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# Deschutes County Clerk

## Certificate Page



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**Second AMENDED Declaration of Covenants, Conditions and  
Restrictions FOR Higher Ground PUD**

This Amendment is made this 24<sup>th</sup> day of May, 2007, by the Higher Ground Home Owners Association, an Oregon non-profit corporation, and relates to certain property described on Exhibit 1. The undersigned president of the Higher Ground Homeowners Association certifies that the Owners of the Lots subject to the restrictions of the Declaration dated August 28, 1995, as previously amended, and in accordance with Section 6.2 of the Declaration dated August 28, 1995, did adopt the provisions of this Second Amendment to Declaration of Covenants, Conditions and Restrictions for Higher Ground PUD (this "Amendment").

**RECITALS:**

A. Higher Ground, Inc., an Oregon corporation, entered into that Declaration of Covenants, Conditions and Restrictions for Higher Ground PUD (the "Original Declaration"), dated August 28, 1995, and recorded in Volume 383, at Page 422, in the Official Records of Deschutes County, Oregon. The Declaration has previously been amended by the First Amendment to Declaration of Covenants, Conditions and Restrictions for Higher Ground PUD dated January 26, 2000, and recorded in Volume 2000, Page 3013.

B. Pursuant to Section 5 of the Original Declaration, Higher Ground, Inc., has terminated its interest in the Higher Ground PUD and has turned control of the PUD over to the Higher Ground Homeowners Association, an Oregon non-profit corporation (the "HGHOA").

C. The HGHOA has adopted and recorded this Second Amended Declaration of Covenants, Conditions and Restrictions for Higher Ground PUD, both to adopt amendments to the Declaration and to restate the Declaration in its entirety.

**SECTION 1. DEFINITIONS**

1.1 Higher Ground: The term "Higher Ground" shall mean the Higher Ground PUD.

1.2 Declarant: The term "Declarant" shall mean Higher Ground, Inc., an Oregon Corporation, or its successors in interest.

1.3 HGHOA: The term "HGHOA" shall mean the Higher Ground Homeowners Association, an Oregon non-profit corporation.

1.4 Declaration: The term "Declaration" shall mean this Second Amended Declaration of Covenants, Conditions and Restrictions for Higher Ground PUD.

1.5 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.

1.6 Lot: The term "Lot" shall mean each Lot described on a subdivision Plat or partition map to any alteration thereof as may be made by a valid Lot line adjustment or Plat amendment.

1.7 Unit: The term "Unit" shall mean a single family dwelling within Higher Ground.

1.8 Owner: The term "Owner" shall mean and refer either to all holders of fee title to any Lot, or any person or persons entitled to possession of the Lot pursuant to a contract of sale.

1.9 Plat: The term "Plat" shall mean the recorded Plat of Higher Ground PUD as recorded in the Official Records of Deschutes County, Oregon, and any subsequent recorded amendment.

1.10 Streets: The term "Streets" or "Street" shall mean any Street, highway or other thoroughfare within or adjacent to Higher Ground 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.

1.11 Design Review Committee: The term "Design Review Committee" shall mean the committee appointed by the Board pursuant to Section 3.2 below.

1.12 Board: The term "Board" shall mean the Board of Directors of Higher Ground Home Owners Association.

## **SECTION 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIGHER GROUND**

The HGHOA hereby declares that all of the real property located in Deschutes County, Oregon, described in Exhibit 1 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 Higher Ground run with all of said real property for all purposes and shall be bindings upon and inure to the benefit of HGHOA and all Owners and their successors in interest as set forth in this Declaration.

### **SECTION 3. ARCHITECTURAL CONTROLS**

**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 the Board or the Design Review Committee established by the Board. All approvals shall be in conformance with the building site established on each Lot by the Board or the Design Review Committee.

