

DESCHUTES COUNTY OFFICIAL RECORDS 2001-033259
MARY SUE PENHOLLOW, COUNTY CLERK



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DESCHUTES COUNTY CLERK

CERTIFICATE PAGE



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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS OF WHISPER RIDGE**

This Declaration is made on the date hereinafter set forth by the undersigned Declarant, 2-K Associates LLC, a limited liability company organized and existing under the laws of the State of Oregon ("Developer");

WHEREAS, Developer is the owner in fee of the real property situated in County of Deschutes, State of Oregon, described in Exhibit A attached hereto (the "Property"), and proposes to develop the Property as a Townhome development to be known as Whisper Ridge;

WHEREAS, the Property is part of a development known as Broken Top and all of the Owners in such development are members of and subject to the rules and regulations of the Broken Top Community Association, Inc., an Oregon non-profit corporation (the "Master Association");

WHEREAS, the Broken Top development is subject to a Declaration of Covenants, Conditions, and Restrictions (as amended or restated from time to time, the "Master Declaration");

WHEREAS, Developer intends to create, in favor of the Master Association and the Whisper Ridge Neighborhood, an easement covering the common exteriors, which includes, without limitation, siding, caulking, the fronts of the exterior doors, roofs, gutters and downspouts, metal chimney caps, and decks for the purpose of access to and maintenance of such common areas, and intends to cause Broken Top to maintain such common areas pursuant to Section 3.4(a) of the Master Declaration; and

WHEREAS, Developer desires to subject the Property to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of the Property and its present and subsequent Owners, as hereinafter specified, and will convey the Property subject thereto;

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Linda Sinclair

WHEREAS, Developer desires that the real property located in the County of Deschutes, State of Oregon, described on Exhibit B, attached hereto (the "Adjacent Property") that is adjacent to the Property be permitted to be annexed to the Whisper Ridge Neighborhood on the terms and conditions set forth in this Declaration; NOW, THEREFORE, Developer hereby declares that each of the Lots to be platted on the Property is and shall be held, sold, and conveyed upon and subject to the easements, conditions, covenants, restrictions, and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property.

1. **Definitions.** Wherever used in this Declaration, the following terms shall have the following meanings:

A. "Developer" shall mean and refer to 2-K Associates LLC, an Oregon limited liability company, which is the Declarant herein, its successors and assigns.

B. A "Lot" shall mean and refer to any plot of land shown on the recorded subdivision of Whisper Ridge, used or intended for construction of a single family Townhome unit.

C. An "Owner" shall mean and refer to the record Owner (including contract purchaser), whether one or more persons or entities, of all or any part of a Townhome, excluding those having such interest merely as security for the performance of any obligation.

D. "Property" or "Whisper Ridge" shall in each case mean and refer to that certain real property described in Exhibit A.

E. "Public Common Area" means all areas designated a "Common Area" on the plat of Whisper Ridge, including any Common Areas designated as such in any supplemental declaration or recorded plat map overlaying all or any portion of the Property.

F. A "Townhome" shall mean and refer to any single family townhome unit constructed upon a Lot, and the Lot upon which it is constructed.

G. "Whisper Ridge Neighborhood" and "Neighborhood" shall mean, collectively, the Townhome units and the Owners. The Whisper Ridge Neighborhood shall constitute a "Neighborhood" for purposes of and as defined in the Master Declaration.

2. Declaration.

A. Developer hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and charges, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title, or interest in such Property or any part thereof and shall inure to the benefit of each Owner thereof. Declarant has subjected the Property covered by this Declaration to the Master Declaration.

B. The exteriors (including siding and caulking) of each building and the front of the exterior doors of each building on the Property are hereby declared to be common exteriors. The roofs, gutters (if any), downspouts (if any), and chimney caps on each building on the Property are hereby declared to be common roofs. The decks around each Townhome are hereby declared to be common decks. All such common property (common exteriors, common roofs, and common decks) is referred to collectively as the "Private Common Area." The Private Common Area shall constitute "Common Area" for purposes of the Master Declaration.

