

96-730

1996 AMENDED BUILDING AND USE RESTRICTIONS

OAK TREE SUBDIVISION

BEND, DESCHUTES COUNTY, OREGON

SECTION I -- RECITALS

WHEREAS, all lots located within the Oak Tree Subdivision, Bend, Deschutes County, Oregon, are subject to protective covenants, conditions and restrictions and rights imposed by a document entitled "Protective Covenants, Conditions and Restrictions" that is recorded in the deed records of the Deschutes County Clerk in Volume 346 at Pages 2441 - 2445 (Document 94-29371) (hereinafter referred to as "Protective Covenants"); and

WHEREAS, the Protective Covenants were amended by a document entitled "Oak Tree" recorded at Volume 346 at Pages 2446 - 2447 of the deed records of the Deschutes County Clerk (Document 94-29372) (previously recorded in Volume 340 at Page 1214, Document #94-20537) and by a document entitled "Amended Protective Covenants, Conditions, and Restrictions for Oak Tree Subdivision" which was recorded in the deed records of the Deschutes County Clerk in Volume 367 at Page 1885, Document #95-07202.

NOW THEREFORE, the owners of all lots within the Oak Tree Subdivision and all land bound by the Protective Covenants hereby consent to the amendment of the above-referenced Protected Covenants, as amended, as set forth in Section III below. These amendments shall be effective upon recording of this document with the Deschutes County Clerk's Office.

SECTION II -- PROPERTY DESCRIPTION

The real property burdened and benefitted by the building and use restrictions contained in this document is:

Parcel I: The North Half of the North Half of the Northwest Quarter of the Southwest Quarter (N1/2 N1/2 NW1/4 SW1/4) of Section Twenty-six (26), Township Seventeen (17) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon.

Excepting therefrom the Westerly 40 feet as dedicated to the County of Deschutes by Declaration of Dedication, recorded March 9, 1981 in Book 337 Page 509.

Parcel II: The East Half of the South Half of the South Half of the Southwest Quarter of the Northwest Quarter (E1/2 S1/2 S1/2 SW1/4 NW1/4) of Section Twenty-six (26),

Township Seventeen (17) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon.

SECTION III -- AMENDMENTS TO PROTECTIVE COVENANTS

Material being added to the Protective Covenants is highlighted in bold type. Text being deleted is enclosed in brackets.

- A. Item 4 a. is amended as follows:
4. TIME OF CONSTRUCTION -
 - a. All buildings constructed **on subdivision lots** must be completed within twelve months from the date construction is commenced. [, exclusive of inside finish work.]
- B. Item 5 is amended as follows:
5. BUILDING EXTERIORS [INTERIORS] -
 - a. The use of new materials on all exterior surfaces will be required. [, used brick will be permissible. It is desired that the exterior material used be indigenous to the Northwest.] **All homes constructed after the effective date of these amendments shall include masonry on their exterior walls, in a location that is visible from an adjoining public street. All building exteriors shall be in harmony with existing residences, as determined at the sole discretion of the Architectural Control Committee (ACC). Earth tone paint or wood stain finishes shall be used for the painting of exterior surfaces. No visible reflective metal flashing shall be allowed on any home.**
 - [b. Exterior surfaces shall be finished with wood stain except that paint may be used for trim or accent panels, but in harmony with other residences.]
- C. Item 6 is amended as follows:
6. ROOF -
 - a. All homes and out buildings, if any, in OAK TREE shall be required to have a **minimum of a 25 year architectural style roofing material and a roof with a minimum 6/12 pitch.** [Class A Fire Rated Roofing and of a material equal to or better than '65 FIRE-HALT by Gustar. No wood roofing material shall be allowed.]
- D. Item 11 is amended as follows:
11. LANDSCAPING [TIMING]

- a. All front yards shall be landscaped within six (6) months after the exterior of a residence is finished with no less than 40% of the front yard to be in grass, the rest to be natural or with bark chips in a professional looking manner. **but in no event later than six (6) months after occupancy of the residence.**
- b. **All front yards shall include a yard light constructed of the same type of masonry approved for the home constructed on the lot. The light shall be placed near the road and shall match the style and location of the yard lights found in the existing development at the time of application for ACC approval.**