**3.2 Design Review Committee.** At any time following the date of this Declaration, the Board may create a Design Review Committee by appointing no less than three and no more than six 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 or the Bylaws of the HGHOA, in which case this Declaration or the Bylaws 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 the Board under this Declaration, except as to the rights, duties and power to review, approve or disapprove plans, designs and construction. If an Owner objects to any action taken by or decision of the Design Review Committee, the Owner may submit to the Board a written appeal request. The written appeal request must identify the decision or action of the Design Review Committee that the Owner wishes to appeal, must include a written explanation of the reasons for the appeal, and identify the action or the decision the Owner would like the Board to take. A written appeal request should be delivered to the Board not more than 15 days after the subject action or decision of the Design Review Committee; however, the Board has the discretion to consider an appeal delivered after the end of the 15-day period. Any appeal received shall be considered by the Board at its next regularly scheduled meeting, or if no meeting is scheduled then at a special meeting noticed by the Board. The decision made by a simple majority of the Board members present at an appeals hearing shall be binding on the Owner and the Design Review Committee.

If the Board does not appoint a Design Review Committee, or if at any time the Design Review Committee has less than three members, the Board shall exercise all authority and powers of the Design Review Committee granted by this Declaration or otherwise.

**3.3 Procedure.** Any Owner proposing to construct any Improvements within Higher Ground (including any exterior alteration, addition, destructions, or modification to any such Improvements) shall follow the procedures and shall be subject to the approvals required by Sections 3.4 through 3.9 below. Failure to follow such procedures or obtain such approvals as required by Sections 3.4 through 3.9 below shall be deemed a breach of this Declaration. The Board may adopt a schedule of fines that may be assessed against an Owner that fails or refuses to comply with these provisions.

**3.4 Required Documents.** Any Owner proposing to use, improve, or develop real property within Higher Ground shall submit the following items for review:

**3.4.1** A 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. In addition to the foregoing, the site plan must meet the requirements of the Bend City Code to apply for a Building Permit.

**3.4.2** 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 one inch=20 feet or larger. Color samples and material samples shall be provided upon request of the Design Review Committee. In addition to the foregoing, the plans and drawings must meet the requirements of the Bend City Code to apply for a Building Permit.

**3.4.3** 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 Section 4.18.7.

**3.4.4 Materials.** Recycled building materials, such as wood chip lap siding, are encouraged. Laminated wood products, metal and recycled materials are encouraged for use in framing. Recycled insulation materials are encouraged.

**3.4.5 Exterior Lighting.** An exterior lighting plan shall be submitted to the Design Review Committee for approval and receive approval prior to installation. Exterior lighting shall be of a type and so placed to eliminate glare and annoyance to adjacent Owners and passersby. No floodlights or lighting shall be continuously used as to cause an unreasonable nuisance or annoyance to nearby neighbors.

**3.5 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 7:00 a.m. and 6:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on weekends.

**3.6 Review.** All plans and drawings identified in Section 3.4 above shall be submitted to the Design Review Committee for review prior to the performance of any proposed work, together with the construction deposit stated in Section 3.9 below. No plans shall be reviewed until all items specified in Sections 3.4 and 3.9 are submitted. Within 30 days following receipt of such plans and drawings, the Design Review Committee shall review the plans and shall inform the Owner in writing whether the plans conform to the Declaration, the Rules and Regulations, and the development concept for Higher Ground. The Design Review Committee may obtain one 30-day extension of the time to review the plans and drawings by sending the Owner notice in writing. If the Design Review Committee does not approve or reject the plans and drawings within the 30 days, or within the 30-day extended period if applicable, then the plans and drawings 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 Section 3.4 above and this Section. No work may be performed relating to any improvement unless and until all aspects of all plans and drawings are approved by the Design Review Committee.

**3.7 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 Section 3.6 above. 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 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 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.

**3.8 Waiver.** Any condition or provision of Sections 3.3 through 3.7 above may be waived by the Design Review Committee in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for Higher Ground. 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 Sections 3.2 through 3.7. The granting of a waiver to one Owner shall not entitle any other Owner to the waiver of the same or similar conditions or provisions. A waiver may be given on a temporary basis and require that the Owner conform with this Declaration by a date certain or prior to an event such as the sale of the Lot. If the waiver is temporary, the Owner, a prospective buyer or renter may apply for an extension of the waiver in writing. No waiver or extension shall be valid unless it is in writing, signed by

an authorized representative of the Board and delivered to the party claiming the benefit of such waiver.

