

**VOL: 2001    PAGE: 1071**  
**RECORDED DOCUMENT**

**STATE OF OREGON**  
**COUNTY OF DESCHUTES**



\*2001-1071    \* Vol-Page

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**DO NOT REMOVE THIS CERTIFICATE**

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

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

DATE AND TIME:        Jan. 9, 2001; 8:04 a.m.

RECEIPT NO:            30572

DOCUMENT TYPE:        Planned Community  
                                 Subdivision Declaration

FEE PAID:                \$101.00

NUMBER OF PAGES:    15

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

**MARY SUE PENHOLLOW**  
**DESCHUTES COUNTY CLERK**

**PLANNED COMMUNITY SUBDIVISION DECLARATION  
(De Minimis Planned Community)  
PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS  
AND RESERVATIONS OF EASEMENTS FOR  
OAK VIEW - ADDITION OF PHASE III**

Pinnacle Productions, L.L.C., and Cascade North Construction, L.L.C., hereinafter referred to as "Developers," are the owners and developers of the following real property, hereinafter referred to as "The Property:"

See Exhibit "A," attached hereto and incorporated herein by this reference.

Developers have previously subjected Oak View Phases I and II to these protective covenants, conditions, and restrictions (hereinafter "Protective Covenants"), and desire to add The Property as additional land subject to these Protective Covenants pursuant to Section 22d. hereof. The following covenants, conditions, and restrictions shall apply to The Property, including any common areas and any future lots created with land included within The Property:

**LAND USE AND BUILDING TYPE:**

**1. OCCUPANCY AND SIZE:**

- a. No lot shall be used except for residential purposes.
- b. No building shall be erected which shall exceed two and one-half stories in height.
- c. No residence may be constructed on any lot unless it includes a garage on the same lot. The garage shall be large enough to accommodate a minimum of two cars.

**2. BUILDING LOCATION:**

- a. No building shall be erected in a location which violates the required yard (setback) requirements of the City of Bend's zoning ordinance, unless a variance to said standards is obtained from the City.
- b. Each building shall be located on each parcel so as to be compatible with the natural surroundings and with other buildings.
- c. The ACC (as defined below) rules may impose more stringent required yard (setback) requirements for structures than required by the City of Bend's zoning regulations. The more stringent of the two sets of rules shall apply to all structures.

*Returned Kelly Rogers  
P. 6/19/95  
Bend OR 97708*

**3. FENCES:**

Fences which are intended to screen recreational vehicles, boats, jacuzzis, saunas, motor homes and trailers shall be seventy-two inches (72") in height, unless the ACC gives prior written approval as to a different height, which such consent may be withheld in its sole and absolute discretion. All other fences shall be sixty inches (60") in height, unless the ACC gives prior written approval as to a different height, which such consent may be withheld in its sole and absolute discretion.

**4. TIME OF CONSTRUCTION:**

All buildings constructed on subdivision lots must be completed within twelve months from the date construction is commenced.

**5. BUILDING EXTERIORS:**

All homes shall include masonry on their exterior walls, in a location that is visible from an adjoining public street. The amount of such masonry shall be determined by the Architectural Control Committee (hereinafter, "ACC"), as determined in the sole discretion of the ACC. All building exteriors shall be in harmony with existing residences, as determined in the sole discretion of the ACC. Paint color for building exteriors must be approved by the ACC. No visible reflective metal flashing shall be allowed on any home.

**6. ROOF:**

All structures shall be required to have a minimum of a 25-year architectural style roofing material and a roof with a minimum 6/12 pitch. An exception to the 6/12 roof pitch requirement may be granted by the ACC for dormers, porches, or outbuildings which do not detract from the appearance of the lot and will not adversely affect neighboring properties. The ACC may require screening of outbuildings as a condition of approval of an exception to the 6/12 roof pitch requirement. An outbuilding is, for purposes of these covenants, a fully enclosed building or structure that is 125-square feet or less in size.