E. Item 15 is amended as follows:

15. [SIGNS] ARCHITECTURAL CONTROL -

- a. No building, structure or improvement shall be erected, placed or altered on any lot until the construction plans and specifications (**including, but not limited to, roofing material, paint colors for exterior surfaces, and siding**) and a plan showing the location of the structure have been approved by the ACC [Architectural Control Committee] as to quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. The approval stamp and signature of the ACC [Architectural Control Committee] will be required before applying for a building permit from the governing agency. **The ACC shall have the sole and final authority to determine the appropriateness of plans and the requirements of these Protective Covenants as they relate to building or structure plans. Any judicial action or proceeding brought to challenge any decision of the ACC shall be commenced within ninety days after issuance of the ACC's written decision and mailing of said decision to the record owner of each lot within the subdivision, whichever is earlier.**
- b. **Yard Improvements. No landscaping or ornamentation shall be erected, placed, altered or maintained on any property bound by these Protective Covenants until the plans and specifications for said landscaping or ornamentation have been approved by the ACC.**
- c. **Application Deposit. Applications for review of structures and buildings by the ACC shall be accompanied by a deposit fee of \$500, payable to Pinnacle Productions. Failure to pay said fee will be grounds for denial of the application. This deposit will be held by Pinnacle Productions until the applicant has obtained approval of the building and structural plans from the ACC, has obtained all**

required building or structural approvals required by regulating governmental entities and has built the buildings or structures in compliance with the approved plans and rules of the ACC and provisions of these Protective Covenants and has completely landscaped the front yard of their lot according to ACC approved plans. At such time, the deposit shall be refunded, without interest and less ACC imposed fines and charges for violations of the Protective Covenants, approved plans or ACC rules. If plans are altered in any way, the above-required information must be resubmitted and ACC approval obtained for all plan alterations.

- d. All structures, buildings, improvements, landscaping and ornamentation must be completed in accordance with the plans and specifications approved by the ACC.

F. There presently no Item #16 in the Protective Covenants.

G. Item 17 is amended as follows:

17. ARCHITECTURAL CONTROL COMMITTEE -

- a. **Membership.** The Architectural Control Committee (ACC) shall consist of three persons appointed by Pinnacle Productions [is composed of V.T. McAllister, Wayne Warner, and Mark Wirges. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee, nor its designated representative(s) shall be entitled to compensation for services performed pursuant to this covenant. At any time, the present owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the Committee or to withdraw from the Committee or restore to it any of its powers and duties]. Any two members of the ACC shall have the power to act on behalf of the committee. Pinnacle Productions shall keep on file at its principal office a list of the names and addresses of the members of the ACC.
- b. **Function.** The ACC will be responsible for reviewing and approving or denying approval of plans for the construction of buildings, structures and improvements to lots bound by the Protective Covenants, as well as the landscaping and ornamentation of such lots. The ACC is hereby delegated the authority to promulgate and amend ACC rules to regulate the location, orientation, design of and materials used for structures, buildings, improvements, landscaping and ornamentation located on property governed by the Protective Covenants. The rules may also interpret the provisions of these

Protective Covenants and regulate construction activities on property bound by the Protective Covenants. The rules may include fine schedules for rule violations. All such interpretations shall be binding in any legal proceeding based upon the provisions of the Protective Covenants and obligations arising from said covenants. Copies of the ACC rules shall be made available to lot owners, upon request and payment of reasonable copying fees.

- c. **Application Materials.** The ACC may require that any or all of the following information be shown or included with the plans submitted to the ACC:
 - I. Existing and proposed land contours and grades;
 - II. All buildings, garages, and other structures and improvements, access drives and other improved areas, and the locations thereof on the site;
 - III. Plans for all floors, cross-sections, and elevations, including projections and wing walls and height of ridge measured from street grade;
 - IV. All landscaping, including existing and proposed tree locations and planting areas and species thereof, mail boxes and exterior ornamentation;
 - V. Exterior lighting;
 - VI. Wall, fences and screening;
 - VII. Patios, decks, pools, and porches;
 - VIII. Signs and parking areas;
 - IX. Samples of materials to be used as may be reasonably requested by the ACC;
 - X. Setbacks required by local land use or building regulations;
 - XI. Utility lines and connections;
 - XII. Scale of drawing;
 - XIII. Specifications describing types of construction and exterior materials to be used, including, without limitation, the colors and manufacturer thereof.
 - XIV. Such other relevant information, data and drawings as may be requested by the ACC.
- d. **Interpretation and application of the provisions of the Architectural Regulations and the provisions of the Protective Covenants that relate to the construction of buildings, structures or improvements of lot landscaping or ornamentation shall be within the sole and exclusive discretion of the ACC.**
- e. **Any judicial action or proceeding brought to challenge a decision of the ACC shall be commenced within sixty days after issuance of the Committee decision and, in no event, later than thirty days after the**

commencement of construction of an ACC approved building or structure.

