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DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2006-35886



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Bradley S. Miller  
Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland, Oregon 97204

### RESTRICTIVE COVENANT AGREEMENT

**THIS RESTRICTIVE COVENANT AGREEMENT** (this "Agreement") is made as of the 24th day of May, 2006 by CASCADE HIGHLANDS, LLC ("Cascade") and ARROWOOD DEVELOPMENT, LLC (the "Arrowood").

Cascade is the owner of certain real property located in Deschutes County, Oregon more particularly described on the attached Exhibit A (the "Crescent Property"). Immediately following the recordation of this Agreement, Arrowood will acquire title to the Crescent Property. Arrowood has agreed, as a condition to the acquisition of the Crescent Property, to execute this Agreement for the benefit of Cascade and the Broken Top Community Association, Inc., an Oregon non profit corporation ("Broken Top").

**NOW, THEREFORE**, Cascade and Arrowood hereby agree as follows:

1. Design Guidelines. From and after the date hereof, the Crescent Property is hereby subject to and subject to the Design Guidelines attached as Exhibit B (the "Design Guidelines"). In no event may any portion of the Crescent Property be developed except in compliance with the Design Guidelines; provided that such Design Guidelines may be revised by Crescent with the prior written consent of Broken Top, which consent may be withheld in the sole discretion of Broken Top to the extent any such change to the Design Guidelines pertains to or affects the design of a house, the height of a structure, any setback requirements, any lot coverage requirements or any limitations of allowable upper level floor space (the "Critical Design Guidelines"). For all proposed changes to the Design Guidelines that do not involve any of the Critical Design Guidelines, the consent of Broken Top shall not be unreasonably withheld.

2. CC&Rs. The Design Guidelines contemplate the existence of covenants, conditions and restrictions for the Crescent Property (the "CC&Rs") and the existence of a Crescent Design Review Committee (the "DRC"). Neither the CC&Rs nor the DRC exist as of the date hereof. Following Arrowood's acquisition of the Crescent Property (but in no event later than the first recordation of the subdivision of the Crescent Property into separate legal lots), Arrowood shall record CC&Rs against the Crescent Property and form the DRC; provided, however, that subject to the ability to amend the Design Guidelines in Section 1 above, in no event shall: (i) any provision of the CC&Rs or any document pertaining to the formation or operation of the DRC be inconsistent or contrary in any respect to the Design Guidelines, (ii) the CC&Rs amend the Design Guidelines, or (iii) the DRC have the right to amend the Design Guidelines or waive compliance with any term or provision of the Design Guidelines.

3. Rights of Successors. The restrictions, covenants, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the owner of the Cascade Property, Cascade, and Broken Top and their respective heirs, representatives, lessees, successors and assigns.

4. Modification and Cancellation. This Agreement (including exhibits) may be modified or canceled only by written agreement signed by the owner of the Cascade Property, Cascade, and Broken Top or their successors in interest.

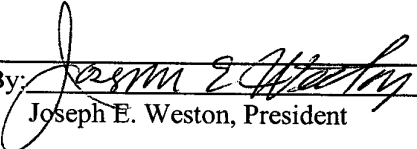
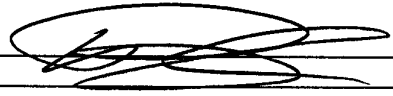
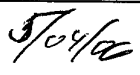
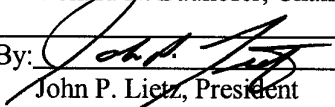
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5. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

6. Attorneys' Fee. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the US Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith (collectively, "Attorneys' Fees"). In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

7. Entire Agreement/Severability. This Agreement constitutes the entire agreement, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document. Invalidation of any provision of this Agreement, in whole or in part, or of any application of a provision of this Agreement, by judgment or court order shall in no way affect other provisions or applications.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement the day and year first written above.

CASCADE:	ARROWOOD
CASCADE HIGHLANDS, LLC	ARROWOOD DEVELOPMENT, LLC
By:  Joseph E. Weston, President	By:  Donald M. Bauhofer, Chairman
	By:  John P. Lietz, President

STATE OF OREGON )

County of Multnomah ) ss.

The foregoing instrument was acknowledged before me on this 4<sup>th</sup> day of May, 2006 by Joseph E Weston President of Cascade Highlands, LLC, on behalf of such



Tracie A Massey  
Notary Public for Oregon  
My Commission Expires: 3/17/08

STATE OF OREGON )

County of Deschutes ) ss.

The foregoing instrument was acknowledged before me on this 24<sup>th</sup> day of May, 2006 by Don Buchhofer Chairman of Arrowood Development, and John Lietz President of LLC, on behalf of such



Amy Oatman  
Notary Public for Oregon  
My Commission Expires: 6/12/09

**EXHIBIT A**

**CASCADE PROPERTY LEGAL DESCRIPTION**

**Cascade Highlands Resort  
"Crescent" land  
Legal Description  
May 10, 2006**

All that portion of Parcel 2 of Partition Plat 2006-23 in Deschutes County, Oregon, as per plat recorded May 2, 2006, in Volume 2006, Page 30472, Official Records of said Deschutes County; lying northerly of the following described line:

Beginning at the intersection of the east line of said Parcel 2 and the south line of Metolius Drive, as shown on said Partition Plat 2006-23;

Thence southwesterly along said south line of Metolius Drive, along the arc of a 680.00 foot radius curve to the left, through a central angle of  $23^{\circ}28'22''$ , an arc length of 278.58 feet, the chord of which bears South  $65^{\circ}36'41''$  West, 276.64 feet;

Thence leaving said south line of Metolius Drive, South  $53^{\circ}52'30''$  West 100.00 feet;

Thence southwesterly along the arc of a 540.00 foot radius curve to the right, through a central angle of  $11^{\circ}27'33''$ , an arc length of 108.00 feet, the chord of which bears South  $59^{\circ}36'16''$  West, 107.82 feet;

Thence South  $65^{\circ}20'03''$  West 151.91 feet;

Thence southwesterly along the arc of a 460.00 foot radius curve to the left, through a central angle of  $28^{\circ}18'55''$ , an arc length of 227.33 feet, the chord of which bears South  $51^{\circ}10'35''$  West, 225.02 feet;

Thence South  $37^{\circ}01'07''$  West 460.99 feet to the west line of said Parcel 2.