**7. MOBILE STRUCTURES:**

No building, whether intended for use in whole or in part as a main residential structure or for use as a garage or other outbuilding, shall be moved upon the premises, with the exception of new, manufactured outbuildings that have been pre-approved by the ACC. No motor homes, campers, trailers, camping equipment, or boats shall be used for overnight living accommodations. No mobile homes or modular homes of any kind are permitted in Oak View.

**8. SIZE OF RESIDENCE:**

No residence shall be constructed of less than 1,400-square feet of living area, exclusive of garages, porches, and outbuildings. Detached garages and outbuildings shall be constructed of quality materials and have an appearance which will conform to the residence.

**9. DRIVEWAYS:**

All driveways shall be concrete or paved. Parking areas shall be surfaced of materials approved by the ACC.

**10. TREES:**

Existing trees may be removed only with the express written permission of the ACC.

**11. LANDSCAPING:**

All yards shall be landscaped within six (6) months after the exterior of a residence is finished, and in no event later than six (6) months after occupancy of the dwelling with landscaping approved by the ACC and according to the ACC-approved plan.

**12. NUISANCES:**

- a. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.
- b. No pets or domestic animals shall be permitted to run loose or unattended.
- c. No excessive or unnecessary noise shall be generated by any vehicles, appliances, tools, or pets.
- d. No gasoline may be stored in bulk tanks upon the property, either above or below the ground.
- e. No garbage or refuse will be allowed to remain on property unless stored in sealed containers. In no event shall garbage or refuse remain on any property for a period in excess of two weeks.

**13. LIVESTOCK & POULTRY:**

No animals, livestock, swine, or poultry of any kind shall be raised, bred, or kept on any lot, with the exception of dogs, cats, or household pets which may be kept provided that they are not kept, bred, or maintained for any commercial purposes and are kept inside of the residence. The term "household pets" includes animals commonly kept as pets within a residence such as hamsters, gerbils, guinea pigs, birds, lizards, and mice and specifically excludes, but is not limited to, pot-bellied pigs and other swine, poultry, rats, and snakes.

**14. ARCHITECTURAL CONTROL:**

- a. No building 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 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. Written ACC approval must be obtained before applying for a building permit from the governing agency.
- 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. The ACC shall have the sole and final authority to determine the appropriateness of all buildings, structures, landscaping, and outbuildings and the requirements of these Protective Covenants as they relate to development of any of the lot bound by the covenants. Any judicial action or proceeding brought to challenge any decision of the ACC shall be commenced within thirty days of the mailing of the ACC's written decision to the applicant and other lot owners who submitted written comments to the ACC regarding the development proposal during the ACC review process. Any such judicial action challenging an ACC decision shall be limited to review for fraud, bad faith, or a failure to exercise honest judgment. The prevailing party in any such judicial action shall be entitled to recover their reasonable costs of collection and attorney fees at trial and on appeal therefrom.
- d. Application Deposit and Filing Fee. Applications for the review of structures and buildings by the ACC shall be accompanied by a filing fee of \$100 and deposit of \$650, payable to the ACC. Failure to pay said fee will be grounds for denial of the application. The filing fee may be raised from time to time, as needed to cover all design review related costs incurred by The ACC.

The deposit will be held by The ACC until the applicant has done the following: i) obtained approval of the building and structural plans from the ACC; and ii) has obtained all required building or structural approvals required by regulating governmental entities; and iii) has built the buildings or structures in compliance with the approved plans and rules of the ACC and provisions of these Protective Covenants; and iv) has completely landscaped the front yard in accordance with the ACC-approved landscaping plan. Once an applicant has provided the ACC with a copy of the City of Bend's final building inspection approval, and the ACC has confirmed that conditions in the preceding sentence have been satisfied, then the ACC shall refund the \$650 deposit to the applicant, without interest and less any ACC imposed fines and charges for violations of these Protective Covenants, approved plans or ACC rules and extraordinary expenses incurred for design review (legal fees, architect, or designer services, etc.). The remaining portions of the deposit shall be used to finance the ACC's enforcement of these Protective Covenants and any architectural regulations created by the ACC. Any deposit that has not been claimed by the applicant within two (2) years after commencement of construction shall be forfeited to the ACC.

