

After Recording Return To: MARK & CATHY JO MARSHALL
207 E 19TH STREET
MCMINNVILLE, OR 97128

22
12
Until A Change Is Requested
Send Tax Statements To:

SAME AS ABOVE

Tax Lot Number:

True & Actual Consideration Is: \$482,205.00

DESCHUTES COUNTY OFFICIAL RECORDS
MARY SUE PENHOLLOW, COUNTY CLERK

2002-29711



\$136.00

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05/31/2002 03:42:27 PM

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\$110.00 \$11.00 \$10.00 \$5.00

WARRANTY DEED

CONCOURSE 97, a California limited partnership ("Grantor")

conveys and specially warrants to

136
MARK AND CATHY JO MARSHALL ("Grantee")

*the real property described as LOT 1, FRANK'S LANDING , DESCHUTES
COUNTY, OREGON (the Property)*

free of encumbrances created or suffered by the Grantor except (i) as set forth on the attached Exhibit A; and (ii) reserving a perpetual nonexclusive easement on the Property for the benefit of Lot 2, Frank's Landing , Deschutes County, Oregon ("Lot 2"), pertaining to the creation of one or more connections between the roadways and parking areas of the Property and Lot 2 to allow for the free flow of vehicular traffic and reasonable, coordinated ingress and egress between the Property, Lot 2, SW 21st and Airport Way (the "Reserved Easement"). Grantee or any subsequent owner of the Property will be responsible for the cost of development, construction, repair, maintenance, upkeep and insurance on all roadways, walkways, parking areas, landscaping and all other improvements on or near the Reserved Easement.

Grantor grants Grantee a perpetual nonexclusive easement on Lot 2 for the benefit of the Property pertaining to the creation of one or more connections between the roadways and parking areas of the Property and Lot 2 to allow for the free flow of vehicular traffic and reasonable, coordinated ingress and egress between the Property, Lot 2, SW 21st and Airport Way (the "Granted Easement"). Grantor or any subsequent owner of Lot 2 will be responsible for the cost of development, construction, repair, maintenance, upkeep and insurance on all roadways, walkways, parking areas, landscaping and all other improvements on or near the Granted Easement.

- 1 - WARRANTY DEED

RECORDED BY
WESTERN TITLE & ESCROW CO.
10 0034302

The Property, the Reserved Easement and the Granted Easement are all subject to those certain covenants, conditions and restrictions contained in that certain Declaration of Covenants, Conditions and Restrictions for Frank's Landing dated May 31, 2002, incorporated herein as if set out verbatim.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

DATED this 21st day of May, 2002.

GRANTOR:

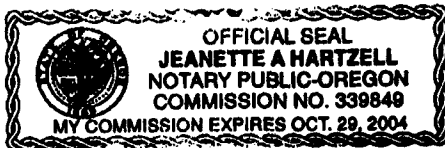
Concourse 97, a California limited partnership

By: *[Signature]*

Its: Authorized Agent

STATE OF OREGON §
COUNTY OF DESCHUTES §

The foregoing instrument was acknowledged before me this 21st day of May, 2002, by Jeep Wood, the Authorized Agent of Concourse 97, the Agent of Concourse 97.



[Signature]
Notary Public for Oregon
My Commission Expires:

EXHIBIT A
PERMITTED ENCUMBRANCES

1. Regulations, including levies, liens, assessments, water and irrigation rights and easements for ditches and canals of Central Oregon Irrigation District.
2. The rights of the public in and to that portion of the herein described property lying within the limits of roads, streets and highway.
3. The existence of roads, railroads, irrigation ditches and canals, telephone, telegraph and power transmission facilities.
4. Right of way of Oregon Trunk Railroad as shown on the Deschutes County Assessor's Map.
5. Limited access in deed to State of Oregon by and through its Department of Transportation, Highway Department, which provides that no right or easement of right of access to, from or across the State Highway other than expressly provided therein shall attach to the abutting property, recorded June 12, 1991, in Volume 237, Page 569, Official Records of Deschutes County, OR.
6. Development Agreement, including the terms and provisions thereof, dated May 22, 2001, and recorded July 23, 2001 in Volume 2001, Page 35602, Official Records of Deschutes County, OR, between the City of Redmond, a municipal corporation of the State of Oregon, and Concourse 97, a California limited partnership.
7. An easement created by instrument, including the terms and provisions thereof, dated August 2, 2001 and recorded August 8, 2001 in Volume 2001, Page 38941, Official Records of Deschutes County, OR, in favor of PacifiCorp, an Oregon corporation, its successors and assigns.