3. Annexation of Adjacent Property. Developer may, from time to time and in its sole discretion, annex to Whisper Ridge any portion of the Adjacent Property. Annexation of the Adjacent Property shall be accomplished as follows:

A. Supplemental Declaration. The owner of the Adjacent Property shall record a Supplemental Declaration which shall be executed by or bear the approval of Developer and shall, among other things, describe the real property to be annexed, state the maximum number of Lots in such annexed real property (except as limited under applicable law, there is no limit to the number of Lots Developer may annex within the Adjacent Property), establish any

additional limitations, uses, restrictions, covenants, and conditions which are intended to be applicable to such property, and declare that such portion of the Adjacent Property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration.

B. Effect of Annexation. The portion of the Adjacent Property included in any such annexation shall thereby become a part of the Whisper Ridge Neighborhood and subject to this Declaration, and the Whisper Ridge Neighborhood shall have and shall accept and exercise administration of this Declaration with respect to the Annexed Property.

4. **Maintenance of Private Common Areas.** The cost of maintaining the Private Common Area shall be included in Neighborhood assessments payable by the Owners of Lots or Townhomes within the Neighborhood. Pursuant to Section 3.4(a) of the Master Declaration, the Neighborhood shall cause the Master Association, at the Neighborhood's cost, to maintain the Private Common Area to the extent of such Neighborhood assessments. Neighborhood assessments may be levied from time to time against the Owners by the Master Association and may include a reasonable reserve for capital repairs and replacements. Neighborhood assessments related to the Private Common Areas shall begin to accrue on the date the certificate of occupancy for the Owner's Townhome is issued (unless an earlier date is required under the Master Declaration).

5. **Damage and Insurance.** Pursuant to Section 6.1 of the Master Declaration, the Whisper Ridge Neighborhood shall request that the Master Association purchase and maintain blanket "all-risk" property insurance, if reasonably available, providing full replacement cost coverage, less a reasonable deductible, of (a) the Private Common Areas and the Public Common Areas and (b) the Townhomes and the structures and improvements within, excluding the Private Common Areas. In the event of damage or destruction of a Private Common Area, Public Common Area, or a Townhome from any cause, other than the gross

negligence of an Owner, Whisper Ridge shall use reasonable efforts to cause the Master Association to repair or rebuild (to the extent such loss is covered by insurance obtained by the Master Association) (x) the affected Private Common Area or Public Common Area, unless Owners within the Whisper Ridge Neighborhood elect not to repair or rebuild in accordance with the Master Declaration, or (y) the affected Townhome. The cost of such repair or rebuilding of any Private Common Area shall be assessed as a Neighborhood assessment to the extent not covered by insurance (including any deductible). The cost of such repair or rebuilding of any Townhome shall be assessed as a special assessment to the Owner of such Townhome to the extent not covered by insurance (including any deductible). If the Master Association does not provide the insurance coverage described above, the Whisper Ridge Neighborhood shall obtain and continue in effect such insurance coverage and assess the Owners for the insurance premiums as a Neighborhood assessment. Notwithstanding the foregoing, if any Owner's gross negligence shall cause damage to or destruction of any Private Common Area or Public Common Area, such negligent Owner shall bear the entire cost of repair or reconstruction. Each Owner and his/her successors and assigns, shall have the right to the full use of the Private Common Area connected to such Owner's Lot and the Public Common Area so repaired or rebuilt.

6. Easements for Private Common Areas. No Owner shall change the location of any Private Common Area. Developer reserves a perpetual easement for the benefit of the Master Association and the Whisper Ridge Neighborhood in that part of the Property on which any Private Common Area is located for purposes of access to and maintenance of Private Common Areas, and in each Owner on that part of the property of others on which any Private Common Area is located if such Private Common Area benefits or burdens the Owner's Lot or Townhome.