**3.9 Construction deposit.** Concurrent with submitting the Owner's plans and drawings pursuant to Section 3.4 above, an Owner must also pay to the Design Review Committee a construction deposit equal to 1% of the total construction costs, not to exceed \$2,000.00. The construction deposit shall be refunded to the Owner upon 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. The Design Review Committee may commingle the construction deposit with its own funds and the Owner shall not be entitled to interest on such deposit.

#### **SECTION 4. RESTRICTIONS ON USE OF PROPERTY**

**4.1 Occupancy.** No Owner shall occupy, use or permit his or her Lot or any part thereof to be used for any purpose other than an allowed residential use as provided by the applicable ordinances of Deschutes County, Oregon. Any rented dwelling Unit must be rented or occupied on a month-to-month or longer basis.

##### **4.2 Leasing of Units.**

**4.2.1 Definition.** "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument. "Tenant", for purposes of this Declaration, is defined as any person who occupies a Unit at a time when the Unit is not also occupied by the Owner.

**4.3 Improvements.** Each Lot within Higher Ground shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard, including private areas, such as decks, driveways and all other areas.

**4.4 Appearance.** Appearance. No Lot or part of the Common Property shall be used as a dumping ground for trash or rubbish of any kind, except as a temporary measure during workdays. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard rakings and other material resulting from landscaping work shall not be dumped onto Streets or Common Areas or on any Lots. All unimproved Lots shall be kept in a neat and orderly condition, free of vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard. All 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 the Design Review Committee.

**4.5 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 the Board or the Design Review Committee.

**4.6 Maintenance of Structures and Grounds.** Each Owner shall maintain such Owner's Lot and Improvements thereon in a clean and attractive condition and in good repair. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior Improvements and glass surfaces. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot properly cultivated and free of trash, excessive weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, vandalism or other causes shall likewise be the responsibility of each Owner and shall be repaired within a reasonable period of time.

**4.7 Offensive Activity.** No offensive activity shall be carried on, nor shall anything be done which may be or become an unreasonable annoyance or nuisance to the other Owners, including but not limited to machinery and power tools which create an unacceptable level of noise. Noise in excess of 80 decibels when measured at the Lot's property line is deemed unacceptable. Whether lower levels of noise are unacceptable will be determined by the Board on a case-by-case basis.

**4.8 Signs.** No sign of any kind shall be displayed to public view on or from any Lot except that not more than one "For Sale", "For Rent", "Garage Sale" or "Yard Sale" sign placed by the Owner, the Board or by a licensed real estate agent, not exceeding twenty-four inches high and thirty-six inches long, may be temporarily displayed on any Lot. This restriction shall not prohibit the temporary placement of political signs on a Lot by the Owner.

**4.9 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 Design Review Committee's prior written consent.

**4.10 Antennas.** Unless otherwise required by law, 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 Design Review Committee's written consent. The placement of any such device of one meter or less shall be approved by the Design Review Committee in writing prior to installation.

**4.11 Limitation on Transfer.** No Owners shall transfer either by conveyance, contract of sale or lease any interest in the Owner's Lot which would result in Ownership of such Lot being held by more than four persons without prior approval of the Board.

**4.12 Other Structures.** No house trailer, mobile home, manufactured home, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot. A tent may be erected solely for short term recreational purposes.



**4.13 Utilities.** No above-ground utilities, pipes or wires shall be used to connect Improvements with supplying facilities without prior written consent of the Design Review Committee.

**4.14 Parking.** Camping trailers, trucks, boats, boat trailers, snowmobiles, 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. Campers shall not be parked or placed outside a screened enclosure for more than fourteen days in a calendar year.

**4.15 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 the Rules and Regulations. The Owner is responsible for clearing and restoring the Common Area to a neat appearance immediately after use. The Board may adopt and amend from time to time and enforce Rules and Regulations governing the use of the Common Property.