**EXHIBIT B**  
**DESIGN GUIDELINES**

**THE CRESCENT**  
**DESIGN GUIDELINES**

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## **I. INTRODUCTION**

These Design Guidelines are intended as an information resource for Owners of The Crescent homesites. It is a critical component of the interactive process required when planning the development of a Crescent homesite. The Design Guidelines are administered and enforced by The Crescent Design Review Committee (DRC). The Guidelines are binding upon all persons who construct, refinish, or alter any part of the exterior of any home or make other improvements upon any property thereon. All owners must comply with the appropriate City or County regulations, The Crescent Declaration of Covenants, Conditions, and Restrictions, and these Design Guidelines.

The Design Guidelines describe the considerations the Design Review Committee will apply in reviewing the site planning, architectural design, and landscaping plans for your new home at The Crescent. They also outline the procedures that are to be followed during the design review process. In addition, the Guidelines detail the Design and Construction Guidelines the general contractor, all subcontractors and suppliers must observe while your home is under construction.

There are a few general points to keep in mind when reading these Guidelines.

First, remember that the Design Review Committee's responsibility is to accommodate creativity and appropriateness of home design while maintaining standards of quality and integrity. The Design Guidelines describe the visual and environmental goals of The Crescent and the minimum acceptable levels of site planning, architecture, detailing, landscape design, and construction beneath which approvals to build may not be granted. This approach has left a relatively large area open for the Design Review Committee's judgment. In exercising that judgment, the Design Review Committee will use its best efforts to make decisions in keeping with the design objectives on which The Crescent is founded.

Second, all applications and interpretations of these Guidelines should be made in a reasonable manner. Therefore, when you see words like "where possible", please keep in mind that they mean "where possible, within reason".

Third, the focus of these Guidelines is the outward perception of The Crescent, and of the homes and land within that community. Therefore, the scope of design review is limited exclusively to what can be seen, heard, or otherwise sensed from outside each property. In using terms like "visible" or "screened", it refers only to visibility from the common areas of The Crescent, from the golf course, or from neighboring properties. What cannot be seen or heard from these areas is not controlled by these Guidelines and may be handled without the need for any review.

## **II. GENERAL ARCHITECTURAL GUIDELINES**

There is no particular architectural style that is required at The Crescent. However, certain styles, while having a beauty of their own, are so closely associated with other times and places that their use would distract from the harmony of The Crescent community. These styles include Santa Fe adobe, Log, Victorian, Colonial, and Southern Plantation. Also, experimental, radical, or ultra-contemporary designs are not in keeping with the quiet, more conservative character of The Crescent.

Diverse architectural harmony is to be achieved through the use of a controlled range of complimentary materials and colors such as natural wood siding, native stone, and concrete shake type tile roofs in light to dark ranges of earth tones. Using these materials, and other materials approved by the Design Review Committee as described in these guidelines, a very wide range of architectural designs can be achieved.



### **III. APPLICATION AND APPROVAL PROCEDURES**

**3.01 Application Procedure:** All applications shall be submitted to the DRC manager at least fourteen (14) calendar days prior to the next scheduled DRC meeting date. Applications shall include the construction application, plans, fees and information described below. Plans are to include one full size set of plans, and two sets of plans reduced to 11"x 17". Refer to the following sections for specific drawing scales. The DRC manager will weekly post a notice at The Crescent Owners' Association office for the homes to be reviewed at the next regular DRC meeting. In addition, the DRC manager will notify by mail all owners who own property within 500 feet of a homesite under review (the subject property) that improvement plans have been submitted and are scheduled for review by the DRC. The date of the DRC review will be indicated in the notification. Lastly, the DRC manager will place a notification poster on the subject lot, stating that improvement plans have been submitted, and stating the DRC review meeting date. The DRC will review the plans and will respond in writing to the applicant within fourteen (14) days after the review. The owner and/or the owner's representatives are welcome to meet with the Committee. The Committee will meet in a closed meeting and approve, approve with conditions, or decline approval of the application. The DRC manager will communicate with the owner or the owner's representative.

Additions, remodels or modifications during construction or after completion of an approved design, including landscaping and exterior colors, shall be submitted to the DRC for approval prior to making such additions, remodels or modifications.

**3.02 Pre-Design Conference:** Prior to preparing preliminary plans for any proposed improvement, the owner and/or owner's representative is encouraged to meet with the DRC manager to discuss proposed plans and to resolve any questions regarding building requirements at The Crescent. The purpose of this informal review is to obtain guidance from the Committee concerning design options and specific site opportunities and constraints prior to initiating preliminary design. The pre-design conference is optional.

**3.03 Preliminary Design Application:** The purpose of the preliminary design review is to enable the DRC to review plans at the preliminary design stage and comment on designs which may not be in keeping with the concepts of The Crescent, or which could be duplications of other designs in proximity to the requested improvement, or to suggest changes in the design. The intent is to identify at an early stage in the design review process and insofar as possible, eliminate difficulties which could arise in the Final Design Application. The construction document application is optional.

The preliminary design application shall include:

**3.03.1 Site Plan:** A conceptual site plan with the roof plan at no less than 1" equals 10'-0" which shows the lot number; adjacent streets; the orientation of the site; the dimensions of the lot; driveway and parking areas; existing trees greater than 6" in diameter measured at 6' in height (to remain and to be removed); both existing and proposed finish grades (minimum 1'-0" contour intervals); the proposed location of fences and screens; all setbacks and easements; and special site features to be preserved or removed.

**3.03.2 Floor Plans and Building Elevations:** All floor plans and exterior elevations at a scale of no less than 1/8" equals 1'-0". The building elevations must reflect accurate finish grade (topography).

**3.03.3 Design Review Fee:** The fee established by the DRC for review of the preliminary and final architectural and landscape plans shall be submitted along with the Preliminary Design Application signed by both the property owner and the builder, at the

time of the preliminary review. If additional plan review is required, the DRC may require an additional fee.

