3.6 Waiver.

Any condition or provision of subsections 3.1 through 3.7, may be waived by Declarant in its sole and exclusive discretion. Any such waiver shall not be deemed a general waiver of the same or any other aspect of the development concept or the required procedures and approvals specified under paragraphs 3.1 through 3.5. The granting of a waiver as to one Owner shall not 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 and signed by an authorized representative of Declarant.

## 3.7 House Colors.

Any Owner may repaint his or her house from time-to-time without the consent of Declarant, provided he or she exclusively uses a color group at any time used by, or then being used by Declarant in Newport Hills, applying each color to the portions of the house and its trim where such color was applied by Declarant, either on that model house or any other model house. Colors within different groups may not be mixed. No new colors may be introduced nor may existing colors be applied to different areas of a house.

## 3.8 Inapplicability of Section 3.

This Section 3 shall be inapplicable and may be entirely disregarded if, but only for such periods of time as, (1) Declarant has recorded the notice referred to in Subsection 5.1 below, and (2) either (a) the Owners have not elected to form a homeowner's association as provided in Subsection 5.2 below, or (b) such a homeowner's association is defunct.

## Section 4. RESTRICTIONS ON USE OF PROPERTY

## 4.1 Occupancy.

No Owner shall occupy, use or permit his Lot, any improvements thereon or any part thereof to be used for any purpose other than as a private residence for the Owner, his family or his guests, in compliance with all applicable laws, except that each Owner shall be permitted to rent his or her house for terms not less than sixty (60) days each.

## 4.2 Improvements.

The entirety of each Lot, including front, rear and side yards, shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard, a nuisance or be unsightly from the street or from any portion of any other Lot.

## 4.3 Fences, Clothes Lines, Garbage Cans, etc.

All clothes lines, equipment, garbage cans, wood piles and storage piles, and the like, shall be kept screened by adequate planting or fencing so as to conceal them from the

view of all neighboring dwellings and streets. Garbage cans may be unscreened during the period they are made available for collection, provided they are then promptly removed from view and kept within the garage or fully screened (a) behind a wooden enclosure that meets the requirements of a Type 2 Fence (see Section 6 below), except that the fence need only be as high as the cans and with fence posts at least 4" x 4" or greater, or (b) behind dense bushes at all times as high as the cans. All rubbish, trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate. Fences shall be constructed, maintained or allowed to remain on a Lot only in full compliance with Section 6 below. Newspaper delivery boxes shall not be allowed unless they are constructed entirely of wood and painted the primary color of the house.

4.4 Animals and Pets.

Dogs, cats or other domestic household pets may be kept on any Lot, provided they are not kept, bred or maintained for any commercial purpose and do not endanger the health of, unreasonably disturb or become a nuisance to the occupants of any other Lot. If Declarant determines that such pets are a nuisance, they shall be promptly and permanently removed. No other animals, livestock or poultry of any kind shall be raised, bred or kept on any part of a Lot.

4.5 Offensive or Commercial Activity.

No rubbish, debris, dead trees or heavy brush of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot which will or may render the same or any portion thereof unsanitary, unsightly, offensive, a nuisance to or detrimental to any other Lot or to the occupants of any such Lot. No activity shall be conducted or maintained which is or may be offensive, a nuisance to or detrimental to any other Lot or to the occupants of any such Lot.

No commercial activity (including public display of any goods, wares or merchandise of any kind) shall be carried on on any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Owners.

4.6 Signs.

No sign of any kind shall be displayed to public view on or from any Lot provided, however, that an Owner may display not more than one sign per Lot which is not greater than 30" by 24" advertising the house for sale.

4.7 Exterior Lighting or Noise Making Device.

No noise making device shall be placed, maintained or utilized on a Lot in a manner, with a frequency or of an intensity which becomes a nuisance to the occupants of any other Lot. All exterior lighting shall be selected and

oriented in such a manner that the bulbs are (1) less than 60 watts each and concealed behind frosted, opaque or opalescent material, or (2) concealed from the view of the occupants of any other Lot or any street, or the fixture has been installed by, or is the same type and size as installed by, Declarant.

