

**VOL: 2000    PAGE: 3013**  
**RECORDED DOCUMENT**

STATE OF OREGON  
COUNTY OF DESCHUTES



\*2000-3013    \* Vol-Page

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**DO NOT REMOVE THIS CERTIFICATE**

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

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

DATE AND TIME:        Jan. 27, 2000; 3:34 p.m.

RECEIPT NO:            16485

DOCUMENT TYPE:        Planned Community  
                                 Subdivision Amendment

FEE PAID:                \$81.00

NUMBER OF PAGES:    11

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

MARY SUE PENHOLLOW  
DESCHUTES COUNTY CLERK

After recording, this Easement shall be delivered to:  
 Kevin J. Keillor  
 747 SW Industrial Way  
 Bend, Oregon 97702

## FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIGHER GROUND PUD

The undersigned president of Declarant (defined below) certifies that the Owners of the lots subject to the restrictions of the Declaration (defined below), in accordance with Section 6.2 of the Declaration, did adopt the provisions of this First Amendment to Declaration of Covenants, Conditions and Restrictions for Higher Ground PUD (this "Amendment").

This Amendment is made this 26th day of January, 2000, by Higher Ground Homeowners Association, an Oregon non-profit corporation ("Declarant"), and relates to certain property owned by members of Declarant and common areas owned by Declarant in the City of Bend, Deschutes County, Oregon, which is described on the attached Exhibit "1" ("HIGHER GROUND").

### RECITALS:

- A. Higher Ground, Inc., an Oregon corporation, entered into that Declaration of Covenants, Conditions and Restrictions for Higher Ground PUD, dated August 28, 1995, recorded in Volume 383, at Page 422, in the Official Records of Deschutes County, Oregon (the "Declaration").
- B. Declarant is Higher Ground, Inc.'s successor in interest.
- C. All capitalized terms not otherwise defined in this Amendment, unless the context requires otherwise, shall have the same meaning provided for such term in the Declaration.

### AMENDMENT:

- 1. Paragraph 1.4 of the Declaration is hereby deleted in its entirety and replaced with the following:

1.4 Improvements: The term "improvements" shall include, but not be limited to, any buildings, outbuildings, private roads, driveways, parking areas, fences and barriers, retaining walls, stairs, decks, hedges, windbreaks, signs, storage areas, and all other structures of every type and every kind above the land surface.

- 2. Section 1 of the Declaration is modified by the addition of the following paragraph 1.9:

1.9 Design Review Committee: The term "Design Review Committee" shall mean the committee appointed by Declarant pursuant to paragraph 3.5.1 below.

3. Section 1 of the Declaration is modified by the addition of the following paragraph 1.10:

1.10 Board: The term "Board" shall mean the board of directors of Higher Ground Homeowners Association, the successor in interest to the original declarant as stated in the Declaration. All references herein to Declarant shall refer to Higher Ground Homeowners Association, acting by and through the Board.

4. Paragraph 3.1 of the Declaration is hereby deleted in its entirety and replaced with the following:

3.1 Approval Required. No improvements 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 Declarant or the Design Review Committee. All approvals shall be in conformance with the building site established on each Lot by Declarant or the Design Review Committee.

5. Paragraph 3.3.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

3.3.3 Although no formal landscaping plan is required, each Lot shall be landscaped in a manner consistent with the other improved Lots in HIGHER GROUND, and landscaping shall be completed as required in paragraph 4.14.6.

6. Paragraph 3.3.6 of the Declaration is hereby deleted in its entirety and replaced with the following:

3.3.6 Driveways. Driveways are required. Driveways shall be of concrete, concert pavers, asphalt or similar materials as approved by Declarant or the Design Review Committee.

7. Paragraph 3.3 of the Declaration is modified by the addition of the following paragraph 3.3.7:

3.3.7 Construction Site. Construction shall be conducted in a manner that minimizes the impacts on adjoining properties. The construction site is to be maintained in a clean and orderly fashion. Loud construction noise from excavation, sawing, roofing etc., will be limited to occurring between the hours of 7 am to 6 pm on week days and 9 am to 6 pm on weekends.