**3.04 Construction Document Application:** Upon preliminary design approval, construction document plans shall be submitted that conform to the approved preliminary plans. Any changes from the preliminary design submittal shall be brought to the attention of the Committee. The construction documents are the plans approved by City of Bend. Any changes to the exterior, after receiving approval from the City of Bend and the DRC, shall be submitted to the DRC for review and approval. The corners of the proposed building and any other proposed improvements shall be staked and string placed between the stakes, for the manager of the DRC to review and approve. Plans are to include one full size set of plans, and two sets of plans reduced to 11"x17".

The final design application shall include:

**3.04.1 Site Plan:** A complete site plan with the roof plan at a scale of no less than 1" equals 10'-0" with the information required for the preliminary application, including both existing and proposed finished grades (minimum 1'-0" contour intervals). Additional information includes the proposed location and finished elevations at the top and bottom of any retaining walls, decks, fences, screens, driveway and walks; the proposed location of all utility services and meters; and the proposed location of all mechanical equipment. Grading plans must include field verified topographic information. Also add the information listed in section 4.40, including grading and drainage information, erosion control measures, concrete washout location, on-site storm drainage facilities and drainage calculations if necessary to demonstrate the adequacy of the proposed improvements.

**3.04.2 Floor Plans:** Floor plans at a scale of no less than 1/8" equals 1'-0" with finished floor elevations.

**3.04.3 Building Elevations:** Building elevations at a scale of no less than 1/8" equals 1'-0" including accurate finished grade (topography); relationship of the building's finished floor elevations to the proposed finished grade of the lot on each elevation, including decks and patios; exterior building materials; patterns; and roof pitches.

**3.04.4 Exterior Lighting:** Catalog cuts, including size, lamp selection, and finish for fixtures, or legible prints of catalog cuts, for all exterior lighting fixtures to be used, with location of fixtures on a site plan and the elevations.

**3.04.5 Exterior Materials and Colors, Including Masonry:** Sample boards shall be submitted for approval, marked with the owners name and site number. Samples shall be identified with the manufacturer's name, color and/or number, and chips or swatches of all exterior colors shall be submitted, including the following:

- a. Roof material and color
- b. Exterior siding and color
- c. Exterior trim and color
- d. Window frame material and color
- e. Exterior door material and color
- f. Exterior stone/rock and color
- g. Exterior fireplace material

In addition, the applicant shall submit a form with a list of all materials and paint chips with the location of all materials and colors.

**3.04.6 Landscape Plan:** A landscape plan that shows the location, size, type, and species of all existing and proposed plants; irrigation system; decorative materials;

water features; landscape lighting; paving surfaces; walls, steps and fences; and drainage plan. Refer to the attached Appendices A and B for approved trees and shrubs.

**3.04.7 Deferral of Exterior Colors and Landscape Plan Applications:**

An owner may delay submittal of the exterior colors and landscape plan until after the start of construction of the house in order to test an assortment of potential colors with actual materials or to better visualize on-site conditions. No color or material shall be applied, nor landscape work started, until such time as the Committee has had the opportunity to review and approve the selections.

**3.05 Commencement and Completion of Construction:**

Prior to commencing construction the owner shall obtain a copy of The Crescent Community Association Design Guidelines from the DRC and the owner's builder shall give the DRC written acknowledgment that the Design Guidelines have been reviewed. Upon receipt of Final Design approval by the Design Review Committee, the owner shall commence construction of the improvements within one year from the date of such approval or any approval given shall be deemed withdrawn.

All construction, including landscaping, shall be completed within fifteen (15) months after commencement of construction, unless such completion is rendered impossible or would result in great hardship to the owner, due to labor strikes, fires, national emergencies or natural calamities, or unless the owner has requested and been granted an extension. An extension may be granted for delays caused by weather, labor strikes, emergencies or calamities, as long as a good faith effort has been made to complete construction. This extension must be requested by the owner and the length of the extension will be defined by the Committee based on its assessment of the situation.

**3.06 Inspections of Work in Progress and Final Release:**

The DRC, or its authorized representative, may inspect all work in progress and give notice of noncompliance. Absence of such inspection or notification during the construction period does not constitute an approval by the DRC of work in progress or compliance with the Design Guidelines.

In the event of any violation of these Design Guidelines or of the design review provisions (Article 11) of the Declaration of Covenants, Conditions and Restrictions, the DRC may, at its sole discretion and in addition to restoration expenses, impose without limitation a punitive fine, commensurate with the severity of the violation. Such fine shall be paid as provided above for other expenses for which the owner is liable.

Upon completion of any residence or other improvement, the owner shall give written notice of completion to the DRC. Within 10 days of such notification, a representative of the DRC will inspect the residence or other improvements for compliance. If all improvements comply with the approved plans and these Design Guidelines, the DRC will issue a written approval to the owner, constituting a final release of the improvements by the DRC. Final release is to be issued within 30 days of the final inspection.

If it is found that the work was not done in strict compliance with the approved plans or any portion of these Design Guidelines, the DRC will issue a written notice of noncompliance to the owner, specifying the particulars of noncompliance, said notice to be issued within 30 days of the final inspection. The owner shall have 30 days from the date of notice of noncompliance within which to remedy the non-complying portions of the improvement. If, by the end of this time period, the owner has failed to remedy the noncompliance, the DRC may take action to remove the non-complying improvements as provided for in the Design Guidelines and the Declaration of Covenants, Conditions and Restriction for The Crescent Community, including, without limitation, injunctive relief or the imposition of fines.

**3.07 Landscape and Fencing/Wall Application:** Existing trees, rock

outcroppings and other significant natural features shall be preserved where possible and enhanced by judicious limbing, trimming, cleaning, planting with native grasses, trees and shrubs, and watering. Introduction of non-compatible species is prohibited. Appendix A lists approved native trees, shrubs and groundcovers and Appendix B lists approved trees, shrubs and groundcovers for cultivated areas.

The functional uses of plant material should include consideration of seasonal shade from deciduous trees, screening of undesirable views and framing certain views. The composition of plant materials should include consideration of present and mature size, background and foreground balance, relationship to the home, and judicious use of color and texture.