- f. **Turnover of Control.** Pinnacle Productions may, at any time, delegate any and all of its duties and authority created by the Protective Covenants, including, but not limited to its ability to appoint ACC members and to manage ACC funds to some or all of the members of the ACC. Pinnacle Productions may, however, retain all deposits and funds paid to Pinnacle Productions prior to turnover of control.

H. Item 21 is amended as follows:

21. GENERAL PROVISIONS -

- a. **Term.** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of ten (10) years from **July 22, 1994** [the date these covenants are recorded], after which time said covenants shall be automatically extended for successive periods of five (5) years unless an instrument **stating that the covenants shall expire at the end of the then current term**, signed by a majority of the [present] owners of the lots has been recorded **in the deed records of the Deschutes County Clerk** [, agreeing to change said covenants in whole or in part].
- b. **Enforcement.** **Complaints of violations may be filed with the ACC by any lot owner or any member of the ACC. The ACC shall have the authority to levy a fine of up to \$500 for a violation of these covenants or for failure to comply with a decision of the Committee. Lot owners are responsible for any and all violations of these Protective Covenants. Any lot owner failing to correct a violation within 30 days of a determination of violation shall be subject to a fine of \$500 per day of violation beyond the 30 day period, until the violation is corrected. Fines may be imposed by the ACC after giving the lot owner allegedly in violation of the Protective Covenants written notice of the alleged violation and an opportunity to be heard regarding the violation. The notice of the date and time of the hearing and the alleged violation shall be mailed certified mail, return receipt requested, to the person and address shown for the lot owner in the records of the Deschutes County Tax Assessor. Fines levied by the ACC shall be paid by the lot owner within 10 days of imposition of the fine. Unpaid fines shall accrue interest at a rate of 15% per annum. Delinquent fines may be collected by the ACC by filing an action to collect a debt in the appropriate state court. The prevailing party in an action to collect a fine shall be entitled to recover their reasonable costs of collection and attorney fees at trial and on appeal therefrom. All fines shall be deposited in the Pinnacle Productions operating**

account and shall be used to fund ACC and subdivision improvement expenses.

Additionally, enforcement actions may [Enforcement shall] be filed in the state court system by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Actions may be brought by any member of the ACC or by any lot owner. In such a proceeding, however, the reviewing court shall defer to the interpretations and the decisions of the ACC as to the meaning of the terms of the Protective Covenants relating to the construction of buildings, structures or improvements or to lot landscaping or ornamentation and as to the compliance of building and structural, landscaping, improvements or ornamentation plans with the requirements of the Protective Covenants.

- c. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.
- d. **Amendment. These Protective Covenants may be amended or replaced by the recording of a document amending the Protective Covenants or new Protective Covenants, signed by owners of at least 75% of the lots created by the final plats of Oak Tree Subdivision, Phase I and Phase II.**

SECTION IV -- INTERPRETATION

In the event of conflict between the provisions of this amending document and the terms of prior protective covenant documents, the text as shown in this amending document shall control.

SECTION V -- CONSENT TO AMENDMENT

The owners of all property bound by the Protective Covenants hereby consent to amendment of the Protective Covenants, as amended, as set forth in this 1996 Amendment.

LOTS 37 & 8 and all other property owned by Ted and
Lola McAllister that is bound by Protective Covenants

Ted McAllister
Ted McAllister, Owner

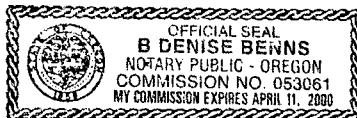
Lola McAllister
Lola McAllister, Owner

STATE OF Oregon)
County of Linn)

ss.

This instrument was acknowledged before me on 9/17/96, 1996 by Ted and Lola
McAllister.

B Denise Benno
Notary Public for Oregon
My commission expires: 4/11/2000



LOT 38

John Dovey
John Dovey, Owner

Ellen Dovey
Ellen Dovey, Owner

STATE OF Oregon
County of Deschutes ss.

This instrument was acknowledged before me on August 22, 1996 by John and Ellen Dovey.

Gina Lucero
Notary Public for OREGON
My commission expires: April 17, 2000



LOT 7

Robert Goslin Kristi Goslin

~~Allyn Urton~~, Owner

Robert Goslin & Kristi J. Goslin

STATE OF OREGON
County of DESCHUTES

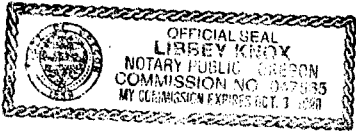
ss.