AFTER RECORDING RETURN TO:
CONCOURSE 97, a California limited Partnership
405 SW 8th Street
Redmond, Oregon 97756

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
FRANK'S LANDING**

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FRANK'S LANDING**

This Declaration is made this 31 day of May, 2002 by Concourse 97, a California limited partnership, as owner of that certain real property in the City of Redmond, Deschutes County, Oregon, described herein as Exhibit "A," attached hereto and incorporated by reference.

The property is being developed as a planned professional office, retail and tourism-oriented 'village' known as Frank's Landing (the Project). It is the intention of Declarant to subject the Project to certain covenants, conditions and restrictions for the benefit of Concourse 97 and the purchasers of lots in Frank's Landing. Said covenants, conditions and restrictions are intended to be common to all lots in Frank's Landing and are being established to:

- insure orderly development in accordance with a plan for subdivision, improvement, maintenance and operation of the real property;
- enhance and protect the value, desirability and attractiveness of the real property;
- promote quality, compatibility and creativity in architectural and Site design;
- preserve natural features of the environment where feasible;
- set forth minimum standards for development, use, and maintenance; and
- provide a formal mechanism for exercise of controls and enforcement.

In the event any development standard or use restriction of this Declaration should conflict with an applicable ordinance of the State of Oregon, Deschutes County, or City of Redmond, the more restrictive standard or requirement shall apply.

I GENERAL DECLARATION

1.1 Declaration of Covenants, Conditions and Restrictions

Declarant hereby declares that Frank's Landing shall be conveyed, built-upon, encumbered, leased, occupied, operated, and used solely in compliance with the conditions, covenants and restrictions (hereafter referred to as "CC&R's") set forth in this Declaration. These CC&R's shall apply to and bind all owners, lessees, licensees, occupants, and users of the property, their heirs, successors and assigns in interest as set forth herein, and shall constitute covenants running with the land.

1.2 Additional Land

Declarant may add contiguous land now or hereafter owned by Declarant by recording in the county records a document describing the additional land and stating it is subject to these CC&R's. Upon recording, the additional land shall be a part of Frank's Landing, as the Project is defined herein.

II DEFINITIONS

- 2.1 Declarant:** Concourse 97, a California limited partnership, and to the extent provided in Section 10.2 of this Declaration, its successors and assigns.

- 2.2 **Declaration:** This declaration of Covenants, Conditions and Restrictions for Frank's Landing, as may from time to time be amended or supplemented.
- 2.3 **Frank's Landing:** All of the real property now or hereafter made subject to this declaration; may also be referred to as Concourse 97.
- 2.4 **Improvement(s):** All buildings, outbuildings, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, telephone and communications lines and facilities, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas and all other structures, construction, installations, and landscaping of every type and kind (including water features), whether above or below the land surface.
- 2.5 **Interchange:** Yew Avenue/Airport Way on- and off-ramps to Highway 97, which abut the subject property.
- 2.6 **Lot:** A lot or parcel within Frank's Landing legally created by partition or subdivision and suitable as a building Site.
- 2.7 **Owner:** The holder of a fee simple interest in a Site, or the holder of a vendee's interest in a Site under a recorded installment contract of sale. The holder of only a leasehold interest in a Site, a building, or a portion of a building is not an Owner for purposes of this definition. If there are two or more co-owners of a Site, they shall collectively constitute only one Owner for purposes of these CC&R's, and shall have only one vote on any matter on which Owners may vote as provided in Section 7.3.
- 2.8 **Owners' Committee:** Committee of owners formed pursuant to Article IX.
- 2.9 **Site:** A contiguous area of land comprised of one or more lots held by the same Owner for a single improvement or integrated separate improvements.
- 2.10 **Streets:** Any street, highway or other thoroughfare within or adjacent to Frank's Landing and shown on any recorded subdivision or partition map, or survey map of record, whether designated thereon as street, boulevard, place, drive, road, terrace, way, land, circle or otherwise.
- 2.11 **Village:** A design concept focusing on discrete businesses located in close proximity to one another, facilitating easy pedestrian access from one location to another and presenting visually appealing style that is integrated without precise duplication.

