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94-29159

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DECLARATIONS OF MOUNTAIN PEAKS - PHASE II
COVENANTS, CONDITIONS AND RESTRICTIONS

This DECLARATION is applicable to Mountain Peaks-Phase Two subdivision in section 26, township 17S, range 12E, Deschutes County, State of Oregon.

WHEREAS, Bourland is the owner in fee simple of the above described real property, known as Mountain Peaks-Phase Two, and

WHEREAS, the Declarant desires to declare of public record his intention to create certain protective covenants, conditions and restrictions in order to effectuate a general scheme of development creating benefits and obligations for the owners of said property.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value of desirability of, and which shall run with, the real property and be binding on all parties having any right or title of interest in the described properties or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

ARTICLE 1

RESIDENTIAL COVENANTS

(1) Land Use and Building Type

No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not to exceed thirty-five (35) feet in height with a private garage for not less than two cars. The foregoing provisions shall not exclude construction of a private greenhouse, gazebo, storage unit, private swimming pool or a shelter or storage of a boat, and/or camping trailer kept for personal use, provided the location of such structures is in conformity with the applicable municipal regulations, and is compatible in design and decoration with the residence constructed on such lot, and has been approved by the Architectural Review Committee, as designated by the Declarant.

- (a) The Architectural Review Committee may restrict the total dwelling height relative to the street, land and other homes and must specifically approve or disapprove.
- (b) No mobile homes, manufactured, pre-built, etc. homes. The foregoing provisions are not meant to exclude the use of trusses, pre-made cabinets, etc.

The provisions of this section shall not be deemed to prohibit the right of any home builder to construct residences on any lot, to store construction materials and equipment on said lots in the

normal course of construction, or to use any single family residence as a sales office or model home for purposes of sale in Mountain Peaks.

(2) Dwelling Size

The floor area of a dwelling, exclusive of open porches and garages shall not be less than 1,500 square feet. In the case of a two story dwelling, the lower or ground floor living level shall not be less than 1,000 square feet. In the event of a multilevel or tri-level dwelling, the main living levels shall constitute a minimum of 700 square feet. A split entry or split foyer type home shall have a main floor area of not less than 800 square feet. The Architectural Review Committee, upon receiving written application, may, at its discretion, waive any violation of this provision which the Committee finds to have been inadvertent.

(3) Business and Commercial Uses

No trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any lot, excepting the right of any home builder and the Declarant to construct residences on any lot, to store construction equipment and materials on said lots in the normal course of said construction and to use any single family residence as a sales office or model home for purposes of sales in Mountain Peaks. This provision, however, shall not be construed so as to prevent or prohibit an owner from maintaining their professional personal library, keeping their personal business or professional records or accounts, handling their personal business or professional telephone calls, or conferring with business or professional associates, clients or customers in their homes. Nor shall this provision be construed so as to prohibit the rental or leasing of any dwelling unit.

(4) Offensive Activities

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done or placed upon any lot which interferes with or jeopardizes enjoyment of other lots within Mountain Peaks-Phase Two.

(5) Animals

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that of a reasonable number (not to exceed three) of dogs, cats or other household pets which may be kept provided that they are not kept, bred or maintained for commercial purposes and are reasonably controlled so as not to be a nuisance.

(6) Signs

No signs shall be erected or maintained on any lot (excluding Mountain Peaks addition entry signs) except that not more than one "For Sale" or "For Rent" sign placed by the Owner, the

Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may temporarily be displayed on any lot. This restriction shall not prohibit the temporary placement of "political" signs on any lot by the Owner, or the placement of temporary promotional signs by the Declarant or his appointees.

(7) Parking

Parking of boats, trailers, motorcycles, trucks, truck-campers and like equipment shall not be allowed on any part of the property nor on public streets adjacent thereto excepting only within the confines of the enclosed garage, storage port, or behind a screening fence or shrubbery which shall in no event project beyond the front setbacks of the residence. No trucks larger than one ton shall be parked in Mountain Peaks except for the purpose of delivery, loading or unloading.

(8) Vehicles in Disrepair

No owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any lot or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an "extreme state of disrepair" when, due to its continued inoperability or significant damage, it offends the occupants of the neighborhood.