4.8 Antennas.

Exterior television antennas, radio antennas, satellite antennas or dishes, or other receiving devices are prohibited, except that exterior satellite antennas or dishes which are less than 24" in diameter or total height may be installed at any location in a rear or side yard or attached to the house, provided that no part is more than five feet above the ground and the entire antenna or dish is fully screened by dense bushes or by a Type 2 Fence described in 4.3 above at least as high as the antenna or dish.

4.9 Limitation on Transfer.

No Owner shall transfer either by conveyance, contract of sale or lease, any interest in a Lot which would result in ownership of such Lot being held by more than four persons (a married couple counting as two persons).

4.10 Mobile Homes.

No manufactured dwelling as defined by ORS 446.003 (26) (a), as amended from time-to-time, or manufactured structure as defined by ORS 446.003 (29) (a), as amended from time-to-time, house trailer, mobile home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected, placed or allowed to remain on any Lot.

4.11 Single Family Residences.

Not more than one single family residence shall be erected or placed on a Lot.

4.12 Utilities.

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

4.13 Preservation of Views.

The height of Improvements or vegetation and trees on a Lot shall not materially restrict the view from other Lots. Declarant shall be the sole judge of the suitability of such heights. If Declarant determines there is such a restriction in the view, written notice shall be delivered to the offending Owner. If after thirty (30) days, the Improvement, vegetation or trees are not removed, trimmed or reduced in height as directed by Declarant, Declarant may enter the offending Lot, complete the removal or reduction, charging the Owner of the Lot the reasonable costs for the work done, or may exercise any other available remedy. This

section is not to be read as justification to create views not present when the Lot was originally purchased. Nothing in this subsection 4.13 shall require an Owner to remove or trim any tree which was on the Lot at the time of its purchase from Declarant.

**4.14 Parking, Recreational Vehicles.**

A minimum of two enclosed garage parking places shall be provided for each Lot. Parking on any street, whether public or private, which adjoins any Lot, shall not be allowed for any house trailer, travel or camping trailer, commercial vehicle (except when actually rendering services), motorhome, boat trailer, boats, trucks, motorcycle or incapacitated motor vehicle. No such vehicle or equipment shall be parked or placed on any Lot for any period over three (3) days unless kept in a fully enclosed garage or in a place designed specifically for this purpose and which is screened by a fence which meets the requirements of Section 6; provided that the vehicle or equipment is not higher than the fence permitted in Section 6. Garage doors shall remain closed except when the garage is in use, but in no event shall any vehicle or equipment be repaired except within a garage with garage doors closed or within a fully screened area. Each Owner specifically agrees, for himself and for his guests, tenants and invitees, that the provisions of this Section 4.14 represent a personal, fully enforceable agreement and commitment, enforceable by Declarant, any other Owner or the HOA, if formed, not to park any vehicle or equipment in violation of this Section 4.14.

**4.15 Square Footage Minimum.**

Any single family residence to be located on any Lot shall be a minimum of 1,500 square feet in size, not including any garages, decks or front porches.

**4.16 Open Burning.**

Open burning of any type is prohibited.

**4.18 Tree Cutting and Landscape Maintenance.**

All trees, hedges, flowers and grass growing on a Lot shall be maintained reasonably free of diseases and pests so that they will not be a menace to, or detrimental to the values and aesthetics of surrounding Lots. Except as is provided in Section 4.13, no healthy tree ten inches or greater in caliper shall be destroyed except as necessary to permit construction of a single family home upon a Lot and to provide for a normal driveway and entry pathway.

**4.19 Restrictions on Further Divisions.**

No Lot shall be further subdivided or partitioned, nor shall any portion of any Lot, nor any easement or license, be conveyed separately from the whole Lot; except that Declarant reserves the absolute right



without the consent of any person or entity other than the City of Bend to (1) subdivide or partition, grant easements over, or otherwise deal with, the Lot in the southeast corner of the Newport Hills project (tentatively designated Lot 75 in Phase IV), and (2) make lot line adjustments as between any two or more Lots which are then still owned by Declarant.

4.20 Waiving of Restriction.

Declarant shall have the right, in its absolute discretion, to waive any of the foregoing conditions or restrictions upon being shown that the same is unreasonable, unfeasible, unnecessary or unfair, as applied to any particular Lot or Lots, or that good reason exists for its waiver without materially and adversely affecting Newport Hills generally. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the enforceability of these restrictions. The granting of a waiver to one Owner shall not entitle any other Owner to a 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 Declarant.