III REGULATION OF OPERATIONS AND USES

3.1 Permitted Uses

Any business or commercial operation and use consistent with the zoning ordinances of the City of Redmond and stated uses declared herein will be permitted provided Declarant consents thereto. Changes in use shall be approved, disapproved or conditionally approved after receipt of all information that would be reasonably required for a prudent business decision.

3.2 Prohibited Activities

No use will be conducted on a Site, nor shall any materials or products be manufactured, processed or stored thereon which shall, in the opinion and sole

discretion of Declarant, cause an undue fire or health hazard, be offensive or detrimental to any adjacent property or to its occupants, or which shall constitute a nuisance. Customary and ordinary construction activity performed in accordance with all applicable laws and without undue interference with neighboring properties shall not be considered a nuisance.

3.3 Condition of Property; Compliance with Laws and Regulations

The Owner and its agents and assigns of each Site shall at all times keep it and the buildings, improvements and appurtenances thereon in a safe, clean, neat and sanitary condition and comply at its own expense, with all applicable governmental statutes, ordinances, regulations, requirements, and directives.

3.4 Maintenance and Repairs

- (a) Each Site and all improvements thereon shall at all times be maintained by the Owner in a condition acceptable to Declarant and Declarant shall have the right to designate and employ a maintenance operator to perform necessary functions at Owner's prorated expense. All repairs, alterations, replacements, or additions to improvements shall be (i) made pursuant to applicable building codes and permit requirements, (ii) made in a good and workmanlike manner and (iii) of a quality at least equal to the original work.
- (b) Periodic cleaning (including ice and snow removal), maintenance to safe and aesthetically pleasing standards, and necessary repairs shall be the Owner's responsibility, but if not completed in a timely manner, it shall be Declarant's option to arrange for such work, at Owner's expense, without liability to Declarant, and Owner shall indemnify Declarant for same if so claimed.
- (c) Owner shall maintain general public liability insurance against claims for bodily injury, death, or property damage on, in, or about the Owner's lot and the common area adjacent thereto. Coverage amounts shall be subject to Declarant's discretion, but shall be bound for a minimum of \$1,000,000 combined single limit. Declarants shall be named an additional insured and shall have the right to purchase replacement coverage at Owner's expense on Declarant's demand.

3.5 Storage and Refuse Collection Areas

All exterior storage vessels or structures, whether for disposal or retention or some other purpose, shall be masked from public view by structure or landscaping, and shall be used and maintained in such a way as to preclude public view of contents at all times, subject to Declarant's approval and continued satisfaction. Examples of such vessels or structures include dumpsters, trailers, or ashtrays, but are not limited to these examples.

3.6 Utilities and Public Improvements

Declarant reserves the sole right to consent to the construction and operation of utility mains and related infrastructure or systems. No Owner shall enter into any contract or agreement with any governmental body or utility agency with reference to the installation of public improvements without Declarant's consent.

3.7 Utility Service and Antennas

Sewer, water, drainage, lines, wires and other devices for the communication or transmission of electric current, including telephone, television, microwave or radio signals shall be contained in conduits or cables constructed, placed and

maintained underground or concealed in or under buildings or other approved structures, provided that electrical transformers may be permitted if properly screened and approved by Declarant.

3.8 Excavation

No excavation of a Site shall be made except in connection with construction of an approved improvement, and upon completion, exposed openings shall be backfilled and disturbed ground shall be graded, leveled, and restored to Declarant's satisfaction, or original condition in accordance with approved plans.

3.9 Partition, Subdivision and Lot-line Adjustments

No Lot shall be partitioned or subdivided, nor shall any lot line be adjusted, without the prior approval of Declarant or the Owner's Committee.