7. Public Common Areas.

A. Owners' Easements of Enjoyment. Subject to provisions of the Master Declaration and this Declaration, every Owner and such Owner's invitees shall have a right and easement of enjoyment in and to the Public Common Areas.

B. Title to Common Areas. Fee title to the Public Common Areas shall be conveyed by Developer to, and must be accepted by, the Association free and clear of liens securing the payment of money.

C. Reservation of Easement. Developer hereby reserves easements on all Lots for the benefit of Developer during construction of Whisper Ridge, and for the Master Association and Whisper Ridge Neighborhood during construction and thereafter, for and over sidewalks, paths, and walkways to be located by Developer on the Lots, including all replacements thereof, for ingress and egress to the exterior of the Townhomes and for maintenance, repair and replacement of all such sidewalks, paths, and walkways, and further reserves easements over, under and through each Lot for the creation, construction, and maintenance of public, quasi-public, or private utilities to be provided to said Lot or other Lots, including but not limited to: electricity, television cable, telephone, natural gas, sewer, storm drains, water, including water for landscaping and irrigation, and for any other utility or function necessary or expedient for health and welfare. The easements contained in this Section 7C are in addition to, and without limitation of, those contained in the Master Declaration.

D. Utility Easements. Without limiting the provisions set forth in Section 7C above, Developer or the Association may (and, to the extent required by law, shall) grant or assign easements to Developer, municipalities, communication companies, or other utilities over Common Areas performing utility services, and the Master Association and the Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving Whisper Ridge.

E. Use of the Public Common Areas. Except as otherwise provided in the Master Declaration or this Declaration, the Public Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Public Common Areas. Nothing herein shall prevent the placing of a sign or signs upon the Public Common Areas for the purpose of identifying Whisper Ridge, provided such signs are approved pursuant to the Master Declaration.

F. Alienation of the Public Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, cause the Public Common Area to be subject to any security interest, sell, or transfer the Public Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless the holders of at least eighty percent (80%) of the Lot Owners have given their prior written approval. This provision shall not apply to the easements described above. A sale, transfer, or encumbrance of the Public Common Area or any portion of the Public Common Area in accordance with this Section 7 may provide that the Public Common Area so conveyed shall be released from any restriction imposed on such Public Common Area by this Declaration. No sale, transfer, or encumbrance, may, however, deprive any Owner of such Owner's right of access or support without the written consent of the Owner.

G. Delegation of Use. Any Owner may delegate such Owner's right of enjoyment of the Public Common Areas to the members of such Owner's family or tenants who reside in the Townhome.

H. Access Easement. Each Owner and each Owner's invitees, Developer, and Developer's assigns shall have the right to use all access easements shown on the plat of Whisper Ridge.

8. **Covenants Running With Land.** The easements, conditions, restrictions, and reservations hereby created herein are and shall be perpetual and construed as covenants

running with the land and binding on each and every person (and all persons claiming under any of them) having or acquiring any right, title, or interest in the Property or any Lot and each such person shall be deemed to accept said right, title, or interest with the understanding that each and every other purchaser is also bound by the provisions herein contained, and each and every purchaser, by accepting such right, title, or interest (including title to a Lot) shall thereby consent and agree to be bound by the covenants herein contained to the same extent as though such purchaser had signed this instrument. In the event of any inconsistency between this Declaration and the Master Declaration, the Master Declaration shall prevail.

9. Amendment of These Covenants, Conditions, and Restrictions. This document may be amended by the affirmative vote or written consent, or any combination thereof, of the Owners representing seventy-five percent (75%) of the Lots in the Whisper Ridge Neighborhood.

In Witness Whereof, the undersigned has executed this instrument on the 10th day of July, 2001.

II-K ASSOCIATES LLC

**By: Arrowood Development LLC,
managing member**

By: 
Don Bauhofer, Chairman

STATE OF OREGON)
)
County of Deschutes)

On this 10th day of July, 2001, Donald Bauhofer personally appeared before me, who, being duly sworn, stated that he is the Chairman of Arrowood Development LLC, managing member of II-K Associates LLC and that this instrument was voluntarily signed on behalf of the company.