Because of aesthetic, drainage and maintenance considerations, lawns should not abut streets. Front and rear lawn areas should abut lawns of adjacent homesites, to provide a harmonious and uninterrupted appearance.

Areas adjacent and around the residence shall be treated as cultivated areas, with lawns, trees, shrubs and groundcover selected from the list on Appendix B. Rigid landscape design shall be avoided. Transition areas are the areas between the cultivated areas and abutting streets and golf courses. The transition areas should be planted with native landscape material selected from the list on Appendix A. The transition line between the native areas and the cultivated areas shall meander.

The area between the owner's property and the street and the area between any bicycle/pedestrian path and the street along the front of an owner's property is the responsibility of the owner to plant, irrigate and maintain.

Private areas are those areas that are located within walls, courtyards, or other structures and are not visible from adjacent properties. Within private areas, an owner may create a formal landscaping and/or use a wide variety of plant materials.

**3.07.1 Preservation of Existing Trees and Rock Outcroppings:** Existing trees and rock outcroppings to be preserved shall be protected during construction with flagging and temporary fencing. The fencing to protect preserved trees must be placed five (5') feet from, and around the base(s) of the trees, to assure that no grading takes place within the drip line. Exposing or filling over tree roots must be strictly avoided. If the DRC determines that certain trees shall be removed to accommodate structures or other improvements, such trees, if not needed on that site, may be moved by The Crescent to other areas of the development within 30 days after approval of removal of such trees.

**3.07.2 Enhancement of Native Landscaping:** To allow native grasses and wildflowers to thrive, bitterbrush and sage should be removed except where they occur adjacent to rock outcroppings, on steep slopes, or in similar accent areas where grasses would be inappropriate.

**3.07.3 Irrigation:** To allow all existing and new landscaping to thrive, each site shall be fully irrigated with an underground sprinkler system with automatic controls. Sprinkler heads should be of "pop-up" design or discretely located, and black risers should be used. Sprinkler systems shall be utilized as needed to maintain active growth and healthy green color for all plant materials, except when dormant in winter, unless such use is prohibited by the City of Bend or other authority for all residential areas using City of Bend water.

**3.07.4 Water Features:** All proposed water features, shall be submitted for approval and shall be shown in plan and section on the application. All areas of the water feature shall be covered with materials, such as river rock, so that the liner or lining

material is not visible.

**3.07.5 Landscape Lighting:** Landscape lighting should only be used to highlight and feature certain landscape elements. Lighting shall be directed downward and may not face streets, adjacent properties or the golf course. The City of Bend does not allow uplighting. All fixtures shall be grated to reduce the visibility of the source of the light. Landscape lighting fixtures may not be greater than 20 watts. Excessive lighting is discouraged.

**3.07.6 Outdoor Furniture:** Location of permanently placed outdoor furniture or accessories such as swings, tables, barbecues, arbors, jungle gyms, or swing sets, shall be submitted for approval. Outdoor furniture and accessories may not encroach within setbacks and shall be properly maintained. Swing sets and other play equipment shall be screened from adjacent properties or be painted or constructed to blend with natural surroundings. Wood type play equipment is recommended. Colors of all such permanently placed items must be earthtones.

**3.07.7 Outdoor Ornamentation and Satellite Dishes:** Placing, erecting, constructing or allowing any permanent unnatural or man-made ornaments, signs, play equipment, relics, flagpoles, machinery, equipment, basketball backboards, game poles and nets, or other such items which are unattached to approved structures are prohibited unless they are included in a landscape plan approved by the DRC. "Unnatural" shall mean any object which is not naturally growing upon, indigenous to or found on a home site in its undeveloped state. The location and color of satellite dishes shall be submitted for the review and approval of the DRC.

Bird feeders made of natural materials and simple designs are encouraged, but will be subject to DRC approval. A list of pre-approved designs is available from the DRC.

Any ornamentation or play equipment described above which is to be attached to or intended to be a part of an approved structure or deck shall be submitted for approval by the DRC.

#### **IV. DESIGN AND CONSTRUCTION GUIDELINES**

The following is a list of design and construction guidelines, which may assist an owner or an owner's representative; provided however, that the following guidelines shall in no respect modify the Declaration of Covenants, Conditions and Restrictions for The Crescent Community.

**4.01 Alcohol and Controlled Substances:** The consumption of alcohol or use of any controlled substance on any construction site or common area within The Crescent is prohibited. Any construction sites found with discarded alcoholic containers will be cited.

**4.02 Blasting:** If any blasting is to occur, the DRC shall be notified two weeks in advance, and appropriate approvals shall be obtained from the City of Bend and/or Deschutes County. Blasting may only be done by licensed demolition personnel, with all requisite insurance coverage as mandated by county and state statutes specific to their blasting activity at The Crescent. The DRC shall have the authority to require written documentation of anticipated seismic effects, with confirmation such effects will not be injurious to other persons or properties, public or private, and that all appropriate protection measures have been utilized.

**4.03 Building Projections:** All projections including, but not limited to, chimney flues, vents, flashing, louvers, gutters, down spouts, utility boxes, porches, railings and exterior stairways shall match the surface from which they project, or must be painted or stained an

approved color to blend unobtrusively with adjacent materials. Building projections are not allowed to encroach in any setback. Through-the-wall fireplace flues shall be enclosed and the enclosure shall extend from the ground to the soffit.

**4.04 Chimneys and Outdoor Barbecues:** Due to the extreme fire danger usually present in this region, all chimneys shall be equipped with a U.L. or L.C.B.O. approved spark arrestors, including outdoor barbecues. Open outdoor fire pits are prohibited. Barbecues are permitted, provided they are lidded cookers and gas fired. All outdoor fireplaces are prohibited.

**4.05 Construction Insurance Requirements:** All contractors shall indemnify and hold harmless the DRC, the DRC members, the Declarant, agents of the DRC and The Crescent Community Association, Inc., from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of the contractor's work. The Crescent Community Association, Inc., the DRC, members of the committee, the Declarant, and agents of the committee shall be added as Additional Insureds to the Contractors Commercial General Liability insurance policy. The policy shall include a "per project" aggregate. All policies must provide 30 days notice of cancellation or material change.