**4.16 Open Burning.** No open burning of any trash, yard debris, or waste of any type shall be allowed. This does not prohibit barbeques or portable campfire pits.

**4.17 Construction Standards.** No structure shall be erected, altered placed or permitted to remain on any Lot which, in the opinion of the Design Review Committee, does not comply with the following standards:

**4.17.1 Size.** No residence of less than 800 square feet of living space, exclusive of garage, shall be permitted to be erected on any Lot. Maximum size of a single family dwelling is not to exceed 2,500 square feet of living space, exclusive of garage.

**4.17.2 Roofs.** All roofs shall have not less than a 4-12 pitch and be covered with composition shingles, metal or earth tone concrete or clay tiles. No wood shingles are permitted.

**4.17.3 Driveways.** Driveways are required. Driveways shall be of concrete, concrete pavers, asphalt or similar materials as approved by the Design Review Committee. Driveways are to be constructed to minimize the visual impact of the driveway and the motor vehicles that use them. Driveways constructed from asphalt are to be minimal in size to mitigate the potential heat sink effect.

**4.17.4 Height.** Solar access to surrounding Lots shall be considered in the siting and design of Units and other buildings and shall be subject to review by the Design Review Committee. No Unit or building shall be higher than 30 feet.

**4.17.5 Garage.** Each Unit shall have at least one private garage for no less than one motor vehicle. No Owner shall have more than two vehicles for the use of the occupants of Owner's Lot parked outside of the garage. Garages are to be located on

the side of the Unit closest to the nearest road and away from Common Property.

**4.17.6 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 months from the beginning of the 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 Design Review Committee.

**4.17.7 Landscape Completion.** All landscaping must be completed within one hundred eighty days after the date the exterior of the Unit is substantially 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 Design Review Committee. The Board may adopt a schedule of fines to assess against an Owner when the Owner fails or refuses to comply with this Section.

**4.17.8 Fences and Hedges.** No wood, concrete or other solid forms of fencing shall be erected without approval of the Design Review Committee. The use of hedges, trees and other living vegetation is encouraged to create private areas. No "boundary" type fencing shall be constructed or maintained.

**4.17.9 Exterior Materials and Finish.** Exterior materials must be approved for use by the Design Review Committee as set forth in this Declaration. The exterior finish of all construction or modification 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 Design Review Committee as set forth in this Declaration. Exterior trim, fences, doors, railing, decks, eaves, gutters and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exteriors of the structures they adjoin.

**4.18 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 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 the Board.

**4.18.1 Cats.** Owners are encouraged to keep cats indoors to mitigate the destruction of wildlife, prevent unwanted reproduction and spread of disease and avoid creating a nuisance on other properties.

**4.18.2 Dogs.** Dogs are not allowed to roam unattended from the Owner's Lot. When outside the Unit, 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. Excessively noisy or aggressive dogs shall be confined to the interior of the Owner's house. Repeated violation of Animal Nuisance laws, as defined by Bend

City Ordinances 5.250 – 5.292, will require referral to the Bend City Police Department for action, which may include impoundment.

**4.19 Commercial or Business Use.** Units and Lots shall be used for residential purposes. Businesses may be conducted in Units as long as the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit, and as allowed by applicable City of Bend ordinances. This provision shall not be construed so as to prohibit an Owner from parking one vehicle used in the Owner's business in the Owner's garage. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Lots, (b) the right of the HGHOA or any contractor or home builder to construct Units on any Lot, to store construction materials and equipment of such Lots in the normal course of construction, and to use any Unit as an office and (c) the right of the Owner of a Lot to maintain his or her professional personal library, keep his or her personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Unit.

**4.20 Private and Public Utility Easements Depicted on Plat.** Easements for installation and maintenance of utility lines and drainage facilities are reserved as specified on the recorded Plat of Higher Ground and shall continue in perpetuity. Said easements are intended to, and do attach to and run with the land affected herein.

**4.20.1 Adjoining Lots.** Adjoined Lots as depicted on the Plat, shall have an equal nonexclusive right to the use of that area of land for the installation and maintenance of utility lines. In addition, by this covenant there is granted to all appropriate government agencies and public utility companies nonexclusive easements for the installation and maintenance of utility lines and the right of access needed to perform their duties.