This instrument was acknowledged before me on 10/3/96, 1996 by ^{Robert Goslin}~~Allyn Urton~~
and KRISTI J. GOSLIN

Libbey Knox

Notary Public for OREGON

My commission expires: 10/3/99



426 - 0540

LOT 27
The Lauziere Family Trust

LaVaune J. Lauziere and Eugene G. Lauziere, Trustees of the LaVaune J. Lauziere and Eugene G. Lauziere Family Trust dated One September 1995.

Date: 9/20/96

Eugene G. Lauziere
LaVaune Lauziere

STATE OF OREGON, County of Deschutes) ss.

Personally appeared the above named person and acknowledged the Certification before me this 20th day of Sept, 1996.



Sharon Kunkel
Notary Public for Oregon
My Commission Expires: 2/26/97

LOT 26
The Roman Catholic ^{Bishop} Church
Dioceses of Baker

The Roman Catholic Bishop of the Diocese of Baker
By: Thomas J. Connolly
Its: Bishop

STATE OF OREGON)
County of Deschutes) ss.

This instrument was acknowledged before me on 19th September 1996 by
Thomas J. Connolly Bishop of The Roman Catholic Church,
Dioceses of Baker.



Matthew M. Chotty
Notary Public for Oregon
My commission expires: 2/16/98

Rev. Evangelist Kelly, O. F. M. Cap.

LOTS 1, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 39, 40, 41, 42, 52

Kelly Rogers
KELLY ROGERS

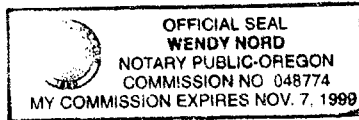
Gayla Rogers
GAYLA ROGERS

STATE OF OREGON)
County of Deschutes) ss.

This instrument was acknowledged before me on Sept 9, 1996 by Kelly and Gayla Rogers.

Wendy Nord
Notary Public for Oregon
My commission expires: 11-7-99

s:rogers\newccrs.doc

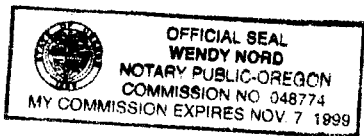


LOT 4

Bret DeYoung
Bret DeYoung

STATE OF Oregon
County of Deschutes ss.

This instrument was acknowledged before me on 9-5, 1996 by Bret DeYoung.



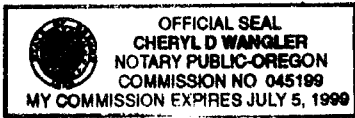
Wendy Nord
Notary Public for Oregon
My commission expires: 11-7-99

LOTS 2, 5, 6, 36, 43

Michael Tennant
Michael Tennant

STATE OF Oregon)
County of Deschutes) ss.

This instrument was acknowledged before me on August 29, 1996 by Michael Tennant.



Cheryl D. Wangler
Notary Public for Oregon
My commission expires: 7-5-99

LOT 33/

Keith Studwell

Keith Studwell, Owner

Susan Joy Franz Studwell

Susan Joy Franz Studwell

STATE OF Oregon)
County of Deschutes) ss.

This instrument was acknowledged before me on Sept. 18, 1996 by Keith Studwell.

Lisa Cooper

Notary Public for Oregon

My commission expires: Aug. 21, 1998



STATE OF Oregon)
County of Deschutes) ss.

This instrument was acknowledged before me on Sept. 18, 1996 by
Susan Joy Franz Studwell

Lisa Cooper

Notary Public for Oregon

My commission expires: Aug. 21, 1998



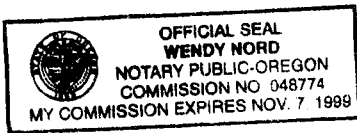
LOT 3

Larry Merrigan
Larry Merrigan, Owner

Grace J. Merrigan
Grace Merrigan, Owner

STATE OF Oregon
County of Deschutes ss.

This instrument was acknowledged before me on August 26, 1996 by Larry and Grace Merrigan.



Wendy Nord
Notary Public for Oregon
My commission expires: 11-7-99

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:

96 OCT 16 AM 9:17

MARY SUE PENHOLLOW
COUNTY CLERK

BY: M. Sains DEPUTY
NO. 96-38276 FILE 105
DESCHUTES COUNTY OFFICIAL RECORDS