(9) Rubbish, Trash and Firewood

No lot or open space shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings and dirt resulting from landscaping work shall not be dumped onto streets, open space or on any lots. No storage of firewood or logs, temporary or otherwise, shall be permitted except in screened areas out of public view. The cutting of firewood with a chain saw shall not exceed four(4) hours per week and only between 10:00 AM and 7:00 PM.

(10) Temporary Structures

No structures of a temporary character, trailer, basement, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence whether temporarily or permanently.

(11) Utilities

All plumbing facilities shall comply with the requirements of the Building Code of Deschutes County. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes, nor any poles, towers or other structure supporting said outdoor overhead wires shall be erected, placed or maintained. All owners of lots within this subdivision, their heirs, successors and assigns shall use underground service wires to connect their premises, and the structures built thereon, to the underground electric or telephone utility facilities provided.

(12) Completion of Construction

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Visible

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. Within thirty (30) days of occupancy all owners shall install drapes or blinds in the windows of their house that are visible from the street. Sheets and other temporary methods are not allowed. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Review Committee.

- (a) Before, during and after construction, job sites must be kept clean and free of debris on a daily basis. All materials shall be kept stacked and organized.

(13) Landscape

- (a) Landscape Completion: All front landscaping must be completed within ninety (90) days after the date of the framing inspection. Rear and side yard landscaping must be completed within 150 days. The front yards shall be completed with grass and planting beds. Rear and side yards must be planted with grass, barkdusted or fenced. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable time, but only after written application is made to the Architectural Review Committee, and the Committee's approval is obtained.

- (b) Trees: In order to remove or do major alteration to any tree over two (2) feet tall on the property at the time these Covenants are recorded, application must be made to the Architectural Review Committee, and the Committee's approval obtained.

(14) Site Alteration

There shall be no construction, grading or land filling on a lot without the approval of the Architectural Review Committee.

(15) Driveways

All residences shall have finished concrete driveways. No asphalt shall be allowed.

(16) Fences and Hedges

The maximum height of a site obscuring fence on any lot shall be six (6) feet. The location of any fences erected shall be along the rear lot line and/or along the side lot lines, but said fences shall not be placed forward of the front setback line for the residence. All fences shall be of wood. Brick or masonry posts shall be allowed. No fence, hedge or shrub that obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines. No fence or wall shall be erected without prior written approval of the design and location by the Architectural Review Committee.

(17) Antennas and Services Facilities

Exterior antennas, except for television antennas, shall not be placed upon the roof of any structure on any lots so as to be visible from the street or open space. Clotheslines, satellite dishes, air conditioners, heat pumps and other service facilities shall be screened so as not to be viewed from the street or open space.

(18) Exterior Materials

Exterior materials must be approved for use by the Architectural Review Committee in accordance with the provisions of Article III herein. Front windows must be painted aluminum, bronzed anodized, wood or plastic vinyl. Any other architectural features subject to control will be approved or disapproved upon submission of plans to the Architectural Review Committee.

- (a) Exterior siding must be horizontal lap siding. For example: "L.P." or cedar or brick or other as may be approved by the Architectural Review Committee. T-111 plywood or other pressed wood sheet siding shall not be permitted.
- (b) Exterior front surface or columns must have a minimum of 200 square feet surface area of brick.
- (c) Roof must be a minimum twenty-five (25) year dimensional composition roof.
- (d) Roof pitch shall be 5 x 12 minimum.

(19) Exterior Finish

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 structures and landscaping within Mountain Peaks - Phase Two. Exterior colors must be approved by the Architectural Review Committee in accordance with the provisions of Article III. Exterior trim, fences, doors, railings, decks, 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 inside of Mountain Peaks - Phase Two.

ARTICLE II

PRIVATE STORM DRAINAGE FACILITIES

(1) Installation, Maintenance and Replacement by Individual Lot Owners.

Each lot owner, upon application for a building permit, is required to design a lot drainage plan consistent with Deschutes County drainage standards. Said private drainage plan shall be sufficient to show how each lot will receive and dispose of natural surface storm water. Prior

to the issuance of building permits, each lot's private drainage plan is to be reviewed by the County for acceptability to their standards. Upon completion of the private drainage facilities, it shall be the sole responsibility of the lot owner, his heirs or assigns to perpetually maintain or replace, if required, private drainage system for the lot so as not to adversely affect adjacent downhill property owners to receive and dispose of natural surface water flows from uphill properties as legally required and as acceptable to County standards.

