

W B H Pacific  
155 NE River

Bend, OR 97701

97-14413

446 - 0302

DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
THE HEIGHTS OF BEND

These Covenants, Conditions, and Restrictions are made this 10th day of April 1997, by John Niemeyer, Dan Baxter and Blue Sky Development, Inc. as tenants in common, hereinafter referred to as "Declarants," as owner of the real property in the City of Bend, Deschutes County, State of Oregon, described in Exhibit "A," attached hereto, and incorporated by reference herein.

The property described in Exhibit "A" is hereby subject to these Covenants, Conditions, and Restrictions and will be known as The Heights of Bend, Phase II, hereinafter referred to as The Heights of Bend.

The Heights of Bend is being developed as a planned residential community. Except where this Declaration for The Heights of Bend conflicts with any applicable government municipal regulations, this Declaration shall be binding upon all subject to this Declaration and their successors in interest as set forth herein. In the event any of the development standards or use restrictions of this Declaration should conflict with a more restrictive standard or requirement set by an applicable zoning ordinance of the City of Bend, the more restrictive standard or requirement of the applicable City of Bend ordinance shall apply.

Section 1. Definitions

- 1.1 The Heights of Bend: The term "The Heights of Bend" shall mean all of the real property now or hereafter made subject to this declaration.
- 1.2 Declarants: The term "Declarants" shall mean John Niemeyer, Dan Baxter and Blue Sky Development, Inc. as tenants in common, or its successors in interest.
- 1.3 Block: The term "block" shall mean those areas designated as blocks on subdivision or partition maps according to the records of Deschutes County.
- 1.4 Lot: The term "lot" shall mean each lot described on a subdivision plat or partition map or any alteration thereof as may be made by a valid lot line adjustment.
- 1.5 Declaration: The term "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for The Heights of Bend.
- 1.6 Homesite: "Homesite" shall mean a lot as defined herein.

- 1.7 Owner: "Owner" shall mean and refer to either all holders of fee title to any lot, or any other person or persons entitled to possession of the lot pursuant to a contract or lease.
- 1.8 Improvements: The term "improvements" shall include, but not be limited to, any buildings, outbuildings, private roads, driveways, parking areas, fences, and barriers, retaining walls and stairs, decks, hedges, windbreaks, planting, planted trees and shrubs, signs, storage areas and all other structures or exterior landscaping, vegetation or ground cover of every type and every kind above the land surface.
- 1.9 Streets: The term "streets" shall mean any street, highway or other thoroughfare within or adjacent to The Heights of Bend 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, lane, circle or otherwise.

Section 2. Property Subject to the Covenants, Conditions, and Restrictions for The Heights of Bend.

- 2.1 General Declaration Creating The Heights of Bend: Declarants hereby declare that all of the real property located in Deschutes County, Oregon described in Exhibit "A" is and shall be hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part subject to this Declaration. All of said Restrictions are declared and agreed to be established with the purpose of protecting the desirability and attractiveness of said real property and every part thereof. All of the Covenants, Conditions, and Restrictions of The Heights of Bend run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarants and all owners, and their successors in interest as set forth in this Declaration.
- 2.2 Addition of other Real Property by Grantor:
- a) Declarants may, at any time during the term of this Declaration, add all or a portion of any land now or hereafter owned by Declarants to the property which is covered by this Declaration, and upon recording of a notice of addition of real property, as set forth below, the provisions of this Declaration specified in said notice shall apply to such added land in the same manner as if it were originally covered by this Declaration. Thereafter, to the extent this Declaration is made applicable thereto, the rights, powers and responsibilities of Declarants and owners of parcels within such added land 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 where the Declaration is recorded.
2. A statement that the provisions of this Declaration or some specified part thereof shall apply to such added real property
3. A legal description of such added real property.
4. Such other or different covenants, conditions, and restrictions as Declarants shall, in their discretion, specify to regulate and control the use, occupancy, and improvement of such added real property.

### Section 3. Architectural Controls

- 3.1 Approval Required. No improvement, as defined in Section 1.8 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by Declarants.
- 3.2 Procedure. Any owner proposing to construct any improvements within The Heights of Bend (including any exterior alteration, addition, destruction, or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by paragraphs 3.3 through 3.7 below. Failure to follow such procedures or obtain such approvals as required by paragraphs 3.3 through 3.7 below shall be deemed a breach of this Declaration.
- 3.3 Required Documents. Any owner proposing to utilize, improve, or develop real property within The Heights of Bend, shall submit the following items for review:
- a) A professionally prepared site plan showing the location, size, configuration and layout of any building, structure, or improvement (or, where applicable, any alteration, addition, modification, or destruction thereto) including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation.
  - b) Professionally prepared architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier or deck (or, where applicable, any alteration, addition, modification or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be 1 inch = 20 feet or larger.
  - 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).