4.21 Inapplicability to Declarant.

The foregoing restrictions shall not apply to the Lots owned by Declarant or to the business activities of Declarant, or its successors or assigns.

Section 5. DETERMINATION OF DECLARANT'S ROLE

5.1 Declarant's Control.

At such time as Declarant shall no longer desire to exercise the architectural, landscaping, signing and lighting controls over the Lots, or other discretionary authority granted herein to Declarant, Declarant shall cause to be recorded in the official records of Deschutes County, Oregon, a declaration stating in substance that Declarant no longer desires to exercise any further discretionary controls over development in Newport Hills. Recordation of such a declaration shall formally terminate Declarant's discretionary authority in respect to architectural, landscaping, signing and lighting controls, as well as all other discretionary authority of Declarant under this Declaration. If at such time Declarant still owns one or more Lots, such declaration shall not in any way affect Declarant's rights as a Lot Owner in respect to such remaining Lots.

5.2 Formation of a Homeowners' Association.

- a. Upon formal termination of Declarant's control, the Owners owning 51% of all of the Lots subject to this Declaration may then or at any later time form an Oregon

non-profit organization or any other appropriate entity to be called the Newport Hills Homeowners' Association (the "HOA"), or such other name as may be selected.

- b. Any ten (10) Owners shall be entitled to call a meeting of all Owners on twenty (20) days prior written notice at which time there shall then be conducted a vote to determine whether the HOA shall be formed. If formed, then at such or at any later meeting, a five (5) person Board of Directors shall be voted on and elected. Only Owners shall be eligible for the initial Board of Directors. For each director position, each Owner (or group of Owners owning one Lot) shall have the right to cast one vote for each Lot owned. Cumulative voting shall apply. The five nominees obtaining the five highest vote totals shall constitute the initial Board of Directors.
- c. The initial Board of Directors shall meet within ten (10) days after their election and may at that time or at any later time determine whether the HOA shall be incorporated or unincorporated and may adopt any governing documents including but not limited to bylaws, architectural guidelines, procedures, rules and regulations (including those for the amendment of any of such documents), relating to the architecture, landscaping, signing and lighting controls within Newport Hills, the exercise of rights under subsection 4.20 above or 5.3 below, the maintenance of fences, entryway monuments and adjacent landscaping, irrigation and lighting, or relating to any other matter of common concern to a majority of the Lot Owners. In no event, however, shall the Board of Directors constitute less than three (3) persons. All of such governing documents as well as any other action taken by the Board of Directors shall be in full force and effect and valid for all purposes when adopted, unless and until overridden, modified or amended by the affirmative vote of 51% of the Owners.
- d. The Board of Directors of the HOA shall succeed to all of the powers, responsibilities and rights of Declarant under this Declaration (except those rights possessed by Declarant as a Lot Owner).

#### 5.3 Right to Assess.

The Board shall possess the right to assess Owners from time to time on a nondiscriminatory basis, equally as to all Lot Owners on the basis of the number of Lots owned, for all costs associated with the repair, upkeep, maintenance, removal and replacement of the entryway monuments and the related lighting, landscaping and irrigation and as to all other matters of common interest to all or substantially all of the Owners. In no event,

however, may an Owner be assessed more than One Hundred Dollars (\$100.00) per year, unless an increase in this annual maximum or any individual assessment in excess of it has first been approved by the affirmative vote or written agreement of the Owners of 51% of the Lots.

5.4 Lien for Assessment.

All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on such lot in favor of the HOA. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for real property taxes, (b) liens for all sums unpaid on a first mortgage, or (c) liens for any mortgage to Declarant duly recorded in the land records of Deschutes County, Oregon, and all amounts advanced pursuant to such mortgages and secured thereby in accordance with the terms of such instrument.

5.5 Effect of Nonpayment of Assessments.

Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Board shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the HOA may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the HOA, the Board, or its or their agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property, or both such remedies. The lien provided for in this Section shall be in favor of the HOA and shall be for the benefit of all other Owners. The HOA, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise avoid liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest,

then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

## Section 6. FENCING

### 6.1 General.

Attached hereto as Exhibit "B" and "C", respectively, are plans for "Type 1" and "Type 2" fencing. Type 1 fencing shall be used along Shevlin Park Road and behind the entryway monuments. Type 2 fencing shall be used exclusively for all other perimeter fencing throughout Newport Hills and shall be used exclusively by Owners electing to erect fences on their Lots.