IV DESIGN CONTROLS

4.1 Approval of Plans Required

All plans for improvements shall be submitted by an Owner and approved by Declarant in writing. Approval shall be based upon final plans and specifications prepared by licensed architects, engineers or other qualified professionals. Plan submissions will also be required for significant revisions, alterations, additions, or changes of use for approved or existing improvements. Plans must be drawn to an easily-readable scale such as 1"=20' unless otherwise noted, and shall be submitted to Declarant prior to submittal to any governmental authority. Submittal shall consist of four (4) copies of the following:

- (a) Site plan
- (b) Architectural plans, elevations and sections
- (c) Existing topographic and proposed grading plan
- (d) Landscape plan
- (e) Description of proposed construction staging and access areas, and any temporary structures.

4.2 Basis for Approval

In exercising its right of approval, Declarant shall consider, among other things, the following:

- (a) adequacy of Site dimensions for the proposed improvement
- (b) nature and location of improvements and uses upon neighboring sites
- (c) exterior appearance of architectural style, proportions, height, bulk, color schemes, textures and materials
- (d) relationship to topography of Site and neighboring sites
- (e) compatibility and harmony of external design with neighboring structures
- (f) proper facing of building elevations with respect to nearby streets
- (g) design and effect of parking area or on site roadways on traffic within Frank's Landing
- (h) adequacy of storm water retention and drainage
- (i) adequacy of screening of equipment installations and service areas
- (j) compliance with the standards of Article V below
- (k) conformity and appropriateness to the Frank's Landing development concept and design guidelines, as referenced in 4.7 below.

4.3 Review Fee

Declarant may establish and assess a fee for reviewing an Owner's plans and specifications submitted pursuant to Section 4.1. Said review fee shall reasonably approximate the cost incurred in connection with such review.

4.4 Review Procedure

If Declarant fails either to approve or disapprove properly-submitted plans and specifications within fifteen (15) business days after receipt of all submittals required by Section 4.1, it shall be conclusively presumed that Declarant has approved said plans and specifications; provided, however, that if, within the fifteen (15) business-day period, Declarant gives written notice of the fact that more time is required for the review of such plans and specifications, there shall be no presumption that the same are approved until the expiration of such reasonable period of time as is set forth in the notice. Declarant shall not arbitrarily or unreasonably withhold its approval of plans and specifications.

4.5 Approval

Declarant may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same, subject to specific conditions.

4.6 Design Review by Governmental Authorities

Any plans or specifications submitted to governmental authorities shall be provided to and approved by Declarant prior to commencement of construction.

4.7 Design Guidelines

The development concept for Frank's Landing shall be determined by Declarant in its sole discretion. 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 Section 4.5 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

4.8 Special Architectural and Site Design Considerations

Building programs shall incorporate the following:

- (a) Distinct architectural style, materials and finishes which are identifiably contemporary or historically reminiscent in design, concept and quality;
- (b) Methods that reduce the large-scale visual impact of building mass and provide relief from large wall expanses;
- (c) Preservation of existing terrain, rock outcroppings and mature trees, and optimization of view corridors, wherever possible;
- (d) The use of window patterns, roof forms, indirect accent lighting and other features which enhance individual buildings while retaining a consistency of basic architectural elements among other buildings in the Project.

4.9 Purpose and Effect of Approval

Declarant's review and approval or denial of plans and specifications are for Declarant's sole benefit and do not constitute a representation or warranty that such plans and specifications are or are not suitable for the purposes for which they are intended, or that they comply with any building or engineering standard,

code or ordinance. Each Owner, upon submitting plans and specifications for approval, agrees to indemnify and hold Declarant, its agents, contractors, successors and assigns from and against any and all claims, damages, expenses, liabilities or losses arising out of or in any way connected with plans and specifications submitted for review in accordance with Section 4.1.

4.10 Declarant Not Liable

Declarant shall not be liable for any damage, loss, or prejudice suffered or claimed by any person by:

- (a) The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
- (b) The construction of any improvement, or performance of any work, whether or not pursuant to approved plans and specifications; or
- (c) The development of any Site within Frank's Landing.

V DEVELOPMENT STANDARDS

5.1 Site Coverage

The ratio of building coverage to Site area is subject to the approval of Declarant, but in no instance may the ratio exceed fifty percent (50%), or the maximum allowed under applicable law, whichever is less.