- 3.4 Review. All plans and drawings identified in paragraph 3.3 above, shall be submitted to Declarants for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied with a check payable to Declarants in an amount to be determined by Declarants from time to time. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this section are submitted. Within 30 days following receipt of such plans and drawings, and the full amount of the architectural review fee, Declarants shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for The Heights of Bend. In the event the owner is not notified as to the conformity of the plans within the 30 day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to The Heights of Bend development concept, the owner shall resubmit those non-conforming portions of the plans for review in accordance with the procedures outlined in paragraph 3.3 above, and this paragraph. No work may be performed relating to any improvement unless and until all aspects of all plans required under paragraph 3.3 above have been approved by Declarants. 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 The Heights of Bend must bear the prior written approval of Declarants.
- 3.5 Architectural Guidelines. The development concept for The Heights of Bend shall be determined by Declarants 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 Declarants, but Declarants shall not be required to do so. Declarants 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 3.4 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.
- 3.6 Inspection. All work related to any building, structure or improvement or any landscaping, vegetation, ground cover or other improvements within The Heights of Bend shall be performed in strict conformity with the plans and drawings approved under paragraph 3.4 above. Declarants 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 all work, if, in good faith, they believe that any such work is non-conforming. In the event that it is determined in good faith by Declarants that certain work is non-conforming, a stop work notice may be issued, without 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 this Declaration. The Declarants or officer, director, employee, agent or servant of Declarants shall not be responsible for any damages, loss, delay, cost or legal expense occasioned through a stop work notice given in good faith even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

- 3.7 Waiver. Any condition or provision of paragraphs 3.2 through 3.6 above, may be waived by Declarants in their exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for The Heights of Bend. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under paragraphs 3.2 through 3.6. The granting of a waiver as to one owner shall not automatically 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, signed by an authorized representative of Declarants and delivered by certified mail to the party claiming the benefit of such waiver.

#### Section 4. Restrictions on Use of Property

- 4.1 Occupancy. No owner shall occupy, use or permit his lot or any part thereof to be used for any purpose other than a private residence for the owner, his family, or his guests, except that each owner shall be permitted to rent the unit when he is not in occupancy.
- 4.2 Improvements. Each lot within The Heights of Bend shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.
- 4.3 Appearance. All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus, and other service facilities located on the lot shall be screened from view in a manner approved by Declarants.
- 4.4 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a lot except with the prior written consent of Declarants.
- 4.5 Offensive or Commercial Activity. No offensive or commercial activity shall be carried on nor shall anything be done 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 without the Declarant's prior written consent, provided, however, that an owner may display not more than one (1) "for sale" sign per lot which has a maximum area not to exceed 600 square inches, the longest dimension being not greater than 30 inches.

- 4.7 Exterior Lighting or Noise Making Device. No exterior lighting or noise making device shall be placed on a lot or any portion thereof without the Declarants' prior written consent.
- 4.8 Antennas. No television antenna, radio antenna, satellite antenna, or other receiving device shall be placed on any lot without the Declarants' prior written consent.
- 4.9 Limitation on Transfer. No owner shall transfer either by conveyance, contract of sale or lease any interest in his lot which would result in ownership of such lot being held by more than ten persons.
- 4.10 Mobile homes. No house trailer, mobile home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any lot.
- 4.11 Single family residences. No more than one single family residence shall be erected or placed on any lot.
- 4.12 Utilities. No above-ground utilities, pipes or wires shall be used to connect improvements with supplying facilities.
- 4.13 View. The height of vegetation and trees on a lot shall not materially restrict the view of other lot owners. The Declarant shall be the sole judge of the suitability of such heights. If the Declarant determines there is such restriction in the view of the other lot owners, written notice shall be delivered to the offending lot owner. If after 30 days the vegetation, or trees are not removed or reduced in height as directed by the Declarants, the Declarants shall enter the offending lot, complete the removal or reduction, charging the owner of the lot the reasonable costs for the work done. This section is not to be read as justification to create views not present when the lot was originally purchased.
- 4.14 Parking. A minimum of two enclosed garage parking places and two exterior open guest parking places must be provided for each lot and must meet the standards set by the Declarants. No extended parking on any street shall be allowed by any house trailer, travel trailer, boat trailer, camper or incapacitated motor vehicle. Camping trailers, trucks, motorhomes, campers, boats, cars under repair and boat trailers may not be parked or placed on any lot for any extended period over three days outside of an enclosed garage.
- 4.15 Transient Rental Use. No owner or owners of any unit with The Heights of Bend shall be permitted to rent their unit to any person or persons for transient occupancy which shall be for a period of 30 days or less. A rental shall be defined as the use or possession or the right to use or possess for lodging or sleeping purposes any unit in The Heights of Bend and rent shall mean the consideration charged whether or not received by the owner for the occupancy of the unit any money, goods, labor, credits,