### 6.2 Fencing to be erected by Declarant.

Declarant intends to install Type 1 fencing along Shevlin Park Road and behind the entryway monuments. Declarant intends to install Type 2 fencing behind some but not all of the Lots along the east perimeter of Newport Hills as well as behind the Church to the northwest of the project.

### 6.3 Fencing to be erected by Owners.

If any Owner or Owners desire to fence in all or part of their side or rear yards, they may do so at their sole option and cost provided the following are adhered to:

- a. The fence shall be constructed only in accordance with the plans attached hereto for Type 2 fencing, or as such fencing plans may be modified from time-to-time by Declarant in writing.
- b. The area which may be fenced shall only be the side and rear yards, or a lesser portion thereof, and in no event may the fence or any fenced area extend closer to the street on which the house is facing than five (5) feet behind the most forward portion of the wall of the house to which the fence returns, measured separately for each side. If the house is on a corner, the fence on the non-front side shall not be closer to the sidewalk than 10 feet.

### 6.4 Maintenance of Fencing; Changes.

All such fencing, whether installed by Declarant or by an Owner, shall be erected within the lines of a Lot and not within the public right of way and shall be owned by the individual Lot Owner. Such Owners shall be and they are hereby obligated at their sole cost and expense to fully maintain all such fencing in good condition and repair, and

with an appearance similar to that when installed and matching the appearance of the fencing of adjacent neighbors, except for normal wood weathering, ultimately replacing such fencing when necessary. No portion of such fencing shall be raised, lowered, changed in appearance, modified or altered in any way from its plans as attached hereto, including changes to the material used to construct such fences and the finish called for on the plans.

#### Section 7. ENTRYWAY MONUMENTS

##### 7.1 Creation of Easement.

Exhibit "D" hereto depicts triangular areas (the "Monument Areas") constituting a part of Lot 89 and Lot 1, respectively. The Owners of each of such Lots, and their respective successors in interest, acknowledge and hereby grant to Declarant (for the benefit of Declarant and all of the other Owners), the other Owners, the HOA, if formed, a perpetual easement in, over and across the Monument Area on such Lot, and does acknowledge that upon purchase of such Lot it was acquired fully subject to the easement and rights herein.

##### 7.2 Use of Easement.

The grant of easement shall include but not be limited to the right in Declarant to construct in such area a stone, concrete and/or wood monument containing the project identification of "Newport Hills," the right to light, landscape and irrigate such monument, to maintain such lighting, landscaping and irrigation, and thereafter permitting Declarant, the Owners and/or the HOA to service and maintain such monument, lighting, landscaping and irrigation as is necessary to keep it in a first class condition, with the right of entry to accomplish the foregoing, but all limited only to the Monument Area. Except as a Lot Owner pursuant to the rules and provisions of the HOA, if formed, the Owner's of Lots 1 and 89, respectively, shall have no obligation or duty to maintain the monuments or the lighting, landscaping or irrigation within the Monument Areas.

#### Section 8. DURATION AND AMENDMENT OF THIS DECLARATION

##### 8.1 Duration.

The Covenants, Conditions and Restrictions of Newport Hills shall continue to remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject thereto (subject, however, to the right to amend and repeal as provided for herein) for a period of thirty (30) years from the date this Declaration is recorded. However, unless within one (1) year prior to the date of said termination, there shall be recorded an instrument directing the termination of this Declaration signed by Owners of not less than two-thirds of

the Lots then subject to this Declaration, this Declaration, as in effect immediately prior to the expiration date, shall be continued automatically without further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of such period the Covenants, Conditions and Restrictions for Newport Hills are terminated as set forth above in this section.

#### 8.2 Amendment.

This Declaration or any provision thereof, or any Covenant, Condition or Restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any part thereof with the written consent of the Owners of fifty-one percent (51%) of the Lots subject to these Restrictions, provided that no amendment which enlarges or diminishes the powers and responsibilities of Declarant shall be effective without the written consent of Declarant.