Prior to commencing construction, the contractor shall provide certificates of insurance providing evidence of Commercial General Liability, Automobile Liability, Employers Liability, and Workers' Compensation insurance. Minimum limits of \$1,000,000 are required.

**4.06 Construction Signage:** One sign identifying the General Contractor may be posted at the building site. Specifications for this sign may be obtained from the DRC administrator. No other signs are allowed except a temporary real estate sale sign (refer to Section 4.38). Identification of licensed tradesmen, when required by state or county statutes, shall be confined to the posting location of the building permit. Attachment of signs or similar material to trees is strictly prohibited.

**4.07 Construction Trailers:** A construction trailer or portable field office may be located within the building site, but not within the building setbacks. The type, size, color and location of any portable office shall be submitted for approval and may not be placed on-site earlier than two weeks prior to commencement of construction nor remain on-site for longer than six months without approval of the DRC.

**4.08 Construction Vehicles and Parking Areas:** Construction workers may not park on, or otherwise use, neighboring lots, adjacent streets, or open space. All vehicles shall be parked on the lot and not within the side yard setbacks. However, during very busy construction periods when all construction vehicles cannot be parked on the lot, they may be temporarily parked along the shoulder of the street, with two wheels off of the paved surface of the street to allow normal unrestricted traffic flow. Changing oil or other vehicle maintenance on any site is prohibited.

**4.09 Design and Color Repetitions:** No repetition or near design repetition of the exterior of any approved residence in The Crescent will be permitted within sight of each other or in proximity of each other. If an applicant knows the design of the applicant's residence is a repetition of another house at The Crescent, the applicant shall notify the DRC of the location(s) of the repetitious design. No exterior color will be allowed to be repeated on adjacent homes, except that an individual Neighborhood may elect to permit or encourage such duplication within its boundaries in the interest of continuity of design on a grouping of small sites.

**4.10 Doors, Windows and Skylights:** Reflective glass is not acceptable. The use of wood window frames, either clad or painted in earth tone colors, is encouraged. Aluminum door frames, windows and skylights shall be bronzed or an anodized earthtone. Vinyl windows should be a color compatible with other elements of the building. White translucent lenses on skylights should be avoided in favor of gray or clear finishes.

**4.11 Driveways:** The maximum width of a driveway at the connection with the street, not including the transitional flare, is fourteen (14) feet. Unless approved by the DRC, driveways shall not encroach in side yard setbacks and driveway connections onto streets will be limited to one per lot. The material of the driveway shall be black asphaltic concrete from the street to the transition area of the adjacent landscaping. See section 3.07. At the transition area, the driveway material may be black asphaltic concrete, exposed aggregate concrete, pavers or other material approved by the DRC. Where required by the DRC, minimum 8" diameter culverts of black HDPE or concrete pipe are required under driveways at the intersection of the street, to allow continuous flow of run-off water along the lot frontage. Inlet and outlet pipes are to be cut flush to the slope and line inlet and outlets with rock to protect the pipe and minimize visual impact. Whenever possible, driveways should meander from the street to the garage.

**4.12 Dust and Noise Control:** The contractor shall be responsible for controlling dust and noise from the construction site, including the removal of dirt and mud from public or private streets that are the result of construction activity on the site.

Playing radios or use of other audio equipment by construction workers during the improvement of any lot at The Crescent is prohibited.

**4.13 Exterior Lighting and House Identification Sign:** No exterior lights whose direct source is visible from a neighboring property or which produces excessive glare to pedestrian or vehicular traffic is allowed. Lamps shielded with translucent lenses or panels do not render the light source invisible. Ornate lighting types such as colored lights or extensive yard lighting is prohibited. Light fixtures may not be located closer than 15 feet to each other.

Lighting fixtures located along driveways shall be on posts between 18 inches and three feet in height. Hoods over lighting elements shall be fixed so as to direct light downward, and shall be constructed of wood or metal with a permanent finish compatible with the house color. No lighting fixtures other than the lot identification sign along driveways may be installed within 20 feet of the road.

The owner is responsible for installing the house identification sign and ensuring that it is illuminated at all times. The design for this sign is available from the administrator of the DRC.

**4.14 Exterior Materials and Colors:** Exterior materials should generally be natural materials that blend and are compatible with the native landscape. The predominant exterior material should consist of indigenous wood species, including beveled or tongue-in-groove board siding, board-on-board, authentic board and batt, and similar siding treatments. The siding shall run in one consistent direction on all exterior walls. Semi-transparent or solid body stains in colors which harmonize with the surrounding landscape shall be used. All reflective metal shall be painted to match or blend with surrounding materials.

Plywood siding, composite siding and other siding materials are prohibited unless the applicant can demonstrate to the DRC that the specific proposed application would result in a finished appearance indistinguishable from an individual board siding application. Stucco and logs may only be used as an accent material. The use of metal siding, fiberglass siding, or composition asbestos siding is prohibited.

Any exterior masonry, other than a foundation which extends less than 12 inches above finished grade, shall be natural stone. The pattern of the masonry shall be submitted for approval. Brick and unit masonry are prohibited. Glass block, in small areas facing side yards may be approved.

Draperies and window coverings, which can be seen from the exterior of the home, shall be a solid neutral color that harmonizes with the surroundings.

The color of all exterior materials shall be subdued to blend with the natural landscape. Earth tones are strongly recommended, although muted accent colors, which are used judiciously and with restraint may be allowed. Colors approaching the primary range (red, blue and yellow) will not be allowed, nor will drastic contrasts in value (light to dark) be allowed.

**4.15 Fences and Walls:** The greatest preservation of the natural environment at The Crescent would be achieved if no fences were built. However, sometimes there is a functional need to enclose areas for privacy and for protection of children and containment of pets. Fencing, where required and allowed, will not exceed 6' in height measured from existing natural grade; should be designed to appear as an extension of the architecture or as approved by the DRC; and will not be allowed to encroach in setbacks. Chainlink or wire fencing is prohibited.

Structural retaining walls may not exceed a height of five feet. Multiple terraced retaining walls shall be utilized where the overall height of retained earth exceeds five feet. Retaining walls may be constructed of rock, rock veneer, concrete or concrete masonry units; however, all exposed concrete wall surfaces and edges shall be treated with an approved finish, such as stone veneer.