5.2 Minimum Setback

Except as otherwise provided in Section 5.3, no improvements of any kind shall be placed on a Site closer to a property line than herein provided:

- (a) Fifty (50) feet from any property line abutting the Airport Way right-of-way or the Interchange right-of-way;
- (b) Ten (10) feet from any property line abutting the SW 21st Street right-of-way;
- (d) Ten (10) feet from any property line that does not abut a public street.

5.3 Exceptions to Setback Requirements

The following improvements, or portions thereof, are specifically excluded from the setback requirements set forth in Section 5.2 subject to applicable law:

- (a) Unsupported roof overhang, subject to approval by Declarant;
- (b) Steps and walkways;
- (c) Paving and associated curbing, except that no vehicle parking shall be permitted in front or side yard setbacks unless approved by Declarant;
- (d) Landscaping and irrigation systems;
- (e) Architectural fences, walls, and sign elements except that Declarant's specific approval is required when placed within a front yard setback;
- (f) Underground utility facilities and their above-ground appurtenances.

5.4 Landscaping

Each Site shall be landscaped in accordance with the approved plans and specifications, subject to Declarant's approval, and in conformity with the criteria and requirements set forth below:

- (a) Site Landscaping. A minimum of fifteen percent (15%) of the area within the property lines of a Site shall be devoted to landscaping, and existing mature trees are to be preserved wherever possible, in accordance with any landscaping guidelines which Declarant may establish, and in compliance with applicable law. A minimum of seven percent (7%) of area within parking areas shall be devoted to Landscaping. Landscaping shall be installed and operable within sixty (60) days of issuance of a certificate of occupancy or completion of construction, whichever first occurs, or as soon thereafter as weather permits.
- (b) Right-of-Way Landscaping. An Owner shall also be responsible for landscaping and maintaining any right-of-way as follows, and subject to applicable law:
 - (i) Street tree variety to be specified by Declarant and installed by Owner in 10' public right-of-way, 25' on center, 3" caliper.
 - (ii) If street trees are installed in paved surfaces, decorative concrete pavers to be specified by Declarant are to be installed by Owner around the trees in four foot square areas.
 - (iii) Live plant material shall cover at least 50% of all Owner right-of-way, subject to Declarant Site-specific approval.
- (c) Parking Area Lighting. Parking area lighting fixtures to be specified by Declarant, installed by Owner, no other fixtures permitted.
- (d) Buffers. Plant and natural material buffers shall be installed by owner in accordance with Declarant aesthetic standards in specified areas, including but not limited to the Interchange right-of-way adjacency. Owner shall be responsible for keeping buffer clean and free of debris at all times.

5.5 Sidewalks

On-site pedestrian circulation systems shall be provided to meet the needs of on-Site users in a safe manner and using all-weather-efficient materials.

5.6 Parking, Loading and Service Areas

Each Site shall provide adequate employee and business parking, loading and delivery facilities to accommodate all operations or uses without requiring on-street parking or maneuvering. If parking requirements increase as a result of change in approved use or expansion of an existing use, additional off-street parking shall be provided to satisfy the requirements of this section. All parking areas shall conform to the following standards, and in addition shall comply with applicable law:

- (a) Parking areas shall be paved, curbed and striped in accordance with approved plans and specification, and shall provide, in addition to parking spaces, adequate driveways and space for movement of vehicles.
- (b) No parking spaces shall be located on or permitted within front or side yard setback areas unless previously approved in writing by Declarant.
- (c) Parking areas shall be planned to accommodate snow removal.

- (d) Loading docks, delivery and service areas shall be located and screened to restrict to the greatest extent practicable their view from adjacent streets and neighboring Sites.

5.7 Building Height

The maximum height of all structures within Frank's Landing shall be thirty-five (35) feet, subject to applicable law. Greater heights may be allowed by Declarant on a case-by-case basis, subject to jurisdictional approval.

5.8 Exterior Building Materials and Colors

Exterior walls must be finished with building materials of a texture, character and color compatible with the surrounding natural elements. Consideration should be given to ease of maintenance. Declarant shall have the sole right to approve or disapprove materials and colors. Selection shall conform to the following:

- (a) Materials which convey permanence and substance are preferred. Such materials include architectural masonry units, concrete block, brick, natural stone, precast concrete, stucco, glass, wood logs, or their equivalent.
- (b) Primary wall surface colors shall be subdued in tone and hue. Complementary accent colors are encouraged in moderation and may be used in conjunction with accent materials or to express corporate identity.
- (c) Roof treatments may be of any traditional roof material that has a non-glare surface and is of a harmonious color to other surfaces, as approved by Declarant.