8. Paragraph 3.4 of the Declaration is hereby deleted in its entirety and replaced with the following:

3.4 Review. All plans and drawings identified in paragraph 3.3 above shall be submitted to Declarant or the Design Review Committee for review prior to the performance of any proposed work, together with the construction deposit stated in paragraph 3.8 below. No plans shall be reviewed until all items specified in this section are submitted. Within 30 days

following receipt of such plans and drawings, Declarant or the Design Review Committee shall review the plans and shall inform the Owner in writing whether the plans conform to the development concept for HIGHER GROUND. 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 HIGHER GROUND development concept, the Owner shall resubmit those nonconforming 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 and drawings are approved by Declarant or the Design Review Committee.

9. Paragraph 3.5 of the Declaration is modified by the addition of the following paragraph 3.5.1:

3.5.1 Design Review Committee. At any time following the date of this Declaration, Declarant may create a Design Review Committee by appointing no less than three (3) and no more than six (6) Owners to be members of such committee. The Board shall retain the authority to remove and replace members of the Design Review Committee, and appoint members to fill vacancies on the Design Review Committee from time to time. The Design Review Committee may adopt any governing documents, including guidelines, procedures, rules and regulations, relating to the Design Review Committee, subject to approval by the Board, so long as such governing documents do not conflict with or contradict this Declaration, in which case this Declaration shall control. The Design Review Committee shall have no power to alter or amend this Declaration, or to diminish the rights, duties or powers granted to Declarant under this Declaration, except as to the rights, duties and power to review, approve or disapprove plans, designs and construction.

10. Paragraph 3.6 of the Declaration is hereby deleted in its entirety and replaced with the following:

3.6 Inspection. All work related to any building, structure or improvement or any landscaping, vegetation, ground cover or other improvements within HIGHER GROUND shall be performed in strict conformity with the plans and drawings approved under paragraph 3.4 above. Declarant or the Design Review Committee 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 it believes that any such work is nonconforming. In the event that it is determined in good faith by Declarant or the Design Review Committee that certain work is nonconforming, a stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all nonconforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such nonconforming items shall be deemed a breach of this Declaration. The Declarant or the Design Review Committee, or their officers, directors, employees, agents or servants 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.

11. Section 3 of the Declaration is modified by the addition of the following paragraph 3.8:

3.8 Construction Deposit. Concurrent with submitting the Owner's plans and drawings pursuant to paragraph 3.4 above, an Owner must also submit a \$1,000 construction deposit with Declarant. The construction deposit shall be refunded to the Owner upon the Declarant's or the Design Review Committee's inspection and approval of all work related to any buildings, structures and improvements, including any landscaping, vegetation, ground cover or other improvements on the Owner's Lot. However, Declarant may commingle the construction deposit with its own funds and the Owner shall not be entitled to interest on such deposit.

12. Paragraph 4.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.3 Appearance. All garbage, trash, cuttings, refuse, refuse containers, garden tools and equipment, automotive parts and accessories (tires, etc.) or construction tools, and any service facilities located on the Lot shall be kept within an enclosed garage or otherwise screened from view in a manner approved by Declarant or the Design Review Committee.

13. Paragraph 4.4 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.4 Construction and Alteration. No structure shall be altered or constructed in or removed from or placed on a Lot except with the prior written consent of Declarant or the Design Review Committee.

14. Paragraph 4.8 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.8 Antennas. No television antenna, radio antenna, satellite antenna, or other receiving or transmitting device in excess of one meter in any direction shall be placed on the Lot without the Declarant's or the Design Review Committee's written consent. The placement of any such device of one meter or less shall be approved by the Declarant or the Design Review Committee in writing prior to installation.

15. Paragraph 4.10 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.10 Mobile Homes. No house trailer, mobile home, manufactured home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot.