The location and proximity of dog runs to adjacent homes and the golf course shall be carefully evaluated. To minimize impact of noise and odor to adjacent properties, golfers and other owners within The Crescent, the DRC will carefully consider all environmental and aesthetic merits of location and size of runs. Alternate types of animal containment such as electric fences and buried electrical devices will also be evaluated.

**4.16 Firearms:** Carrying any type of firearms on the property is prohibited.

**4.17 Fires and Flammable Materials:** Careless disposition of cigarettes and other flammable materials, as well as the build-up of potentially flammable materials constituting a fire hazard, is prohibited. At least two 20-pound ABC-Rated Dry Chemical Fire Extinguishers shall be present and available in a conspicuous place on the construction site at all times.

No on-site fires are allowed, except for small, confined, attended fires for the purpose of heating masonry water.

**4.18 Foundations:** Visible surfaces of concrete masonry or concrete foundation walls and piers may not exceed 12 inches above finished grade unless they are faced with approved masonry. Surfaces not faced with approved masonry shall receive a stucco or mortar-wash finish and be painted to blend unobtrusively with adjacent materials. Wood siding that extends from walls down over foundation walls to cover foundation surfaces should smoothly follow grade lines, not the steps in the concrete foundations. Foundation walls which occur under a skirted deck such that they are no longer visible are exempt from the facing requirements stated above.

**4.19 Garages:** Each residence shall have an enclosed garage for at least two cars. If possible, garage openings should face away from the street. Garage overhead doors should be constructed from wood. Carports are prohibited. Three car garages are required to have at least one bay offset by a minimum of four feet (4') or as approved by the DRC.

**4.20 Heating and Cooling Equipment:** No roof mounted or wall mounted heating or cooling equipment will be permitted. Any exterior heating and/or cooling system components shall be at ground level, adjacent to the residence, hidden from view of the golf course, street, or neighboring properties and not encroach in the setbacks. Heating and cooling equipment shall also be insulated for sound control, so that it cannot be heard from the golf course or neighboring properties.



**4.21 Height of Structures:** Structures built on lots within The Crescent will have a 30-foot height limit from finish grade. The height of building is defined as "the vertical distance from grade to the highest point of the roof" (Deschutes County Code Section 18.04.030). In addition to the height limit, these structures must also meet the following massing restrictions. Second story square footage will be limited to one-third of the total livable square footage of the structure (excluding the square footage of the garage). Designs will be evaluated to insure that the core of the house dominates the total mass of the structure. To that end, second story living spaces cannot be concentrated over the garage if the resulting design of these spaces creates a mass that dominates the total house mass, shifting the focal point away from the core of the house. In addition, the DRC will consider suitability of the building height to the site and its surroundings.

**4.22 Lot Coverage:** The area of the lot covered by buildings, roof overhangs, patios, decks, driveway, walks and all impervious surfaces shall not exceed 50% of the total lot area. The entire area included within courtyards enclosed with a wall 5' or higher shall be included in the lot coverage calculation.

**4.23 Mailboxes and Newspaper Holders:** Due to service restrictions and guidelines of the U.S. Postal Service, mail delivery to individual mailboxes for each home is no longer available for new construction. The Declarant has developed a mail service plan acceptable to the Postal Service, establishing a single approved design for the structures on which gang mail boxes and newspaper holders are mounted. The Declarant will construct each structure prior to issuance of a Final Release on any residence that will use that structure. Each owner will pay a pro rata share of the cost of construction of the structure in which the owner's box is located. Individual mailboxes or newspaper holders on lots are not allowed.

**4.24 Material Deliveries:** All building materials, equipment and machinery required to construct a residence shall be delivered to and remain within the building area of the lot and not within the setbacks.

**4.25 Nonliability:** Neither the DRC, any member thereof, nor agents of the Committee, or the Declarant, shall be liable to the Association or to any owner or other person for any loss or damage claimed on account of any of the following:

- a. The approval or disapproval of any plans, drawings and specifications, whether or not defective.
- b. The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.
- c. The development, or manner of development, of any property within The Crescent.

Neither the DRC nor any member thereof shall be liable to any Owner, occupant, builder, or developer or any other person for any damage, loss, or prejudice suffered or claimed on account of any action of or failure to act by the DRC or a member thereof, provided only that the member has, in accordance with the actual knowledge possessed by the DRC or by such member, acted in good faith. The scope of the DRC's review is not intended to and shall not be construed to include any representations or warranties or conclusions regarding structural, geophysical, engineering, or other matters, fitness for a particular purpose or habitability.

Approval by the DRC of any improvement at The Crescent only refers to The Crescent Design Guidelines and in no way implies conformance with local government regulations. It shall be the sole responsibility of the owner to comply with all applicable government ordinances or regulations, including but not limited to zoning ordinances and local building codes.

**4.26 Nonwaiver:** The approval by the DRC of any plans, drawings, or specifications for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing or specification subsequently or additionally submitted for approval. Failure to enforce any of the design guidelines shall not constitute a waiver of same.

**4.27 On-Site and On-Street Parking:** In addition to the requirement for garage parking, each lot shall have an area for at least two guest parking spaces, which cannot encroach in the side yard setbacks. Once construction is complete, no on-street parking is permitted. During construction, the edges of the street shall be protected with dirt or gravel.

**4.28 Outdoor Storage and Service Yards:** Outdoor storage areas and service yards for trash containers, firewood, clotheslines, maintenance or service equipment such as lawnmowers and snowblowers or overflow storage shall be screened from all adjacent properties by a wall or fence, which cannot exceed 6' in height and cannot encroach in the setbacks. Screening walls shall be attached to the home.

**4.29 Outdoor Spas and Swimming Pools:** Spas, swimming pools, and related equipment shall be screened and shall be architectural extensions of the house through the use of walls or courtyards. Above grade swimming pools are not allowed. Covers such as inflatable bubbles are not allowed.

**4.30 Patios, Steps and Paths:** Excessive areas of pavement is discouraged. Paving materials for driveways, patios, steps, paths and other areas should have dull, non-reflective surfaces and earth colors that blend well with the natural surroundings.