property or other consideration valued in money without any deduction. Transient use shall not include a rental of any unit for a period of in excess of 30 consecutive calendar days.

- 4.16 Square Footage Minimum. Any single-family residence to be located on Lots 54-59, The Heights of Bend, shall be a minimum of 1,400 square feet in size, not including any garage. All other single-family residences to be located on any other lots shall be a minimum of 1,700 square feet in size with a minimum of 1,000 square feet being on the first floor, not including any garage.

#### Section 5. Determination of Declarants' Role

- 5.1 Declarants' Control. At such time as the Declarants shall no longer desire to exercise the architectural, landscaping, signing and lighting controls over any lots within The Heights of Bend, Declarants shall cause to be recorded in the official records of Deschutes County, Oregon a declaration stating that Declarants no longer desire to exercise any further controls over development in The Heights of Bend. Recordation of such a declaration shall formally terminate Declarants' interest and all rights of architectural landscaping, signing and lighting controls, as well as any other duties of Declarants under this declaration.

#### 5.2 Formation of HBARC.

- a) Upon formal termination of Declarants' control, Declarants shall form an Oregon non-profit organization called The Heights of Bend Architectural Review Committee (HBARC). The HBARC shall be governed by a five person board of directors. HBARC shall succeed to all powers, responsibilities, and rights of Declarants under this declaration with respect to the exercise of architectural, landscaping, signing and lighting controls.
- b) Within thirty days after the commencement date of HBARC, the initial board of directors shall be elected. Persons eligible for the initial HBARC shall be limited to owners of any lot within The Heights of Bend. Declarants shall solicit from and circulate to all lot owners a list of nominees for the initial board of directors' positions within the thirty day HBARC organizational period. Declarants shall then conduct an election of the initial board of directors. The five nominees obtaining the five highest vote totals shall constitute the initial board of directors.
- c) The total number of votes entitled to be cast for each director's position shall be based upon the total number of lots within The Heights of Bend. Each lot owner shall have the right to cast one vote for each lot owned. The initial board of directors shall meet within ten days after their election and may at that time adopt any governing documents including bylaws, guidelines, procedures, rules and regulations, relating to the architectural, landscaping, signing and lighting controls within The Heights of Bend.

- 5.3 Failure to Organize. In the event Declarants are unsuccessful in organizing the board of directors of HBARC within the thirty day organizational period specified above, Declarants shall have no further responsibilities relating to HBARC and the HBARC board of directors shall be organized exclusively by the owners of lots within The Heights of Bend. Such failure of organization of the HBARC board or directors shall not affect the existence of HBARC or the effectiveness of this Declaration.

Section 6. Duration and Amendment of this Declaration.

- 6.1 Duration. The Covenants, Conditions, and Restrictions of The Heights of Bend 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 years from the date this Declaration is recorded. However, unless within one year from 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 years and thereafter for successive periods of ten years unless within one year prior to the expiration of such period the Covenants, Conditions, and Restrictions for The Heights of Bend are terminated as set forth above in this section.
- 6.2 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 a written consent of the owners of fifty-one percent (51%) of the lots subject to these Restrictions, provided, that the provisions of Article 4 hereof shall inure to the benefit of and be enforceable solely by Declarants, shall be capable of being amended by Declarants without the consent of any other owner, person or entity and shall not give any third party any right or cause of action on account of the terms of this Declaration, and further provided that no amendment which enlarges or diminishes the powers and responsibilities of the Declarants shall be effective without the written consent of the Declarants.
- 6.3 Any amendment, deletion, or repeal of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

Section 7. Enforcement.

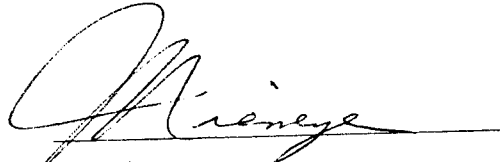
- 7.1 This declaration shall be specifically enforceable by Declarants or by any owner of any lot in The Heights of Bend. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement or condition.