- e. Improvements to Comply with ACC Approved Plans. All structures, buildings, improvements, landscaping, and ornamentation must be completed in accordance with the plans and specifications approved by the ACC.
- f. Revisions of Approved Plans. ACC approval must be obtained for any changes in revised plans and prior to the construction or placement of any building, structure, or outbuilding in a manner that does not conform to the approved plans. If plans are altered in any way, the above-required information must be resubmitted and ACC approval obtained.

#### **15. ARCHITECTURAL CONTROL COMMITTEE:**

- a. Membership. The ACC shall consist of three persons appointed by Developers. Any two members of the ACC shall have the power to act on behalf of the ACC. Developers shall keep on file at its principal office a list of the names and addresses of the members of the ACC for review by lot owners.
- 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 these 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 these Protective Covenants. The rules may also interpret the provisions of these Protective Covenants and regulate construction activities on property bound by these 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 these 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; and
  - II. All buildings, garages, and other structures and improvements, access drives and other improved areas, and the locations thereof on the site; and
  - III. Plans for all floors, cross-sections, and elevations, including projections and wing walls and height of ridge measured from street grade; and
  - IV. All landscaping, including existing and proposed tree locations and planting areas and species thereof, mail boxes, and exterior ornamentation; and
  - V. Exterior lighting; and
  - VI. Wall, fences, and screening; and
  - VII. Patios, decks, pools porches; and
  - VIII. Signs and parking areas; and
  - IX. Samples of materials to be used as may be reasonably requested by the ACC; and
  - X. Setbacks required by local land use or building regulations; and
  - XI. Utility lines and connections; and
  - XII. Scale of drawing; and
  - XIII. Specifications describing types of construction and exterior materials to be used, including, without limitation, the colors and manufacturer thereof; and
  - XIV. Such other relevant information, data, and drawings as may be requested by the ACC.
- d. **ACC Discretion.** The interpretation and application of the provisions of the ACC architectural regulations and the provisions of these 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. **Judicial Action.** Any judicial action or proceeding brought to challenge a decision of the ACC shall be commenced within thirty 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. The prevailing party in any such judicial action shall be entitled to recover their reasonable costs of collection and attorney fees at trial and on appeal therefrom.

- f. **Turnover of Control.** Developers may, at any time, delegate any and all of its duties and authority granted by these Protective Covenants, to the members of the ACC, except the ability to appoint ACC members. At such time the Developers shall cause to be recorded in the official records of Deschutes County, Oregon, a declaration stating that Developers no longer desire to exercise any further controls over The Property. Recordation of such a declaration shall formally terminate Developers' interest and all rights and duties of Developers shall be vested in the current ACC members. The initial ACC members shall serve as the only members of the ACC for a period of two years from the date that the Developers record the aforementioned declaration. Upon the expiration of this two year period, the ACC shall hold an election for the three ACC member positions. Any lot owner may nominate anyone to serve on the ACC. The three nominees obtaining the three highest vote totals shall constitute the newly elected ACC members. The total number of votes entitled to be cast for each ACC member's position shall be based upon the total number of lots within The Property. Each lot owner shall have the right to cast one vote for each lot owned. The newly elected ACC members shall meet within ten days after their election and shall assume the rights and duties of the ACC. New elections shall be held every two years pursuant to the procedures of this sub-section (f). Newly elected ACC members shall serve until their replacement is elected and takes office.
- g. **Liability.** Neither the ACC nor any member thereof shall be liable to any person, including, lot owners or any applicants for ACC approval or participant in ACC review or enforcement processes, for any damage, loss, or prejudice suffered or claimed by such person, provided only that, if an action is brought on account of any action or omission of the ACC or any member thereof, the ACC, in accordance with actual knowledge possessed by it, must have acted in good faith. Except in cases where the ACC is found to have acted in bad faith, all lot owners shall indemnify and hold harmless the ACC, and any members thereof, from any and all claims, liabilities, and obligations ("Liabilities") of every kind and description, contingent or otherwise, arising out of or related to the operation of the ACC, or which pertain to any provisions of these Protective Covenants, including all costs associated with such claims or actions, including reasonable attorney fees ("Costs"). Once such action has been determined by arbitration, trial or settlement, the ACC shall have the authority to levy against each lot within The Property a one time fee for such lots pro rata share of such Liabilities and Costs. Fees levied by the ACC shall be paid by the lot owner within 10 days of imposition of the fee. Unpaid fees shall accrue interest at a rate of 15% per annum. Delinquent fees 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 fee shall be entitled to recover their reasonable costs of collection and attorney fees at trial and on appeal therefrom.