**4.31 Pets:** No pets may be brought onto the property by any construction worker. Pets left in a vehicle are considered in violation of this regulation.

**4.32 Prefabricated Buildings:** Any building that is constructed off-site and requires transportation to any lot, whole or in partial assembly, will not be permitted. This prohibition includes mobile homes, stock modular buildings, or any other structures requiring transportation and set up in a partially completed state.

**4.33 Restoration of Property:** Upon completion of construction, each owner and contractor shall clean their construction site and repair all property which has been damaged, including but not limited to, restoring grades, planting shrubs and trees as approved or required by the DRC, and repair of streets, driveways, pathways, drains, culverts, ditches, signs, lighting and fencing.

In addition, the Owner and general contractor shall be held financially responsible for site restoration/revegetation and refuse removal necessitated on any and all adjacent properties as a result of trespass or negligence by their employees, subcontractors or suppliers.

**4.34 Roofs:** In general, relatively low-profile buildings with a variety in massing and roof lines are desired. Large, expansive areas of unbroken roof planes and ridge lines are undesirable. The minimum roof pitch is four feet in twelve and the maximum roof pitch is twelve feet in twelve. Large roof or eave overhangs with wood soffits are encouraged. Fascias should be stepped to avoid cupping. All flashing shall be painted to match the roof color.

Approved roofing includes slate or flat concrete tiles and tile colors shall range from light to darker earth tones. Asphalt composite shingles are prohibited.

**4.35 Sanitary Facilities:** Each owner or contractor shall be responsible for providing adequate sanitary facilities for construction workers. Portable toilets shall be located within the building area and outside of all setbacks and the colors and location shall be approved by the DRC.

**4.36 Setbacks:** The Declarant has modified the setbacks, which are more restrictive than City of Bend setbacks and run with the land:

- a. The front yard setback shall be a minimum of twenty feet.
- b. The side yard setback shall be a minimum of ten feet.
- c. The rear yard setback shall be a minimum of twenty feet to patios, decks under 30 inches in height, or manmade streams or pools. In addition, a minimum setback of thirty feet is required between the rear property line and any buildings, roof lines, spas, swimming pools, mechanical equipment or other structures.

**4.37 Severability:** If any provision of these Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the remainder of these Design Guidelines shall be construed as if the invalid part were never included therein and such remainder shall be valid and fully enforceable.

**4.38 Signs:** No signs of any kind are allowed, except the house identification sign, directional signs provided by the Declarant, a temporary real estate sale sign and a temporary construction sign approved by the DRC. One sign identifying the realtor may be posted at a homesite. Specifications for this sign are available from the DRC administrator. Real estate sale lease signs, banners, flags, and other devices intended to call attention to any residence are prohibited.

**4.39 Site Preparation:** Excessive excavation or fill shall be avoided. Retention of existing trees over 12" in diameter or over 30 feet in height is strongly encouraged. Cutting, removal or pruning of any trees which is necessary for the development and landscaping of any site shall be approved by the DRC. Only pruning of dead limbs, removal of dead trees, and cutting and removal of trees with a trunk diameter of less than 6" measured at a height of 6' and which are bowed, leaning, severely misshapen, diseased, or sparsely needled may be done without pre-approval of the DRC.

**4.40 Site Drainage and Erosion Control:** All run-off from impervious surfaces, including but not limited to roofs, patios and driveways, shall be collected and conveyed to a subsurface drainage dispersal system on the lot. The collection system may include gutters, surface swales, or buried drain lines. Subsurface drainage dispersal systems may include drywells, soakage trenches, or other facilities. The owner is responsible for establishing finished floor elevations that ensure positive drainage away from the home; installing and maintaining a subsurface drainage dispersal system that has adequate capacity; and ensuring that concentrated run-off does not flow onto adjacent property. Further, the owner shall consider and show existing off-site drainage improvements, such as catch basins, drywells and culverts that benefit the owner's lot. The storm drainage plan should consider the off-site improvements and the grading and drainage of the lot should be designed accordingly.

The owner is responsible for installing and maintaining adequate erosion control measures during construction, including silt fencing, bio-bags, gravel water bars and a place for concrete truck and concrete mixer wash-outs. Additionally, during and after construction, the owner is responsible for maintaining the existing 18" gravel shoulders and the drainage ditch along the street in front of the lot, and the 8" gravel shoulder along both sides of any bicycle/pedestrian path that runs along in front of the lot.

Any drywells or other site drainage system installed on a lot by the Declarant shall be maintained by the lot purchaser.

The owner is responsible for repairing any off-site drainage improvements, such as catch basins, drywells and culverts, damaged by the owner or the owner's contractors during

construction of the owner's improvements.

**4-41 Size:** The minimum size house is 2,000 square feet. There is no maximum size, but homes that are excessively large for their lots will be discouraged.

**4-42 Solar Applications:** Owners should consider passive solar opportunities. Solar collectors and associated hardware shall be an integral part of the home and placement of the collectors shall take into consideration excessive glare and reflection. The collectors and associated hardware cannot be visible from any other lot or common area.

**4-43 Terraces and Decks:** Yards and terraces should be designed to be extensions of the architecture. Decks should be designed to preserve the beauty of the home as seen from the golf course and neighboring properties. The undersides and finish of decks shall be considered, especially on upper hillside sites. Deck supports and trim are important design elements and simple posts or similar support systems will not be acceptable. Where the vertical distance from the underside of a ground floor deck structure (along its perimeter edge) exceeds 30 inches above finish grade below, the under-deck area shall be screened with wood siding or other approved finish. The screen wall shall be set back 18" to 24" from the edge of the deck. The only exception is for decks overhanging living space below. The decks and terraces cannot encroach in setbacks.

**4-44 Trash Receptacles and Debris Removal:** Owners and builders shall clean up all trash and debris at the end of each day. An approved trash receptacle shall remain on-site at all times, located near the street and outside of the setbacks. Dumping, burying, or burning trash anywhere on the site or elsewhere in The Crescent is prohibited. Heavy debris, such as broken stone and wood scrap, shall be immediately removed from the site upon completion of the work of the trade that generated the debris.