- 7.2 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 fees incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.

Section 8. Effect of Declaration

The Covenants, Conditions, and Restrictions of this declaration shall run with the land included in The Heights of Bend and shall bind, benefit, and burden each lot in The Heights of Bend, including any additions thereto. The terms of this Declaration shall inure to the benefit and shall bind Declarants, all successors and assigns of Declarants and all owners of any lot in The Heights of Bend, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving any right, title, or interest or use in or to any real property in The Heights of Bend. The use restrictions and regulations set forth in Section 4 and Section 5 of this declaration shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as The Heights of Bend, and their successors in interest as set forth in this declaration, 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.

  
John Niemeyer

  
Dan Baxter

  
Blue Sky Development, Inc.  
by: Roy Marvin, President

STATE OF OREGON  
County of Multnomah

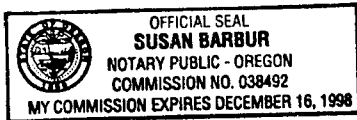
This document was acknowledged before me on April 10, 1997, by JOHN NIEMEYER.



Susan Barbur  
NOTARY PUBLIC FOR OREGON  
My Commission Expires:

STATE OF OREGON  
County of Multnomah

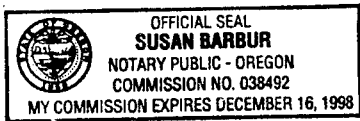
This document was acknowledged before me on April 2, 1997, by DAN BAXTER.



Susan Barbur  
NOTARY PUBLIC FOR OREGON  
My Commission Expires:

STATE OF OREGON  
County of Multnomah

This document was acknowledged before me on April 3, 1997, by ROY MARVIN as President of Blue Sky Development, Inc.



Susan Barbur  
NOTARY PUBLIC FOR OREGON  
My Commission Expires:

Declaration of Covenants, Conditions and Restrictions  
for The Heights of Bend

446 - 0312

EXHIBIT "A"

THE HEIGHTS OF BEND, PHASE II

A PARCEL OF LAND LOCATED IN THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, WHICH IS A 5/8" REBAR WITH YELLOW PLASTIC CAP MARKED LS 2384, AT THE SOUTHWEST 1/16 CORNER OF SECTION 29, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, IN THE CITY OF BEND, DESCHUTES COUNTY, OREGON; THENCE ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 29, NORTH 89°34'57" WEST, 561.91 FEET TO THE EAST LINE OF LOT 1 OF THE HEIGHTS OF BEND, PHASE I AS SHOWN ON THAT PLAT MAP ON FILE WITH THE DESCHUTES COUNTY SURVEYOR AS CS07409; THENCE ALONG SAID EAST LINE, NORTH 00°25'03" EAST, 80.02 FEET; THENCE CONTINUING ALONG SAID EAST LINE, NORTH 10°30'59" WEST, 77.64 FEET TO A 5/8" REBAR WITH A YELLOW PLASTIC CAP MARKED LS 1020 AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE NORTH 53°53'53" EAST, 18.06 FEET; THENCE NORTH 15°36'41" WEST 133.80 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG A 330.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 09°33'51", AN ARC DISTANCE OF 55.09 FEET (THE LONG CHORD OF WHICH BEARS SOUTH 73°17'59" WEST, 55.02 FEET) TO A POINT OF NON-TANGENCY; THENCE NORTH 14°10'14" WEST, 160.08 FEET; THENCE NORTH 39°08'19" EAST, 143.99 FEET; THENCE NORTH 16°00'13" EAST, 43.73 FEET; THENCE SOUTH 49°54'53" EAST, 153.34 FEET; THENCE NORTH 33°32'07" EAST, 31.27 FEET; THENCE SOUTH 56°27'53" EAST, 60.00 FEET; THENCE SOUTH 67°12'33" EAST, 110.85 FEET; THENCE SOUTH 11°47'36" EAST, 168.59 FEET; THENCE NORTH 89°44'57" EAST, 266.08 FEET TO THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 29; THENCE ALONG SAID EAST LINE, SOUTH 00°18'14" WEST, 280.43 FEET TO THE POINT OF BEGINNING.

STATE OF OREGON ) SS.  
COUNTY OF DESCHUTES )

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:

97 APR 29 PM 2:24

MARY SUE PENHOLLOW  
COUNTY CLERK

BY *J. J. [Signature]* DEPUTY  
NO. **97-14413** FEE **55**  
DESCHUTES COUNTY OFFICIAL RECORDS