Notary Public for Oregon
My Commission Expires: 12/21/2004

EXHIBIT A

LEGAL DESCRIPTION
Golf Tracts at Broken Top, Phase 2

A parcel of land, located in the southeast one-quarter of the northeast one-quarter (SE1/4, NE1/4), and in the northeast one-quarter of the southeast one-quarter (NE1/4, SE1/4) of Section 1, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a 5/8" iron rod with yellow plastic cap marked David Evans & Assoc., monumenting the northwest corner of Tract UU, "Plat No. 858, Golf Tracts at Broken Top", recorded in the Deschutes County Surveyor's records as CS12905; thence along the north boundary of said Tract UU the following three (3) courses: South 89°56'23" East, 39.95 feet; thence South 19°52'46" East, 91.46 feet; thence South 89°59'14" East, 116.96 feet to the easterly boundary of said Tract UU; thence South 34°57'26" West, 93.49 feet along said easterly boundary; thence leaving said boundary, South 16°06'32" West, 198.92 feet along an adjusted boundary line as shown on the Record of Survey by W&H Pacific for Lot Line Adjustment LLA-01-85, recorded in the Deschutes County Surveyors office as CS14490; thence leaving said adjusted boundary, South 85°57'55" West, 93.26 feet; thence South 79°15'07" West, 41.14 feet; thence South 83°58'41" West, 94.04 feet to the easterly right-of-way of Broken Top Drive and the westerly boundary said of Tract UU; thence along said right-of-way and boundary the following three (3) courses: along the arc of a non-tangent, 352.28 foot radius curve to the right, through a central angle of 33°44'30", an arc length of 207.46 feet, (the chord of which bears North 12°56'56" East, 204.47 feet); thence North 29°49'11" East, 186.71 feet; thence along the arc of a 430.00 foot radius curve to the left, through a central angle of 02°31'31", an arc length of 18.95 feet, (the chord of which bears North 28°33'26" East, 18.95 feet) to the point of beginning.

EXHIBIT B

LEGAL DESCRIPTION
Golf Tracts at Broken Top, Phase 3

A parcel of land, located in the southeast one-quarter of the northeast one-quarter (SE1/4, NE1/4), and in the northeast one-quarter of the southeast one-quarter (NE1/4, SE1/4) of Section 1, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Commencing at a 5/8" iron rod with yellow plastic cap marked David Evans & Assoc., monumenting the northwest corner of Tract UU, "Plat No. 858, Golf Tracts at Broken Top", recorded in the Deschutes County Surveyor's records as CS12905; thence along the north boundary of said Tract UU the following three (3) courses: South 89°56'23" East, 39.95 feet; thence South 19°52'46" East, 91.46 feet; thence South 89°59'14" East, 116.96 feet to the easterly boundary of said Tract UU; thence South 34°57'26" West, 93.49 feet along said easterly boundary; thence leaving said boundary, South 16°06'32" West, 198.92 feet along an adjusted boundary line as shown on the Record of Survey by W&H Pacific for Lot Line Adjustment LLA-01-85, recorded in the Deschutes County Surveyors office as CS14490 to the **True Point of Beginning**; thence continuing along said adjusted boundary South 13°29'44" East, 184.22 feet; thence South 57°56'10" West, 170.99 feet to the easterly right-of-way of Broken Top Drive; thence leaving said adjusted boundary, and along said right-of-way, along the arc of a non-tangent, 352.28 foot radius curve to the right, through a central angle of 46°05'15", an arc length of 283.37 feet, (the chord of which bears North 26°57'57" West, 275.79 feet); thence leaving said right-of-way North 83°58'41" East, 94.04 feet; thence North 79°15'07" East, 41.14 feet; thence North 85°57'55" East, 93.26 feet to the **True Point of Beginning**.