- h. The ACC and any duly appointed member of the ACC is hereby granted permission to enter upon any property bound by the Protective Covenants for the limited purpose of determining whether or not the use of the property or any improvement thereon is then in compliance with the Protective Covenants. Such entry may occur at any reasonable hour and at reasonable intervals of time. No such entry shall be deemed to constitute a trespass or to otherwise create a right of action against the ACC or any ACC member by the lot owner or other persons occupying some or all of the lot.

**16. MAINTENANCE OF PROPERTY:**

- a. Each parcel and its improvements shall be maintained in a clean and attractive condition in good repair and in such a fashion as not to create a fire hazard or visual problem.

**17. FIREARMS:**

- a. No firearms, air pistols, archery, slings shots, or any other weapons or projectiles shall be used or discharged anywhere within The Property.

**18. PARKING AND STORAGE:**

- a. No parking or storage of any vehicle used for commercial purposes will be allowed at any time within this subdivision. This provision extends specifically to trucks of any kind larger than one (1) ton size and generally to any other items which may be considered of a commercial nature.
- b. Storage of vehicles, trailers, pickups, or boats will be allowed only if screened from sight from any street within the subdivision and if not otherwise prohibited by other provisions of the Protective Covenants. These items must be concealed by a solid screen behind a line extending from the front line of the house or in the case of a corner lot the side line of the house extending to the lot line. The design and construction of the solid screen must be approved by the ACC prior to construction.

**19. ALLEYS:**

- a. Defined. The Property contains some private alleyways between certain lots ("Alleys"), as shown on the Plat of Oak View, Plat Cabinet E-455 to 457, and E-574 - 578 ("Plat"), which is incorporated herein by this reference. The lots which are adjacent to any Alleys shall hereinafter be known as "Alley Lots."

- b. **Easement.** The Alleys shall be perpetual, non-exclusive easements over and across the Alley Lots, which shall be for the use of owners of Alley Lots. These easements shall be used for ingress and egress only. The Alleys may be utilized by vehicular or foot traffic. Developers hereby reserves, for the benefit of each Alley Lot, and each owner of an Alley Lot grants to each other owner of an Alley Lot, whether or not such grant is reflected in the deed to said lot, a perpetual, non-exclusive easement over and across each Alley Lot in the location of the Alleys shown on the Plat, for ingress and egress as defined herein.
- c. **Maintenance.** The Alleys shall be maintained by the owners of the Alley Lots. The cost of such maintenance shall be governed and allocated pursuant to ORS 105.170 through 105.185, as may be amended by the state legislature from time to time.
- d. **Other Restrictions.** Notwithstanding anything in these Protective Covenants to the contrary, the following restrictions or exceptions shall apply to Alley Lots: (i) No parking shall be permitted in the Alleys; (ii) Driveways and garages on Alley Lots shall be located off of Alleys rather than main streets; (iii) Fences on Alley Lots which face the Alleys shall have a height no greater than 60 inches (unless a height of 72 inches is required by Section 3 above); and (iv) any gates along the Alleys shall open inward or shall slide to the side so as to not obstruct the Alleys.
- e. **Right to Grant Additional Access.** Developers hereby reserves, for a period of three (3) years after the recording of these Protective Covenants, the right to grant the right of use of the Alleys to owners of lots abutting the Alleys that are not within The Property, provided that the owners of such lots agree to be bound by the provisions of this Section 19 of these Protective Covenants.