All concrete washout from both trucks and mixers shall occur within the building area of the lot in a location where it will be ultimately concealed by structure or covered by backfill. Washout in the street, setbacks or on adjacent properties is strictly prohibited.

Any clean-up costs incurred by the DRC or The Crescent Community Association in enforcing these requirements shall be the responsibility of the owner.

**4-45 Utilities:** All meter panels shall be screened so that they are not visible from the street or neighboring properties.

**4-46 Vehicular Access to The Crescent:** Prior to commencement of construction, each general contractor shall meet with gatehouse staff to obtain the entry code, which the contractor will give to the contractor's employees, subcontractors and suppliers who require access to The Crescent. The gatehouse staff will also identify the designated contractor's gate. The DRC or the gatehouse staff may require proof of acceptable insurance as a condition of entry. Gate clickers are not available for access.

**4-47 Views:** Since The Crescent has numerous public areas, like the golf course, it is important for an owner to consider the view from the public areas to the back of the owner's home. Consideration should therefore be given by an owner to screen and filter views from public view back to the owner's home and service yards.

**4-48 Working Hours:** Daily working hours shall be from 30 minutes before sunrise, but not prior to 6:30 a.m.; and until 30 minutes after sunset, but not later than 8:30 p.m. Construction activity which generates excessive noise, such as hammering, sawing, excavation work, and concrete delivery, shall be confined to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 7:00 p.m. on Saturday. Noisy activity is prohibited on Sundays and national holidays.

**ADOPTION AND APPROVAL**

These The Crescent Community Design Guidelines as revised May \_\_, 1999, are hereby adopted and approved by The Crescent DRC.

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Appendix "B"

**CULTIVATED AREAS PLANT LIST**

Trees

Acer ginnala	Maple
Betula nigra	River Birch
Cercis canadensis	Eastern Redbud
Crataegus phaenopyrum	Washington Hawthorn
Sorbus aucuparia Amur	European Mountain Ash

Shrubs

Berberis thunbergii	Japanese Barberry
Chacnomcles cultiuars	Flowering Quince
Cotoneaster apiculatus	Cranberry Cotoneaster
Lonicera tatarica	Tatarian Honeysuckle
Philadelphus virginialis	Mock Orange
Pinus mugo mugo	Mugho Pine
Potentilla fruticosa 'Jackmanii'	Jackman Potentilla
Ribes alpinum	Alpine Currant
Rosa foetida	Austrian Copper Rose
Salix discolor	Pussy Willow
Salix purpurea 'Nana'	Alaska Blue Willow
Spiraea sp.	Spiraea
Syringa vulgaris	Lilac
Viburnum x burkwoodii	Burkwood Viburnum

Groundcovers and Vines

Achillea tomentosa	Wholly Yarrow
Aegopodium podagraria	Bishops Weed
'Variegatum'	Carpet Bugle
Ajuga reptans	Winter Blooming Bergenia
Bergenia crassifolia	Snow-in-Summer
Cerastium tomentosa	Clematis Rock
Clematis sp.	Cotoneaster
Cotoneaster horizontalis	Virginia Creeper
Parthenocissus quinquefolia	Boston Ivy
Parthenocissus tricuspidata	Periwinkle
Vinca minor	

Perennials

Aurinia saxatilis  
Campanula carpatia  
Chrysanthemum sp.  
Coreopsis grandiflora  
Crocus speciosus  
Dicentra 'Luxuriant'  
Erysimum hieraciifolium  
Gaillardia grandiflora  
Geum rivale 'Leonard's  
Variety'  
Iris sibirica  
Mertensia virginica  
Narcissus sp.  
Nymphaea sp.  
Rudbeckia

Perennial Alyssum  
Tussock Bell Flower  
Shasta Daisy  
Coreopsis  
Crocus  
Bleeding Heart  
Siberia Wallflower  
Blanket Flower  
Geum  
Siberian Iris  
Virginia Bluebells  
Daffodil  
Water Lily  
Coneflower

Appendix "C"

**CONSTRUCTION FINES**

**Construction Violations:**

Initiating major new construction without approval	<b><u>Fine Amount:</u></b> \$2,500
Initiating minor new construction without approval	\$ 500
Other deviations from approved plans	\$ 500
Unauthorized earthwork or site alteration	\$1,500
Unauthorized blasting	\$1,500

**Tree, Brush, and Limb Removal:**

Tree removal from common area or neighboring property or	<b><u>Fine Amount:</u></b> Replacement with equal total caliper
Unauthorized tree removal from own property	Example: 8" caliper tree removed and replaced with (2) 4" caliper trees and a fine to be determined by the DRC

Failure to properly dispose of vegetative debris	\$ 150
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**Trash Receptacles and Debris Removal:**

Failure to remove daily, debris, mud or excess dirt from public or private streets, open space or driveways	<b><u>Fine Amount:</u></b> \$ 250
Concrete washout in streets, rights-of-way, setbacks or adjacent properties	\$ 250
Trash receptacle missing from job site	\$ 250
Portable sanitary facility missing or in unauthorized location	\$ 250

**Native Landscape Protection Practices:**

Failure to maintain vegetation protection fencing	<b><u>Fine Amount:</u></b> \$ 250
Damaging native landscape on adjacent properties and areas around construction site	\$ 250

**Vehicles, Access and Parking Areas:**

Access of homesite by means other than approved route (future driveway)	<b><u>Fine Amount:</u></b> \$ 250
Construction materials within setbacks	\$ 250
Parking in areas other than designated in Design Guidelines	\$ 250

**Hours of Construction and Radios:**

Construction outside of approved hours of operation	<b><u>Fine Amount:</u></b> \$ 250
Radio or other audio equipment audible beyond property lines	\$ 250

**Safety:**

Possession or discharge of firearms or other weapons	<b><u>Fine Amount:</u></b> \$ 1,500
Fire Extinguishers missing or inadequate	\$ 500
Consumption of alcohol or use of controlled substances	\$ 500
Pets or other domestic animals on site	\$ 100

**Other Violations:**

Fines for violations not listed may be assessed on a case-by-case basis

At the discretion of the DRC, fines may be increased due to the severity of the violation