#### 8.3 Effective Date.

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

### Section 9. ENFORCEMENT

9.1 This Declaration shall be specifically enforceable by Declarant or by any Owner of any Lot in Newport Hills. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement or condition.

9.2 In the event that legal suit or legal action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney's fees incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.

9.3 Declarant may at its sole option assign any and all rights of enforcement, or any portion thereof, to one or more Owners on such terms as shall be satisfactory to Declarant, in which event the assignee(s) shall then have, subject to the terms of the assignment, all of the rights of enforcement which shall have been assigned, whether at law or in equity, and whether for money damages or any other relief, to the same extent as those rights were possessed by Declarant.

### Section 10. EFFECT OF DECLARATION

The Covenants, Conditions and Restrictions of this Declaration shall run with the land made subject to this Declaration and shall bind, benefit and burden each Lot in Newport Hills, including any real property added thereto. The terms of this Declaration shall inure to the benefit of and shall bind Declarant, all successors and assigns of Declarant and all Owners of any Lot, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees, occupants, users, or any other party claiming or deriving any right, title, or interest or use in or to any Lot, including any person who holds such interests as security for the payment of an obligation including any mortgagee or other security holder in actual possession of any Lot by foreclosure or otherwise and any other person taking title from such security holder.

BNH Construction Corp.

By: 

Melvyn Mason  
President

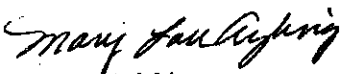
STATE OF OREGON )

) ss.

COUNTY OF DESCHUTES )

On this 28<sup>th</sup> day of July, 1994, before me, the undersigned Notary Public, personally appeared Melvyn Mason, President of BNH Construction Corp., personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument, the entity upon behalf of which he acted executed the instrument.

WITNESS my hand and official seal.

  
Notary Public



LEGAL DESCRIPTION  
OF THE LAND  
INITIALLY INCLUDED IN THE  
COVENANTS, CONDITIONS & RESTRICTIONS FOR  
NEWPORT HILLS

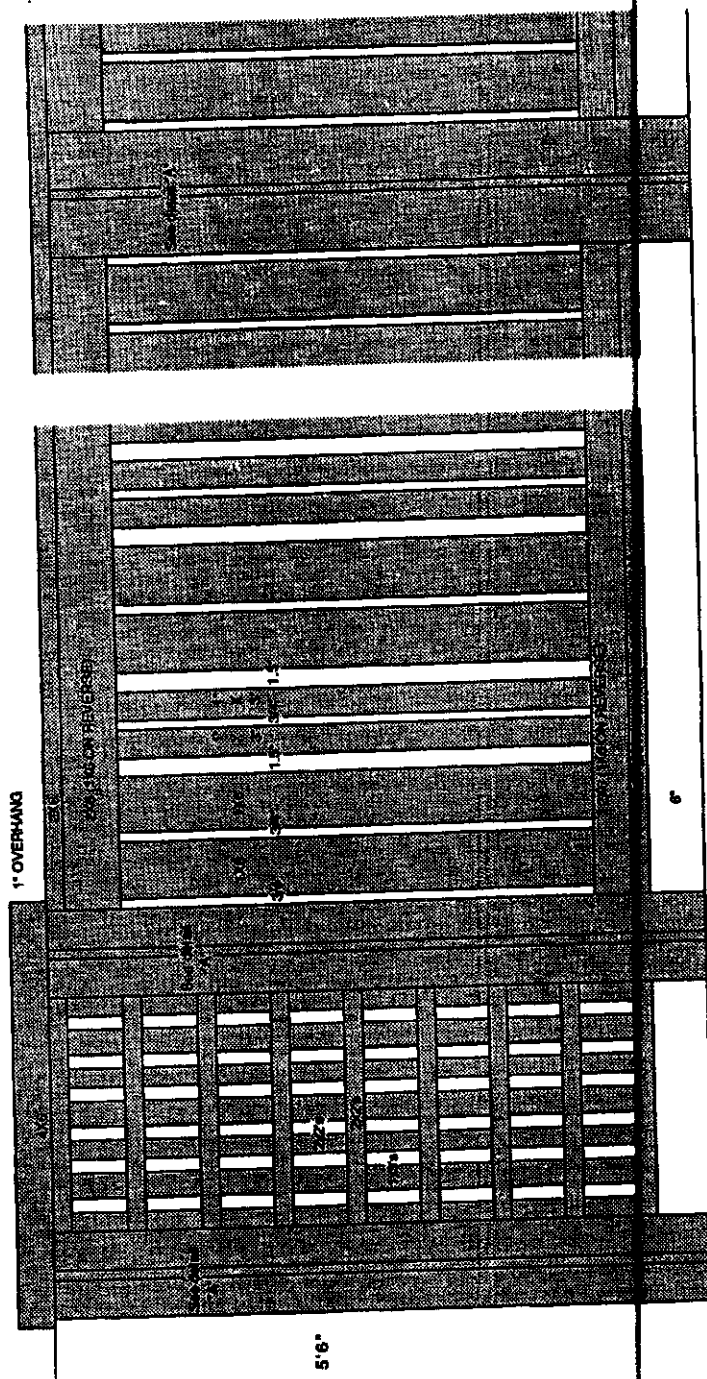
LOTS 1 THROUGH 7, 28 THROUGH 30, 56 THROUGH 58, AND 81  
THROUGH 89 OF THE FOREST HILLS PHASE I SUBDIVISION, COUNTY OF  
DESCHUTES, STATE OF OREGON.