16. Paragraph 4.12 of the Declaration is hereby deleted in its entirety and replaced with the following Paragraph 4.12, including a new Paragraph 4.12.1:

4.12 Parking. Camping trailers, trucks, boats, boat trailers, snow mobiles, all-terrain vehicles, personal utility trailers, and personal water craft may not be parked or placed on any Lot for any extended period over three days outside of an enclosed garage or other permitted screened enclosure. Motorhomes and campers shall not be parked or placed outside a screened enclosure for more than fourteen days in a calendar year.

4.12.1 Common Property. Common property is provided for the enjoyment of all residents. Private use of common property for parties and events is encouraged when in compliance with community use guidelines. Declarant may adopt and amend from time to time, and enforce reasonable guidelines governing the use of the common property. Parking in common areas is prohibited except in designated areas.

17. Paragraph 4.14.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.14.3 Height. Solar access to surrounding Lots shall be considered in the siting and design of homes and shall be subject to review by Declarant or the Design Review Committee. No building shall be higher than 28 feet. Some Lots shall be restricted to one story to provide solar access.

18. Paragraph 4.14.4 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.14.4 Garage. Each residence shall have at least one private garage for no less than one automobile. No Owner shall have more than two vehicles for the use of the occupants of Owner's Lot parked outside of the garage, on common property, or on the street within HIGHER GROUND as part of the Owner's or occupant's regular practice.

19. Paragraph 4.14.5 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.14.5 Completion of Construction. The construction of any building on any Lot, including private Lot drainage, painting and all exterior finish, shall be completed within six (6) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather or other conditions, this provision may be extended for a reasonable length of time upon written approval from the Declarant or the Design Review Committee.

20. Paragraph 4.14.6 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.14.6 Landscape Completion. All landscaping must be completed within one hundred eighty (180) days after the date the exterior of the residence is completed. In the event of undue hardship due to weather or other conditions, this provision may be extended for a reasonable length of time upon written approval from the Declarant or the Design Review Committee.

21. Paragraph 4.14.8 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.14.8 Exterior Materials and Finish. Exterior materials must be approved for use by the Declarant or the Design Review Committee as set forth in these covenants. The exterior finish of all construction on any Lot shall be designed, built, and maintained in such a manner as to blend in with the existing structures, and landscaping within HIGHER GROUND. Exterior colors must be approved by the Declarant or the Design Review Committee as set forth in these covenants. Exterior trim, fences, doors, railings, decks, eaves, gutters, and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structures they adjoin.

22. Paragraph 4.15 of the Declaration is hereby deleted in its entirety and replaced with the following paragraph 4.15, including new paragraphs 4.15.1 and 4.15.2:

4.15 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, not to exceed a total of two dogs, or two cats, or one dog and one cat, provided that they are not kept, bred or maintained for commercial purposes and are reasonably controlled so as not to be a nuisance. Waivers for one additional dog or cat may be granted by Declarant.

4.15.1 Cats. Cats will be fixed with bells appropriate to prevent the capturing of birds.

4.15.2 Dogs. Dogs are not allowed to roam unattended from the Owner's property. Dogs are to be in sight and under voice control of the Owner at all times. Owners are responsible for immediately cleaning up and disposing of their animal's waste. Repeated violation may require the animal be confined to the Owner's property or the animal may be impounded as per Bend City Ordinance 5.270.

23. Paragraph 4.20, including paragraphs 4.20.1 through 4.20.7, of the Declaration are hereby deleted in their entirety and replaced with the following paragraph 4.20, including new paragraphs 4.20.1 through 4.20.5:

4.20 To maintain an earth-friendly community the following standards are required where applicable:

4.20.1 Wood burning Stoves. No wood-burning stoves are permitted although energy efficient pellet stoves may be approved.

4.20.2 Trees. Trees over six inches in diameter shall not be removed without written permission of Declarant or the Design Review Committee.

4.20.3 "Resource Efficient" building is required. Home size shall be between 800 square feet and 2500 square feet inclusive. Roofing shall have a minimum 25-year warranty-life expectancy. Wood shake roofing is not permitted. T1-11 siding is not allowed except as may be approved by Declarant or the Design Review Committee.