**4.20.2 Indemnification and Restoration.** Each Owner holding an interest in an easement shall require all workers and contractors undertaking maintenance work hereunder to maintain standard liability insurance in a reasonable amount from a reputable insurance company protecting each Owner. Each Owner holding an interest in an easement agrees to release and indemnify the Owner of the burdened Lot against all liability for any injury, personal or property, to the Owner of an easement, agents, employees, assignees or officers or said Owners of an easement, when such injury or damage shall result from any maintenance undertaken pursuant to this agreement. It shall be the responsibility of the easement Owner to restore the easement area to a condition equal to that which existed prior to any work performed in the easement.

**4.21 Firearms or Other Deadly Weapons.** No firearms or other deadly weapons such as BB-guns, pellet guns, air rifles, sling shots, archery equipment, paintball markers, airsoft guns, or similar weapons shall be permitted outside a Unit unless they are being transferred between a Unit and a vehicle.

**4.22** To maintain an earth-friendly community the following standards are

required where applicable:

**4.22.1 Wood-Burning Stoves.** No wood-burning stoves are permitted, although energy efficient pellet stoves may be approved by the Design Review Committee.

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

**4.23** The following items are strongly suggested:

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

**4.23.2** One and one-half-story and two-story Units are encouraged to create as small a building footprint as possible.

**4.23.3** Recycled building materials, such as wood chip lap siding, is encouraged. Laminated wood products, metal and recycled materials are encouraged for use in framing. Recycled insulation materials are encouraged.

**4.23.4** Low-watt lighting bulbs for interior use are encouraged.

**4.23.5** Units 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. Units should be built as energy and resource efficient as possible. Green building construction standards, such as those identified in the "Leadership in Energy and Environmental Design (LEED) Green Building Rating System", should be incorporated wherever possible.

**4.23.6** Passive solar heating systems with an on-demand back-up system or an energy efficient heating system is suggested.

**4.23.7** Water efficient fixtures. Water efficient interior and exterior fixtures are recommended.

**4.23.8** Playground. Any playground or other play areas or equipment furnished by the HGHOA or erected within Higher Ground shall be used at the risk of the user, and the HGHOA shall not be held liable to any person for any claim, damage or injury occurring thereon or related to the use thereof.

**4.23.9** Pools and Bodies of Water. The HOA shall not be responsible for any loss, damage or injury to any person or Property arising out of the authorized or unauthorized use of pools or hot tubs, saunas, ponds, waterfalls or water retention facilities within Higher Ground.

## **SECTION 5. TERMINATION OF DECLARANT'S ROLE**

**5.1** Declarant's Control. At such times as the Declarant shall no longer desire to exercise the architectural, landscaping, signing and lighting controls over any Lots within Higher Ground, Declarant shall cause to be recorded in the official records of Deschutes County, Oregon, a Declaration stating that Declarant no longer desires to exercise any further controls over development in Higher Ground. Recordation of such a Declaration shall formally terminate Declarant's interest and all rights of architectural, landscaping, signing and lighting controls, as well as any other duties of Declarant under this Declaration. Declarant shall have been deemed to give such notice within ninety days of the sale of all Lots in Higher Ground.

### **5.2** Formation of HGHOA.

**5.2.1** Upon formal termination of Declarant's control, Declarant shall form an Oregon non-profit organization called the Higher Ground PUD Home Owners Association (HGHOA). HGHOA shall be governed by a three-person Board and shall incorporate. Except as amended as provided herein, this Declaration shall serve as the Bylaws of the HGHOA. Declarant shall cause the HGHOA to be incorporated and the initially elected officers and selected registered agent shall be placed on the original filing immediately after the organizational meeting.

**5.2.2** Within thirty days after the commencement date of HGHOA, the initial Board shall be elected. Persons eligible for the initial Board shall be limited to Owners of any Lot within Higher Ground. Declarant shall solicit from and circulate to all Lot Owners a list of nominees for the initial Board positions with the thirty-day HGHOA organizational period, and any Owner interested is encouraged to submit his or her name to Declarant. Declarant shall then conduct an election of the initial Board. The three nominees obtaining the three highest vote totals shall constitute the initial Board.