EXHIBIT "A"



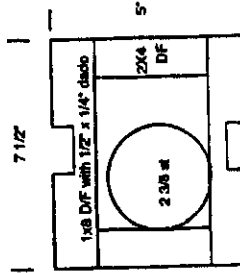
NEWPORT HILLS - FENCE DESIGN - TYPE "J" FENCE

1" OVERHANG



approx. 80'

The lattice section repeats about every 80 - 100 feet.  
All fences are to be finished with a semi-transparent type stain as selected by Declarant.  
All wood to be of select western red cedar with no loose knots.  
Steel posts are to extend at least 1' 6" into the ground and embedded in concrete.

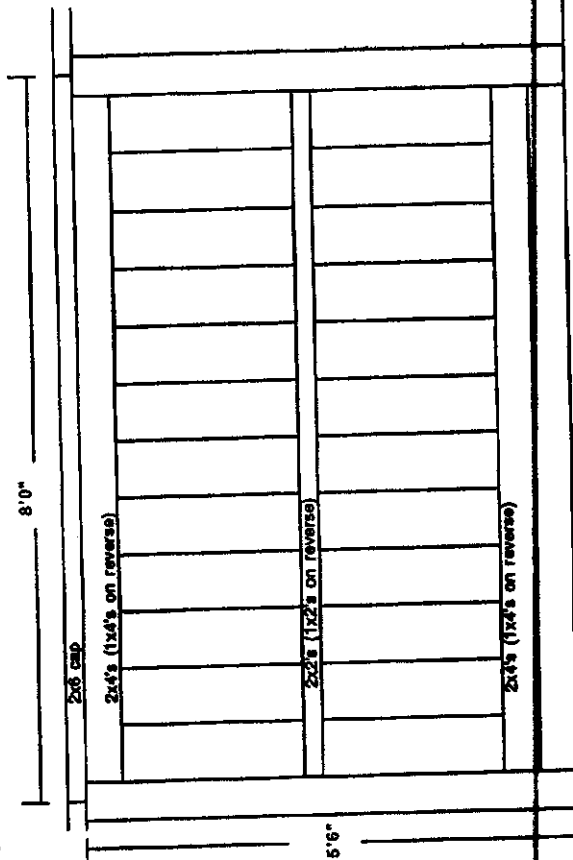


DETAIL "A"

... NOT TO SCALE ...

EXHIBIT "B"

NEWPORT HILLS - TYPE "Z" FENCE DESIGN



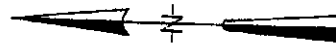
POST DETAIL:

All fences are to be finished with a semi-transparent type stain as selected by Declarant.  
All wood to be of select western red cedar with no loose knots.  
Steel post are to extend at least 1' 6" into the ground and embedded in concrete.