**20. ASSESSMENT POWERS:**

- a. Each lot owner, by acceptance of a deed for the conveyance of a lot hereof, whether or not it shall be so expressed in such deed, is deemed to personally covenant and agrees to pay the ACC regular assessments or charges for common expenses and costs. All such assessments, together with interest thereon at the rate established from time to time by resolution of the ACC and together with all other costs, fees, charges and fines allowed by law, shall be a lien and charge on the land and shall be a continuing lien upon such lot against which each such assessment is made. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law.
- b. The assessments levied under this Section 20 shall be used exclusively for the purpose of landscaping and maintenance of The Property, for the costs of operating the ACC, and to create a replacement reserve for those items the ACC has responsibility. The ACC shall determine the annual assessment in accordance

with the provisions hereof, provided, however, the annual assessment shall be sufficient to meet the obligations imposed by these Protective Covenants. The ACC shall set the date(s) such assessment shall become due.

- c. Notwithstanding anything in this Section 20 to the contrary, the assessment amount levied against any lot or all lots shall never exceed the amounts permitted for The Property to remain a "de minimis" planned community, as that term is defined in ORS 94.570, which may be amended from time to time. At the time that these Protective Covenants were entered into, ORS 94.570 stated that: "A de minimis planned community is one for which the estimated annual assessment against all lots in the planned community does not exceed \$1,000 or \$100 per lot, whichever is greater." It is the intent of the Developers that The Property always be a "de minimis" planned community; however, once Developers have delegated any and all of their duties and authority granted by these Protective Covenants to the ACC (pursuant to Section 15(f) above), then upon an affirmative vote of a majority of all lot owners, including lots owned by the Developers, that The Property no longer be considered a "de minimis" planned community, then the first sentence of this sub-section (j) shall no longer be applicable.

## 21. HOMEOWNERS ASSOCIATION:

- a. Upon formal termination of the Developers' control, the ACC may, but shall not be obligated to, form an Oregon nonprofit organization called the OAK VIEW PUD Homeowners Association (hereinafter, the "HOA"), the members of which shall be all the lot owners within The Property. HOA shall be governed by a three person board of directors and shall incorporate. Except as amended as provided herein, these Protective Covenants shall serve as the Bylaws of the HOA. If the ACC elects to form the HOA, the ACC shall cause the HOA to be incorporated and the initially elected officers and selected registered agent shall be placed on the original filing immediately after the organizational meeting.
- b. If the ACC elects to form the HOA, the initial board of directors shall be elected. Persons eligible for the initial HOA shall be limited to owners of any lot within The Property. ACC shall solicit from and circulate to all lot owners a list of nominees for the initial board of directors positions and any owner interested is encouraged to submit their name to the ACC. ACC shall then conduct an election of the initial board of directors. The three nominees obtaining the three highest vote totals shall constitute the initial board of directors.
- c. The total number of votes entitled to be cast for each director's position shall be based upon the total number of lots within The Property. Each lot owner shall have the right to cast one vote for each lot owned. The initial board of directors shall meet within ten days after their election and may at that time adopt any governing documents including bylaws, guidelines, procedures, rules and

regulations, relating to the architectural, landscaping, signing and lighting controls within The Property.