**5.2.3** The total number of votes entitled to be cast for each Director's position shall be based upon the total number of Lots within Higher Ground. Each Lot Owner shall have the right to cast one vote for each Lot owned. The initial Board shall meet within ten days after their election and may at that time adopt any governing documents including bylaws, guidelines, procedures and rules and regulations relating to the architectural, landscaping, signing and lighting controls within Higher Ground.

**5.3** Failure to Organize. In the event Declarant is unsuccessful in organizing the Board of HGHOA within the thirty-day organizational period specified above, Declarant shall have no further responsibilities relating to HGHOA, and the HGHOA Board may be organized exclusively by the Owners of Lots within Higher Ground. Such a failure of organization of the HGHOA Board shall not affect the existence of HGHOA or the effectiveness of this Declaration.

**5.4 HGHOA Powers.**

**5.4.1** Membership in the HGHOA shall be limited to Owners.

**5.4.2** The affairs of the HGHOA shall be governed by a Board of Directors as provided herein.

**5.4.3** Subject to the provisions of the Declaration and Bylaws, the HGHOA may, whether or not the HGHOA is unincorporated:

**5.4.3.1** Adopt and amend bylaws, rules and regulations;

**5.4.3.2** Adopt and amend budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from the Owners;

**5.4.3.3** Hire and terminate managing agents and other employees, agents and independent contractors;

**5.4.3.4** Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or on behalf of two or more Owners on matters affecting Higher Ground;

**5.4.3.5** Make contracts and incur liabilities;

**5.4.3.6** Regulate the use, maintenance, repair, replacement and modification of Common Areas;

**5.4.3.7** Cause additional Improvements to be made as a part of the common areas;

**5.4.3.8** Acquire by purchase, lease, devise, gift or voluntary grant, real property or any interest therein and take, hold, possess and dispose of real property or any interest therein;

**5.4.3.9** Impose and receive any payments, fees or charges for the use, rental or operation of the Common Areas;

**5.4.3.10** Impose charges for the late payments of assessments, attorney fees for collection of assessments and, after giving notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, Rules and Regulations of the HGHOA;

**5.4.3.11** Adopt rules regarding the termination of utility services paid for out of assessments of the HGHOA and, after giving notice and an opportunity to be heard, terminate the rights of any Owners to receive such services until the correction of any violation covered by such rule has occurred;

**5.4.3.12** Impose reasonable charges for the preparations and recordation of amendments to the Declaration or statements of unpaid assessments;

**5.4.3.13** Provide for the indemnification of its officers and executive Board, as may be limited by ORS 61.218(3)(d)(1987 Replacement Part), and maintain Director's and officers' liability insurance; and

**5.4.3.14** Exercise any other powers conferred by the Declaration or Bylaws and all other powers that may be exercised in this state by any such HGHOA; and exercise any other powers determined by the HGHOA to be necessary and proper for the governance and operation of the HGHOA.

**5.4.4** Subject to Section 5.4.3 unless expressly prohibited by the Declaration, the HGHOA has the authority to execute, acknowledge, deliver and record on behalf of the Owners, leases, easements, rights of way, licenses and other similar interests affecting the general Common Areas and consent to vacation of roadways within and adjacent to Higher Ground.

**5.4.5** The granting of a lease in excess of two years or any other interest or consent pursuant to Section 5.4.4 shall first be approved by two-thirds written consent of all Owners.

## **SECTION 6. DURATION AND AMENDMENT OF THIS DECLARATION**

**6.1** Duration. The Declaration 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 therein) 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 termination of this Declaration signed by not less than 75% of the Lots then subject to 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 Higher Ground are terminated as set forth in this Section.

**6.2** Amendment. This Declaration or any provision thereof, or any Covenant, Condition or Restriction contained therein, may be terminated, extended, modified or amended, as to the whole of said property or any part thereof if approved by not less than 75% of the Lots voting either in person or by proxy at a meeting called with the stated intent of amending this Declaration. Thirty days' notice must be given for such a meeting. Notice may be given by either e-Mail, U.S. Mail or a combination, at the Board's discretion.