\*\*\* NOT TO SCALE \*\*\*

EXHIBIT "C"

346 - 2865



SCALE 1"=20'

89

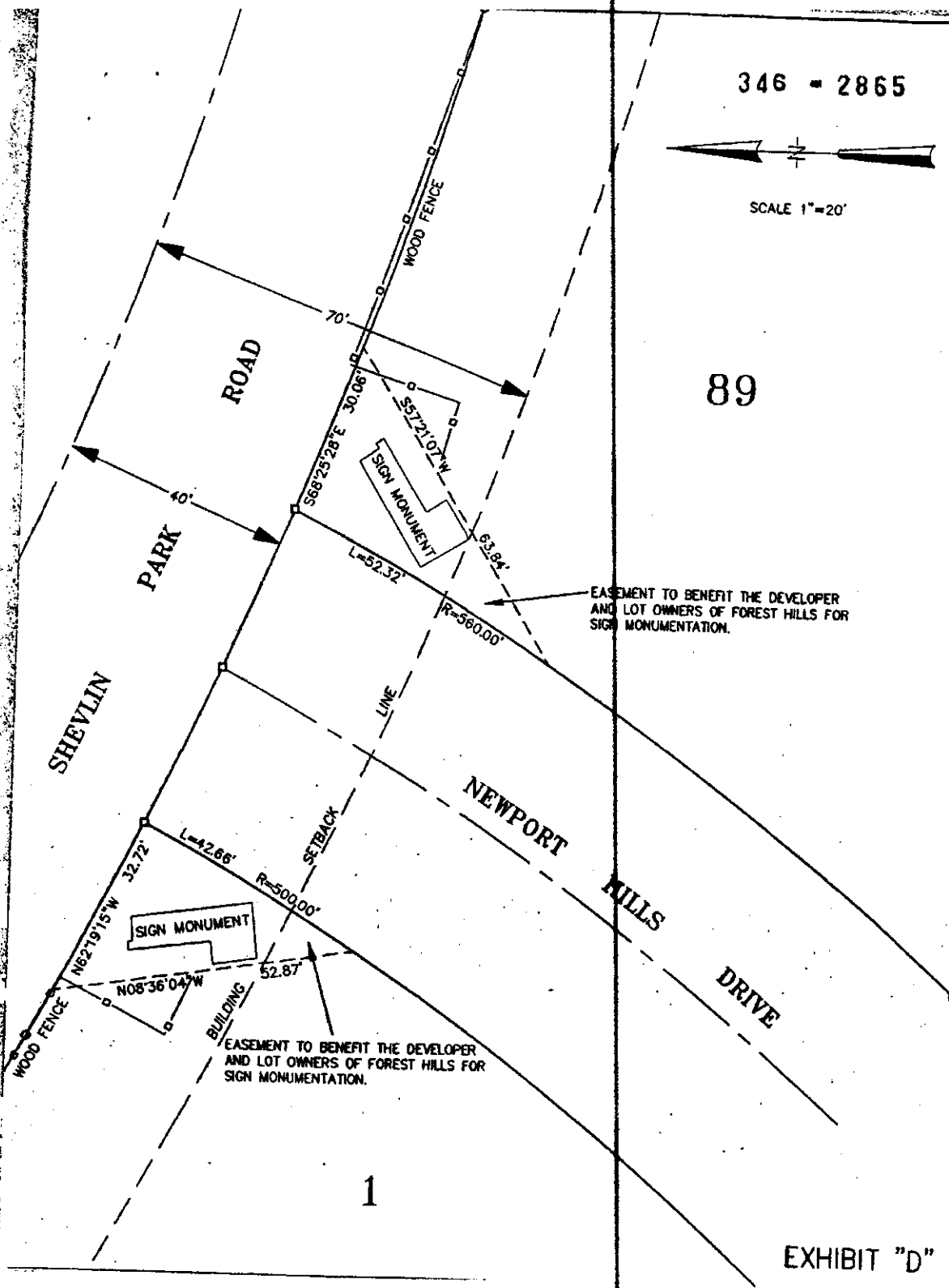


EXHIBIT "D"

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 28 AM 11:09

MARY SUE PENHOLLOW  
COUNTY CLERK

BY: Mary Sue Penhollow DEPUTY  
NO. 94-29597 REC. 95.00  
DESCHUTES COUNTY OFFICIAL RECORDS