- d. The HOA's board shall have the following powers: (1) govern the affairs of the HOA; (2) adopt and amend bylaws and rules and regulations; (3) adopt and amend budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from owners; (4) hire and terminate managing agents and other employees, agent and independent contractors; (5) 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 The Property; (6) make contracts and incur liabilities; (7) regulate the use, maintenance, repair, replacement and modification of any common areas; (8) cause additional improvements to be made as a part of any common areas; (9) 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; (10) impose and receive any payments, fees or charges for the use, rental or operation of any common areas; (11) impose charges for 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 these Protective Covenants, bylaws and rules and regulations of the HOA; (12) impose reasonable charges for the preparation and recordation of amendments to these Protective Covenants or statements of unpaid assessments; (13) provide for the indemnification of its officers and executive board, as may be limited by ORS Chapter 65, and maintain director's and officers liability insurance; (14) exercise any other powers conferred by these Protective Covenants and all other powers that may be exercised in this state by any such association; and exercise any other powers determined by the HOA to be necessary and proper for the governance and operation of the HOA.
- e. Unless expressly prohibited by these Protective Covenants, the HOA has the authority to execute, acknowledge, deliver and record on behalf of the lot owners any and all leases, easements, rights of way, licenses and other similar interests affecting any common areas and consent to vacation of roadways within and adjacent to The Property.
- f. Upon the formation of HOA, the HOA may, but is not obligated to, terminate the powers of the ACC by a written declaration to that effect, and upon such termination, all rights, powers and duties of the ACC and Developers, as stated herein, shall be vested in the HOA.
- g. Any member of the HOA's board may be terminated by a recall election held at the written request of any 4 members of the HOA. The election shall be held 30 days following such written request. Such board member shall be terminated upon a majority vote of all members.

**22. GENERAL PROVISIONS:**

- a. **Term.** These Protective Covenants are to run with the land and shall be binding on all parties and all persons claiming under them through January 1, 2020, 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 Deschutes County.
- b. **Enforcement.** The ACC is granted the authority to enforce the requirements of these Protective Covenants and compliance with ACC-approved plans. Lot owners are responsible for any and all violations of these Protective Covenants or of ACC-approved plans. Complaints of violations may be filed with the ACC by any lot owner or any member of the ACC. Once a complaint is filed with the ACC, the ACC shall determine whether to resolve the matter informally with the lot owner who is allegedly violating the regulations or to set the matter for an informal hearing. If a lot owner is found by the ACC to have violated a provision of the covenants or ACC-approved plans, the owner shall be given 30 days to correct the violation. If the violation is not corrected 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 violations corrected. For violations that are not capable of correction, a fine of up to \$5,000 may be imposed at the conclusion of the informal hearing. Without limiting the foregoing, each lot owner has the right to enforce, through a judicial proceeding or action, any of the provisions of these Protective Covenants.
- c. **Notice of Hearing.** The notice of the date and time of the informal 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. The notice must be sent at least 3 days prior to the hearing.
- d. **Fines.** 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. In such a proceeding, the merits of the matter that resulted in the imposition of a fine shall be irrelevant. 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 ACC operating account and shall be used to fund the ACC and any subdivision improvement expenses.

Additionally, enforcement actions may 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.

- e. Severability. Invalidation of any one of these Protective Covenants by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.
- f. Amendment. The ACC is delegated the authority to file amended Protective Covenants in the official records of the Deschutes County Clerk, upon a vote in favor of the amendment by a majority of lot owners including lots owned by the Developers. Once filed, the amended Protective Covenants shall bind all lots then bound by these Protective Covenants in existence just prior to the recording of the amended Protective Covenants. Amended Protective Covenants shall be signed by a minimum of two members of the ACC. An amendment is effective when filed in the official records of Deschutes County.
- g. Allocation of Votes. Each lot in The Property shall be granted a single vote for purposes of voting to amend these Protective Covenants. That vote may be exercised by any owner of the lot. In the event that more than one vote is cast by owners of a single lot, the sole vote allocated to that lot shall be divided evenly between those owners casting ballots. For purposes of amending these Protective Covenants, when land is conveyed by a land sale contract, the contract purchaser and not the contract seller shall be entitled to exercise the voting rights of the lot.
- h. Additional Land. Developers hereby reserves the right to subject additional land to the controls and provisions of this Protective Covenants document by filing a declaration in the deed records of Deschutes County to said effect. Said land must adjoin the boundaries of The Property, or the boundaries of subsequently annexed property. Once property has been subjected to the provisions of these

Protective Covenants, the majority required for amendment of the covenants shall be determined by counting all lots within the annexed area as well as all lots within The Property.