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 the Board or any Owner of any Lot in Higher Ground. 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, or any financial penalty as deemed appropriate by the Board. The Schedule of Fines shall be included in the Rules and Regulations and may be amended by the Board from time to time.

7.2 In the event either party engages an attorney to enforce this Agreement or any of its terms, whether or not a suit or action is commenced, it is agreed that the prevailing party shall be entitled to recover all expenses reasonably incurred before, at and after trial and on appeal whether or not taxable as costs, including, without limitation, attorney fees, witness fees (expert and otherwise), copying charges, deposition expenses and other charges to be paid by the losing party to the prevailing party and to be fixed by the trial and appellate courts.

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

7.4 The Board may also initiate enforcement of this Declaration by taking the following steps:

7.4.1 Contacting the breaching party, informally, to point out the breach of this Declaration, the Bylaws, and/or the Rules and Regulation. The party would then have five days in which to correct the problem.

7.4.2 If the problem has not been corrected, then notifying the breaching party, in writing, about the specific enforcement matter and requesting that the breaching party correct the enforcement matter within twenty days of receipt of this notice.

7.4.3 If the matter is not corrected within the allotted time, a second letter shall be sent indicating the per diem fine that will be charged to the Owner until the matter is corrected or further action is taken. The Board will also request, at this time, that the breaching party participate in mediation, as described in Section 7.4.8. The breaching party shall have the opportunity to challenge the notice 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 twenty days, the Board may choose to initiate legal action.

7.4.4 Upon receipt of a written request from the breaching party for a hearing before the Board, the Board shall set a hearing date within twenty days of the



said request and shall deliver a notice to the breaching party, setting forth the time and place of the hearing.

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

**7.4.6** The Board shall issue a written decision within ten days of the hearing. The Board has the flexibility to work with the breaching party to determine a process and timeline to remedy the enforcement matter.

**7.4.7** Dispute Resolution. No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners, Members, the Board, officers in the HGHOA or the HGHOA. Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

**7.4.8** Outside Mediator. In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. In order to be eligible to mediate a dispute under this provision, a mediator may not work for any of the parties, represent any of the parties or have any conflict of interest with any of the parties. Costs for such mediator shall be shared equally by the parties. If the breaching party does not consent to mediation, the Board may choose to initiate legal action to enforce this Declaration. Any party that refuses or fails to participate in mediation may not make a claim for attorney fees or costs as provided for in Section 7.5 or Oregon law.

**7.4.9** Mediation is Not a Waiver. By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before mediation may be scheduled.

**7.4.10** Assessment Collection and Lien Foreclosure. The provisions of this Declaration dealing with mediation shall not apply to the collection of assessments and/or the foreclosure of the Assessment Lien by the Board as set out in the Declaration.

**7.4.11** After the end of the additional thirty days, if the dispute is still not resolved through mediation, the Board or the Owner may choose to initiate legal action to enforce this Declaration.

**7.5** Enforcement: Attorney Fees. The HGHOA and the Owners within Higher Ground of any mortgagee on any Lot shall have the right to enforce all of the Covenants, Conditions, Restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may pertain specifically to such

parties or Owners by any proceeding at law or in equity. Failure by either the HGHOA or by any Owner or mortgagee to enforce any Covenant, Condition or Restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter.

Except as otherwise provided in this Declaration, in the event suit or action is commenced to enforce the terms and provisions of this Declaration, the Bylaws, or any Rule or Regulation, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal or review, the cost of the appeal or review, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the HGHOA shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

## **SECTION 8. EFFECT OF DECLARATION**

The Covenants, Conditions and Restrictions of the Declaration shall run with the land included in Higher Ground and shall bind, benefit and burden each Lot in Higher Ground. The terms of this Declaration shall inure to the benefit and shall bind Declarant, all successors and assigns of the Declarant including the Board and all Owners of any Lot in Higher Ground, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving and right, title or interest or use in or to any real property in Higher Ground. 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 Higher Ground 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.