ARTICLE III

ARCHITECTURAL REVIEW COMMITTEE

(1) Architectural Review

No structure, including storage shelters, shall be commenced, erected, placed or altered on any lot until the construction plan and specifications and a plat showing the nature, shape, heights, materials, colors and proposed location of the structure or change have been submitted in writing to the Architectural Review Committee. It is the intention and purpose of this Covenant to assure quality of workmanship and materials, harmony of external design with the existing structures as to location and topography, finished grade elevations and to avoid plan repetition. In all cases, the Architectural Review Committee approval is required.

(a) Major Construction

In the case of initial or substantial additional construction of a dwelling or landscaping, the owner shall prepare and submit to the Architectural Review Committee such plans and specifications for the proposed work as the Committee may require. Material required by the Committee may include, but not necessarily be limited to, the following:

- (1) A plot plan indicating location of all improvements, including private lot drainage.
- (2) Drawings showing elevations, exterior materials and exterior color scheme of all improvements.

NOTE: Total dwelling elevation relative to the street, land and other homes must be approved by the Architectural Review Committee.

The Architectural Review Committee shall render its decision with respect to the proposal within five (5) business days after it has received all materials required by it with respect thereto.

(b) Minor Work

In the case of minor additions or remodeling, change of existing exterior color scheme or exterior materials, greenhouse or swimming pool construction or any other work not referred to in (a) above, the owner shall submit to the

Architectural Review Committee such plans and specifications for the proposed work as the Committee determines to be necessary to enable it to evaluate the proposal. The Architectural Review Committee shall render its decision with respect to the proposal within five (5) business days after it has received all material required by it with respect thereto.

(2) Architectural Review Committee Decision

The Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds that the proposed work would be inappropriate for the particular lot or incompatible with the design standards that Declarant intends for Mountain Peaks - Phase Two. Conditions such as siting, shape, size, color, design, height, disturbance of existing terrain or any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work.

The Committee's decision shall be determined by a vote of the members with only a majority needed to render a decision. In the event the Committee fails to render its approval or disapproval within thirty (30) business days after plans and specifications have been submitted to it; or in any event, if not suited to enjoin, the construction has been commenced prior to the completion thereof, approval will not be required, and the related Covenants shall be deemed to have been fully complied with.

(3) Membership - Appointment and Removal

The Architectural Review Committee, hereinafter referred to as the Committee, shall consist of as many persons, but not less than three (3), as the Declarant shall from time to time appoint. The Declarant shall keep on file, at the principal office, a list of the names and addresses of the members of the Committee. A member of the Committee shall not be entitled to any compensation for services performed pursuant to the Covenants. The powers and duties of such Committee shall cease one (1) year after the construction of all single family dwellings and the sale of said dwellings to the initial owner/occupant on all of the building sites within Mountain Peaks - Phase Two. This shall not be construed to be a waiver of the quality standards of the development required by Mountain Peaks - Phase Two.

(4) Liability

Neither the Architectural Review Committee nor any member thereof shall be liable to the owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action, or failure to act, of the Committee or a member thereof, provided that the member has in accordance with actual knowledge possessed by him, acted in good faith.

(5) Non-Waiver

Consent by the Architectural Review Committee to any matter proposed to it and within its jurisdiction under these Covenants shall not be deemed to constitute a precedent or waiver impairing its rights to withhold approval as to any similar matter thereafter proposed or submitted for consent.

(6) Effective Period of Consent

The Committee's consent to any proposed work shall automatically be revoked one (1) year after issuance unless construction of the work has been commenced or the owner has applied for and received an extension of time from the Committee.

ARTICLE IV

PRIVATE UTILITY EASEMENTS DEPICTED ON PLAT

(1) Easements

Easements for installation and maintenance of utility lines and drainage facilities are reserved over the front eighteen (18) feet, the rear (5) feet and the side (5) feet of each lot, except where the easement lines are denoted on the recorded plat and are greater. Within these easements, no structure (excluding walks and driveways), planting or materials shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of water through drainage channels in the easements.