5.9 Mechanical and Electrical Equipment

Exterior components of plumbing, processing, heating, cooling and ventilating systems shall be screened from public view to the greatest extent practicable. Screening devices shall appear as integrated parts of the architectural design. Ground-level or other exterior equipment including electrical transformers shall be adequately screened with either plantings or durable enclosures so as to blend with the visual background. In areas where noise is generated by mechanical systems, insulation may be required to reduce the impact on neighboring properties, subject to Declarants discretion dependent upon particular acoustical environments.

5.10 Fences and Walls

Fences and walls shall be designed to coordinate with and be appropriate to the overall building style and Site design. Fencing layouts and designs are subject to Declarant's approval and will be considered based upon specific Site and use conditions. Perimeter fencing defining all property lines is prohibited.

5.11 Lighting

All lighting is to be shielded downward, bulbs not visible, and confined within property lines, and shall conform to any lighting guidelines which may be set forth by Declarant, and in compliance with applicable law.

5.12 Signs

All signs, whether permanent or temporary, business identification, directional, or street number, are subject to review and approval by Declarant and shall conform to sign criteria which may be established by Declarant, as amended from time to time, and shall comply with applicable law, subject to jurisdictional review.

VI CONSTRUCTION

6.1 Prosecution of Work

Upon approval from Declarant pursuant to Section 4.5, the Owner receiving such approval shall promptly satisfy any conditions of such approval and shall diligently proceed with the prosecution of all approved excavation, construction or alterations, and landscaping in strict conformity to the approved plans and specifications. If for any reason work has not commenced within one (1) year from the date of Declarant's approval, approval shall expire.

6.2 Completion of Work

All construction, reconstruction, refinishing or alterations of any improvement including landscaping shall be completed within one (1) year from the commencement of the work, unless otherwise previously agreed by Declarant in writing.

6.3 Inspections

Declarant shall have the right, upon reasonable prior notice to Owner, to inspect any work related to any building, structure or facility or any landscaping or other improvements within Frank's Landing to determine its conformity with approved plans and specifications. In the event Declarant determines in good faith that certain work is non-conforming, Declarant may issue a stop work notice, without the necessity of court order, which shall require the Owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of these CC&R's. Any inspection or correction conducted or instituted by Declarant shall have the same purpose and effect as Declarant's review and approval of plans and specifications as set forth in Section 4.9.

6.4 Maintenance during Construction

It shall be the responsibility of each Owner to insure construction Sites are kept free of unsightly, unhealthy, or hazardous conditions, including dust.

6.5 Temporary Structures

No temporary buildings or other temporary improvements, including trailers, tents or shacks shall be permitted on Site unless expressly approved in writing prior to entry by Declarant.

VII OWNERS' COMMITTEE

7.1 Declarant's Right to Exercise Controls

- (a) Declarant, as developer and original owner of Frank's Landing, may exclusively exercise all design, landscaping, sign and other controls as

well as those other duties, obligations and rights prescribed under this Declaration until Declarant relinquishes the exercise of control and the burden of such duties to the Owners' Committee as set forth below.

- (b) When Declarant ceases to own land in Frank's Landing, as the same may be enlarged by the addition of land pursuant to Section 1.2, or at any earlier time at Declarant's option, Declarant shall relinquish its exercise of such rights and responsibilities and shall record in appropriate offices a declaration stating that Declarant no longer desires to exercise further controls over development in Frank's Landing except to the degree it has such rights as an Owner or as a member of the Owners' Committee. Copies of such declaration shall be provided to each Owner within Frank's Landing contemporaneously with recordation of the declaration. Recordation of such a declaration shall formally terminate Declarant's rights and duties relating to design, landscaping, sign and other controls, as well as any other duties, rights and obligations of Declarant under these CC&R's, except to the degree it has such rights as an Owner or as a member of the Owner's Committee.

7.2 Formation of Owners' Committee

Upon Declarant's relinquishment of its control and duties, the Owners' Committee shall automatically come into existence, and shall succeed to all duties, powers, responsibilities, rights and privileges of Declarant under these CC&R's.