## **SECTION 9. ASSESSMENT**

**9.1** Any increase in the annual assessment shall require a vote of not less than one-half of the Owners. If no increase or decrease is voted upon, the previous year's annual assessment shall continue. Unless changed by a vote of more than one-half of those Owners voting in person or by proxy at the annual meeting, the assessment shall be due and payable as previously set. 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. Unless changed by vote of more than one-half of those Owners voting in person or by proxy at the annual meeting, the amount of the reserve shall remain unchanged. Voting eligibility on all assessment and reserve matters shall be based on the total number of Lots within Higher Ground.

**9.2** Any unpaid or overdue assessment shall be collectable upon ten days' written notice to the Owner. If the unpaid or overdue assessment, along with any penalties or interest is not paid, then the HGHOA may record a lien. The HGHOA may

commence an action against the Owner in the appropriate court of law with or without recording a lien. All costs of collection, including but not limited to attorney's fees at trial and on appeal, shall be added to the assessment. As an alternative to the procedures set forth herein, the HGHOA and the Owner may agree upon an alternative repayment procedure. The agreement will be in writing and signed by both parties; or the HGHOA may record a lien consistent with the terms of the alternative repayment procedures.

## **SECTION 10.            LIMITATION OF LIABILITY AND INDEMNIFICATION**

**10.1**    Liability. So long as it or they have acted in good faith, the Board, the HGHOA and the Design Review Committee, their Directors officers and agents, or their successors or assigns shall not be 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 hold a 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. HGHOA shall indemnify the Board, 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 a claim, action, suit or proceeding as and when incurred, subject only to the right of HGHOA, should it be proven at a later time that said person had no right to such payments.


IN WITNESS WHEREOF, **Higher Ground Homeowners Association** has caused this Declaration to be signed on the day and year first written above.

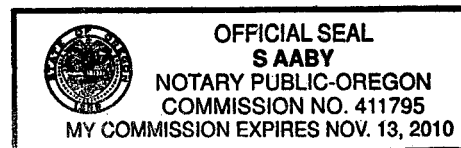
**Higher Ground Homeowners Association,  
an Oregon Non-Profit Corporation**

By: *Ellen Santasiero*  
Ellen Santasiero, President

STATE OF OREGON, County of Deschutes, ss:

The foregoing instrument was acknowledged before me this 24 day of May 2007, 2007, by Ellen Santasiero, President of Higher Ground Homeowners Association, an Oregon non-profit corporation.

  
Notary Public for Oregon

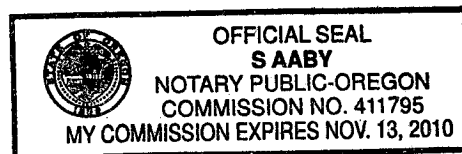


By: Dana Madison  
Dana Madison, Owner of Lot 2  
STATE OF OREGON, County of Deschutes, ss:

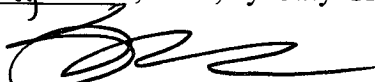
I agree to have Lot 2 become part of the Legal Description of Property subject to Declaration and this Amendment this 24 day of May, 2007, by Dana Madison, Owner of Lot 2.

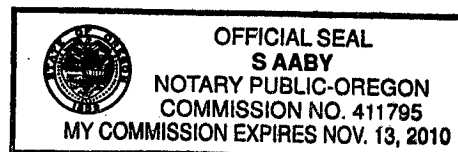
  
Notary Public for Oregon

By: Gary W. Griffin - Tina Carlsen  
Gary Griffin and Tina Carlsen, Owners of Lot 3  
STATE OF OREGON, County of Deschutes, ss:



I agree to have Lot 3 become part of the Legal Description of Property subject to Declaration and this Amendment this 24 day of May, 2007, by Gary Griffin and Tina Carlsen, Owners of Lot 3.

  
Notary Public for Oregon



## **EXHIBIT 1**

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

Higher Ground PUD, 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 Re-Plat 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 Lot 1), 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.