(2) Duration and Nature of Easement

These easements shall continue in perpetuity. They are intended to, do attach to and run with the land affected herein. This provision is binding on the undersigned landowner, Bourland, and all persons claiming under it. It is the intent of Bourland to create a continuing obligation and right on the part of himself and subsequent owners of the subject land.

(3) Right of Entry

Adjoining lots, as depicted on the plat, shall have equal and non-exclusive 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 non-exclusive easements for the installation and maintenance of utility lines and the right of access needed to perform their duties.

(4) Indemnification of Deschutes County

The owners of the easement and the burdened lot shall hold harmless, defend and indemnify Deschutes County and its officers, agents and employees against all claims, demands, actions and suits, including attorney fees and costs brought against any of them arising out of the failure to properly maintain the improvements located in the easement area which are subject to this agreement, except for those easements granted for public facilities.

(5) Liability and Restoration

The owners of an easement shall require all workmen and contractors undertaking maintenance work hereunder to maintain standard liability insurance in a reasonable amount from a

reputable insurance company protecting each other. Each of the owners of an easement agrees to release and indemnify the owners of the burdened lot against all liability for injury to himself or damage to his property 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.

ARTICLE V

GENERAL PROVISIONS

(1) Term and Amendment

These Covenants and Restrictions shall run with and bind all the property within Mountain Peaks - Phase Two for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years. This Declaration, or parts thereof, can be terminated, revoked or amended only by duly recording an instrument which contains the amendment of the order of revocation or termination, and which is signed by the owners of seventy-five (75%) percent of the lots.

(2) Enforcement

In the event of any violation of any of the provisions of this Declaration, the Declarant or any other person or persons owning real property within the plat may, at their option, exercise their right to enforce these Covenants by prosecuting any proceeding at law or in equity necessary to prevent the violation or to recover damages sustained by reason of such violation. Failure by any party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any action successfully prosecuted to abate or recover damages for a violation of the provisions of the Declaration, the prevailing party shall be entitled to recover all costs, including reasonable attorney fees, which shall be in no event less than \$500.00, incurred in such enforcement.

(3) Severability

Invalidation of any one of these Covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

(4) Limitation of Liability of Declarant

The Declarant shall not be liable to any owner on account of any action or failure to act by Declarant in performing his duties or rights hereunder, provided that the Declarant has, in accordance with actual knowledge possessed, acted in good faith.

(5) Disclaimer Statement

These Covenants constitute a private agreement among the owners of lots within Mountain Peaks - Phase Two and will not be enforced by Deschutes County. These Covenants have not been

APPROVED - 1994

approved or disapproved by the County and do not restrict the County's authority to adopt or amend its development regulations. There may be conflicting requirements between these Covenants and the County's regulations. The County will limit its review of a development application and the issuance of permits to the requirements of its regulations and any condition of approval. It is the duty of every person engaged in development or ownership with Mountain Peaks - Phase Two to know the requirements of these Covenants. In the event there is a conflict between a County regulation and these Covenants, any question regarding these deed restrictions shall be directed to the Architectural Review Committee. The County will not be liable for any approvals or permits which are granted in compliance with County regulations, but which are not in compliance with these Covenants.

(7) Notice

Any notice, demand or report required under this agreement shall be sent to each owner in care of the street address of his parcel; or, in the event the owner does not reside on the said property, in care of the current property tax notification address hereunder by written notice to each other owner. Any required notice or demand shall be made by hand delivery or certified mail, and shall be deemed received on actual receipt or forty-eight (48) hours after being so mailed, whichever occurs first.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set his hand this 25 day of July, 1994.

Ben Bourland
Ben Bourland

STATE OF OREGON,

County of Washington } ss.

FORM NO. 23 - ACKNOWLEDGMENT
STEVENS-LESS LAW FIRM, CO., PORTLAND, ORE.

BE IT REMEMBERED, That on this 25th day of July, 1994, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named BEN BOURLAND

known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



S. Phinney
Notary Public for Oregon.
My Commission expires 10-10-96

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

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:

94 JUL 25 PM 12:07

MARY SUE PENHOLLOW
COUNTY CLERK

BY: J. Moore DEPUTY

NO. 94-29159 FEE 55.00

DESCHUTES COUNTY OFFICIAL RECORDS