7.3 Members

- (a) All Owners are members of the Owners' Committee, and each lot represents one (1) vote. Within thirty (30) days after the commencement date of the Owners' Committee, the initial members of the Owners' Committee shall convene. Persons eligible for Owners' Committee Officership, shall be limited to an individual Owner or directors, officers, employees, agents, owners or partners of any corporation, partnership, joint venture or proprietorship owning any Site within Frank's Landing. Declarant shall solicit from and then circulate to all Owners, a list of nominees for the three (3) initial officer positions within the 30-day organizational period. Declarant shall then conduct an election of the initial Officership. The three nominees obtaining the three highest vote totals shall constitute the initial Owners' Officers: President, Vice President, and Secretary/Treasurer.
- (b) Each Owner of a Lot or Lots throughout Frank's Landing shall have the right to cast one vote for each Owners' Committee officer per each Site. If the Owner of a Site consists of more than one person or entity, they shall agree among themselves and designate in writing a single person who is entitled to cast the votes for the Site. If they do not agree and designate in writing the person entitled to cast the votes for the Site, that Site shall not be entitled to vote. The initial Owners' Committee shall meet within ten (10) days after the election and may at that time adopt any governing documents, including bylaws, guidelines, procedures, rules and regulations, relating to the Owners' Committee and Frank's Landing.

7.4 Declarant's Responsibilities

In the event Declarant is unsuccessful in organizing the Owners' Committee within the 30-day organizational period specified by Section 7.3 above, Declarant shall have no further responsibilities relating to the Owners' Committee, and the Owners' Committee shall be organized exclusively by the Owners within Frank's

Landing. Such failure of organization of the Owners' Committee shall not affect the existence of the Owners' Committee or the effectiveness of the CC&R's.

7.5 Legal Form, Owners' Committee

The Owners' Committee shall determine the legal form of the Owners' Committee and any association of Owners.

VIII DURATION AND MODIFICATION

8.1 Duration

Unless sooner terminated or modified according to the procedures provided in Section 8.2 below, these CC&R's shall remain in effect for a period expiring on the thirtieth (30th) anniversary date of the execution of this Declaration and shall be automatically renewed for an unlimited number of successive ten-year periods unless repealed as provided below.

8.2 Modification and Repeal

This Declaration may be terminated or extended or any covenant, condition or restriction herein may be modified or amended as to all or any portion of Frank's Landing pursuant to the following procedures:

- (a) Except as otherwise provided in (b) below, with the written consent of Declarant and of the Owners of fifty-one percent (51%) of the Owners of Sites within Frank's Landing. The consent of Declarant shall not be required after Declarant ceases to be an Owner of any Site.
- (b) Until such time as Declarant no longer owns any interest in Frank's Landing or relinquishes control pursuant to Section 7.1 herein, Declarant acting alone may modify or amend the provisions of Articles III, IV, V and VI; provided, however, that (i) any such modification or amendment must be within the spirit and overall intention of the development as set forth herein; (ii) prior to any such modification or amendment, Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary; and (iii) any modification or amendment shall not provide for any type of improvements or use not presently permitted by this Declaration.
- (c) No termination, extension or modification or other amendment shall become effective until a proper instrument has been recorded in the deed records of Deschutes County and such change is made in compliance with applicable law. No material amendment of this Declaration shall affect the rights of a mortgagee under a mortgage or a trustee or beneficiary under a trust deed constituting a lien on any Site unless such person consents in writing to the amendment.

8.3 Replat

Declarant reserves the right to replat all or any portion of Frank's Landing, before or after the sale of any Lots, provided that no changes are made to the plat of any Lot that is not owned by Declarant without the consent of the Owner of such Lot.

IX ENFORCEMENT

9.1 Right of Entry

Declarant, or its authorized representative, shall have the right to enter any Site for the purpose of determining compliance with these CC&R's.