4.20.4 Low-toxic or nontoxic paints should be used exclusively on the interior of the homes. Other building materials, such as but not limited to flooring should be low toxic or nontoxic. Flooring containing formaldehyde is discouraged. Interior of homes should be free of polluting materials whenever possible.

4.20.5 Exterior Lighting. An exterior lighting plan shall be submitted to Declarant or the Design Review Committee for approval and receive approval prior to installation.

24. Paragraph 4.21.1 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.21.1 Natural features such as trees, rock outcroppings, etc., should not be disturbed in locating the house. Final landscaping should be as natural as practical.

25. Paragraph 4.21 of the Declaration is modified by the addition of the following paragraphs 4.21.5 through 4.21.8:

4.21.5 Passive Solar heating. Homes should be placed on the Lot to obtain the most benefit possible of the southern exposure. No less than 20% of the exterior southern wall surface should be windows.

4.21.6 Homes should be insulated to Super Good Cents standards with an air ventilation system suggested.

4.21.7 Passive solar hot water systems with an on-demand back-up system or an energy efficient hot water system is suggested.

4.21.8 Water efficient fixtures. Water efficient interior and exterior fixtures are recommended.

26. Paragraph 7.3 of the Declaration is renumbered to become the new paragraph 7.4.



27. Section 7 of the Declaration is modified by the addition of the following new paragraph 7.3:

7.3 Informal attempts at reconciliation of disputes are encouraged, but in the event that these attempts are not successful, the following paragraphs 7.4 and 7.5 shall be implemented.

28. Section 7 of the Declaration is modified by the addition of the following paragraph 7.5, including paragraphs 7.5.1 through 7.5.7:

7.5 The Declarant may also initiate enforcement of this declaration by taking the following steps:

7.5.1 Notifying the breaching party, in writing, about the specific enforcement matter, and request that the breaching party to correct the enforcement matter within (20) twenty days of receipt of this notice.

7.5.2 The breaching party shall have the opportunity to challenge the Declarant's request by making a written request to the Board for a hearing. If no hearing is requested by the breaching party and the enforcement matter is not remedied within (20) twenty days, the Declarant may choose to initiate legal action to enforce this Declaration.

7.5.3 Upon receipt of a written request from the breaching party for a hearing before the Board, the Board shall set a hearing date within (20) twenty days of the said request and shall deliver a notice to the breaching party, setting forth the time and place of the hearing.

7.5.4 At the hearing, the breaching party may appear in person or submit their challenge in writing to the Board.

7.5.5 The Board shall issue a written decision within (10) ten days of the hearing. The Board has the flexibility to work with the breaching party to determine a process and time line to remedy the enforcement matter.

7.5.6 No court action shall be pursued until an additional (30) thirty days has passed after the Board issues a written decision.

7.5.7 After the end of the additional (30) thirty days, the Declarant may choose to initiate legal action to enforce this Declaration.

29. Paragraph 9.1 of the Declaration is hereby deleted in its entirety and replaced with the following:

9.1 At the annual meeting the Owners shall decide by two-thirds (2/3) majority vote the amount and payment schedule of the annual assessment. The assessment shall be due and

payable on the date set by the Owners at the annual meeting. No assessment shall be larger than necessary for the maintenance, insurance, upkeep, repair or replacement of the improvements existing at the time of such annual meeting, together with a reasonable reserve, as such reserve is approved at such annual meeting by a two-thirds majority vote of the Owners. Any new improvements shall require the consent of two-thirds (2/3) of the Owners.

30. Paragraph 9.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

9.3 Any unpaid or overdue assessment shall be collectable upon ten day's written notice to the Owner. If the overdue assessment is not paid, then the Association may sue the Owner in the appropriate court of law. All costs of collection, including but not limited to attorney fees at trial and on appeal, shall be added to the assessment. As an alternative to the procedures set forth herein, the Association and property Owner may agree upon an alternative repayment procedure. The agreement will be in writing and signed by both parties; or the Association may lien the property as provided by section ORS 94.709. The Owner shall remain personally liable for all assessments through a judgement or lien to the residence or any other real or personal property of the Owner.