IN WITNESS WHEREOF, Developers has caused this instrument to be executed for recording as the Protective Covenants, Conditions, and Restrictions for OAK VIEW this 5th day of January, 2001.

PINNACLE PRODUCTIONS, L.L.C.

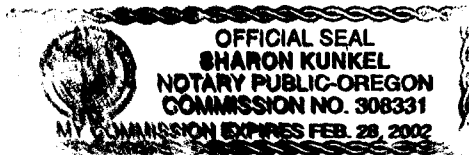
By Kelly W. Rogers  
Title member

CASCADE NORTH CONSTRUCTION, L.L.C.

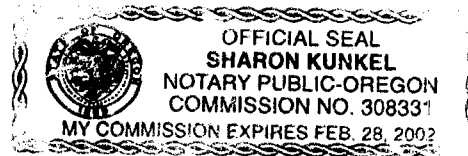
By [Signature]  
Title Member

STATE OF OREGON, County of Deschutes, ss:

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of Jan, 2001, by Kelly W. Rogers as Managing member of and for Pinnacle Productions, L.L.C.



[Signature]  
Notary Public for Oregon



STATE OF OREGON, County of Deschutes, ss:

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of January, 2001, by ~~Brent~~ Randal S. Thornton mgr member of and for Cascade North Construction, L.L.C.



[Signature]  
Notary Public for Oregon

**EXHIBIT "A"**

A parcel of land containing 2.49 acres, more or less, located in a portion of the Southeast One-Quarter of Northwest One-Quarter (SE1/4 NW1/4) of Section 26, Township 17 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at the southeast corner of Lot 12, Oakview Phase II, filed in Cabinet E-468, Office of Deschutes County Clerk; thence along easterly boundary line of said Oakview, Phase II, North 00°12'05" East a distance of 250.00 feet to the northeast corner of Lot 11, said Oakview Phase II; thence leaving said easterly boundary line, North 89°57'15" East a distance of 384.70 feet; thence 29.81 feet along a non-tangent curve to the right with a radius of 120.00 feet, the chord of which bears South 06°54'53" East a distance of 29.73 feet; thence South 00°12'05" West a distance of 61.48 feet; thence North 89°57'15" East a distance of 190.00 feet to a point on the westerly 20.00 foot right-of-way line of Eagle Road; thence along said westerly right-of-way line, South 00°12'05" West a distance of 60.00 feet to the northeast corner of the plat of Oakview, Phase I, filed in Cabinet E-455, Office of Deschutes County Clerk; thence along the northerly and westerly boundary lines of said Oakview, Phase I the following two courses:

South 89°57'15" West a distance of 190.00 feet;  
 South 00°12'05" West a distance of 99.00 feet to the northeast corner of Lot 35,  
 Sunpointe, Phase III, filed in Cabinet D-570, Office of the Deschutes County  
 Clerk;

thence along the northerly boundary line of said Sunpointe, Phase III, South 89°57'15" West a distance of 388.39 feet to the "Point of Beginning," the terminus of this description.

**TOGETHER WITH** an easement for an Alley (as defined in Section 19 of these Protective Covenants) described as follows:

A strip of land 8.00 feet in width, located in a portion of the Southeast One-Quarter of the Northwest One-Quarter (SE1/4 NW1/4) of Section 26, Township 17 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at the northwest corner of Lot 1, Oakview Phase II, filed with the Deschutes County Clerk per Cabinet Number E-468; thence leaving the boundary of said Oakview Phase II, North 00°06'54" East a distance of 8.00 feet; thence North 89°57'15" East a distance of 945.90 feet; thence around a 120.00 foot radius curve right 8.32 feet (chord bears South 16°01'04" East, 8.32 feet); thence South 89°57'15" West a distance of 384.70 feet to the northeast corner of said Oakview Phase II; thence along the northerly boundary line of said Oakview Phase II, South 89°57'15" West a distance of 563.51 feet to the "Point of Beginning," the terminus of this description.