9.2 Default and Remedies

In the event of any breach, violation, or failure to perform or satisfy any covenant, condition, or restriction which has not been cured within the time set forth in a written notice to do so, Declarant at its sole option and discretion may enforce any one or more of the following remedies or any other rights or remedies to which Declarant may be entitled by law or equity, whether or not set forth herein. All remedies provided herein or by law or equity shall be cumulative and not mutually exclusive; damages or declaratory relief; specific performance or injunction; abatement of nuisance without further legal action, including costs, notice of claim of lien to Deschutes County in accordance with applicable law.

9.3 Waiver

No waiver by Declarant of a breach of any of these restrictions, and no delay or failure to enforce any of these restrictions, shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of these CC&R's.

9.4 Costs of Enforcement

In the event any legal or equitable action shall be instituted to enforce any provision of these restrictions, the party prevailing in such action shall be entitled to recover all of its costs, including court costs, arbitration or mediation costs, and reasonable attorneys' fees and costs.

9.5 Non-Exclusive Rights of Enforcement

The rights of enforcement granted to Declarant are non-exclusive and shall be exercisable by Declarant for so long as Declarant owns any interest in Frank's Landing. Concurrently, each Owner is hereby granted the rights of enforcement and the remedies provided to Declarant by Section 9.2.

X MISCELLANEOUS

10.1 Constructive Notice and Acceptance

Every person or entity who now or hereafter owns, occupies, or acquires any right, title, or interest in or to any portion of Frank's Landing is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in Frank's Landing.

10.2 Delegation and Assignment of Declarant's Rights and Duties

Declarant may from time to time delegate any or all of its rights, powers, discretion and duties as Declarant hereunder to such agent or agents as it may designate. Declarant may permanently assign any and all of its rights, powers, discretion and duties as Declarant hereunder to any person, corporation or

association which will assume the duties of Declarant. Such assignment shall become effective upon recordation with the Deschutes County Recorder. If at any time Declarant ceases to exist and has not made such assignment, a successor Declarant may be appointed only with the written consent of fifty-one percent (51%) of the Owners within Frank's Landing.

10.3 No Liability

Neither Declarant nor its successors or assigns shall be liable to any Owner or occupant of Frank's Landing by reason of any mistake in judgment, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner or occupant of any of Frank's Landing by acquiring its interest therein agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief attributable to or caused by same.

10.4 Notices

All notices to be given pursuant to this Declaration shall be in writing. If given to the Declarant, notice is effective only upon receipt. If given to an Owner, notice is effective: (i) two (2) days after mailing by United States certified or registered mail, postage prepaid, addressed to the Owner of a Site at the address shown on the then current property tax roll for Deschutes County; or (ii) upon receipt in the case of messenger, overnight courier, or facsimile. Notices to Declarant shall be delivered to: Lary J. Mielke, 600 S. Lake Ave., Suite 502, Pasadena, CA 91106 (Fax 626/564-0232); with a copy to: Jean Wood, 405 SW 8th St., Redmond, OR 97756 (Fax 541/504-7774).

10.5 Declarant's Approval or Consent

Any provision of these CC&R's whereby Declarant's approval or consent is required, said approval or consent must be in writing to be valid and shall be the responsibility of Owner to obtain. Notwithstanding the foregoing, Declarant may delegate certain review and approval rights to an agent, and may do so without express notice to Owners.

10.6 Captions

The captions of articles and sections herein are used for convenience only and not intended to be part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular article or section to which they refer.

10.7 Effect of Invalidation

If any term or provision of these CC&R's is held to be invalid by any court, such invalidity shall not affect in any way the validity of the remaining CC&R's.

IN WITNESS WHEREOF, the undersigned Declarant has caused the execution of this Declaration on the date first above written.

DECLARANT:

CONCOURSE 97, a California limited partnership

By: Jean Wood, Authorized Agent

By: 
Jean Wood, Authorized Agent

STATE OF OREGON)
COUNTY OF Deschutes) ss.

The foregoing instrument was acknowledged before me this 29th day of May, 2002,
by Jean Wood, on behalf of Concourse 97.


Notary Public for Oregon

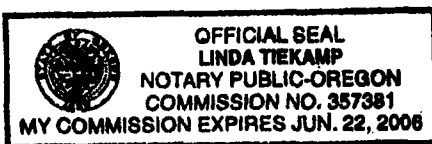


EXHIBIT "A"

Lots 1 through 6 of Frank's Landing, Deschutes County, Oregon.