31. The Declaration is modified by the addition of the following Section 10, including paragraphs 10.1 and 10.2:

**Section 10. LIMITATION OF LIABILITY AND INDEMNIFICATION:**

10.1 Liability. So long as it or they have acted in good faith, Declarant, HOA and the Design Review Committee, their directors, officers and agents, or their successors or assigns shall be not liable to anyone for any damages, claims, fees, or other costs for any of the following actions made pursuant to this Declaration:

- (a) The granting of approvals or disapprovals;
- (b) For any assessment given pursuant to this Declaration;
- (c) For any decisions made at or relating to any hearings, or the failure to a hold hearing;
- (d) For any decisions made at or relating to any meetings, or the failure to hold a meeting; or
- (e) For taking or failing to take any action permitted or prescribed by this Declaration.

10.2 Indemnification. HOA shall indemnify the Declarant, the Design Review Committee, and any of their directors, officers, employees or agents who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of its or their acts or omissions permitted or prescribed by this Declaration. This indemnification shall apply

against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said entity or person in connection with such suit, action or proceeding, if he or she acted in good faith, and with respect to any criminal action or proceedings, had no reasonable cause to believe his or her conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of HOA, should it be proven at a later time that said person had no right to such payments.

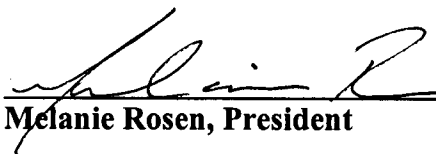
32. The Declaration included an Exhibit "1," which described the property subject to the Declaration. However, such Exhibit "1" was not included in the original recorded document. Therefore, the Exhibit "1," attached hereto and incorporated herein, is to replace all references to Exhibit "1" in the Declaration, thereby making all property described in Exhibit "1" subject to both the Declaration and this Amendment.

33. Notwithstanding anything in the Declaration or this Amendment to the contrary, if any provision of this Amendment is inconsistent, incompatible or contradictory to a provision of the Declaration the provision of this Amendment shall govern as to the contradictory subject matter.

34. Except as modified above, all other terms of the Declaration shall remain unchanged and in full force and effect.

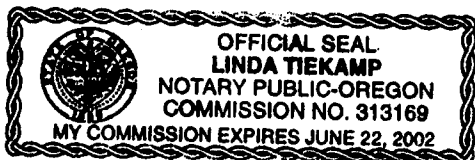
**IN WITNESS WHEREOF**, Declarant has caused these presents to be signed in duplicate on the day and year first written above.


**Higher Ground Homeowners Association,  
an Oregon non-profit corporation**

  
\_\_\_\_\_  
Melanie Rosen, President

STATE OF OREGON, County of Deschutes, ss:

The foregoing instrument was acknowledged before me this 26th day of January, 2000, by Melanie Rosen, President of Higher Ground Homeowners Association, an Oregon non-profit corporation.



  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: 6/22/02

200-3013-11

**EXHIBIT 1**

**Legal Description of Property subject to Declaration and this Amendment:**

Higher Ground P.U.D., as shown on the Plat of Higher Ground Planned Unit Development No. P-4-94, Deschutes County, Oregon; as such Plat is modified by that Re-Plat of a Portion of Higher Ground Planned Unit Development No. 96-5, being a Replat of Lots 1, 15, 16, 20, 21, 22, 23, 24, 27, 28, 29 and adjacent common areas, Deschutes County, Oregon; and as more fully set forth in that Re-Plat of Higher Ground Planned Unit Development No. 96-5, Deschutes County, Oregon.

AND

Higher Ground Phase III (excluding Lots 1-3), as shown on the Plat of Higher Ground Phase III Planned Unit Development No. 96-223, being Parcel 1 and a portion of Parcel 2 of Partition Plat 1992-42, Deschutes County, Oregon.