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DESCHUTES COUNTY OFFICIAL RECORDS
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2003-18212



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**PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATIONS OF EASEMENTS FOR
TRI-PEAKS I**

Developers own one hundred percent (100%) of that real property which is platted as TRI-PEAKS I, in the City of Bend, Deschutes County, Oregon. This plat was filed on February 13, 2003, in Plat Cabinet F at Page 404 of the Plat of Records of Deschutes County, Oregon.

Developers desire to subject the property described in such plat ("The Property") to the conditions, restrictions and charges set forth herein for the benefit of such property and its present and subsequent owners, and to establish such property as a planned development to be known as "Tri-Peaks I."

NOW, THEREFORE, Declarant hereby declares that the property described in the plat of Tri-Peaks I shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof:

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 except that residences constructed on lots 1, 2, 3, 4, 5, and 6 in Tri-Peaks I subdivision may include a garage shall be large enough to accommodate a single car.

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 surrounds and with other buildings.

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15 OREGON AVENUE, BEN

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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 the ACC's sole and absolute discretion. All fences shall be constructed with six inch wide Cedar fencing.

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 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 minimum 6/12 pitch, except that roofs over the main body of a residence that do not face a street may have a 5/12 pitch. In addition, the 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 a minimum of 125 square feet.

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 outbuildings shall be moved upon the premises. 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 Tri-Peaks I.

8. SIZE OF RESIDENCE:

No residence shall be constructed of less than 1,100-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 constructed of concrete, pavers or shall be paved. Parking areas shall be surfaced with materials approved by the ACC.

10. TREES:

Existing trees may be removed only with the expressed 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.

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 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 vehicle, appliances, tools, or household 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 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 other 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, fowl, 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 finished grade elevation. Written ACC approval must be obtained before applying for a building permit from a governing agency.
- B. The ACC shall have the sole and final authority to determine the appropriateness of all buildings, structures and outbuildings and the requirements of these Protective Covenants as they relate to development of any of the lots bound by these 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 failure to exercise honest judgment. The prevailing party in any such judicial action shall be entitled to recover their reasonable costs, including costs of collection, and attorney fees at trial and on appeal therefrom.
- C. 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, 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, in the sole discretion of the ACC, as needed to cover all design review related costs incurred by The ACC.
- D. All structures, buildings and improvements must be completed in accordance with the plans and specifications approved by the ACC.
- E. ACC approval must be obtained for any changes in plans 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 re-submitted and ACC approval obtained.

15. ARCHITECTURAL CONTROL COMMITTEE:

- A. Membership. The ACC shall consist of three persons appointed by the 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 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. 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 and improvements located on property governed by the Protective Covenants. The rules may also interpret the provisions of these Protective Covenants and regulate construction activities on property bound by 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 the Protective Covenants and Obligations arising from said covenants. Copies of the ACC rules shall be made available to lot owners, upon request and payment of reasonable copying fees.
- C. **Application Materials.** The ACC may require that any or all of the following information be shown or included with the plans submitted to the ACC:
- i. Existing and proposed land contours and grades.
 - ii. All buildings, garages and other structures and improvements, access drives and other improved areas, and the locations thereof on the site.
 - iii. Plans for all floors, cross-sections, and elevations, including projections and wing walls and height of ridge measured from street grade.
 - iv. Exterior lighting.
 - v. Walls, fencing, and screening.
 - vi. Patios, decks, pools, and porches.
 - vii. Signs and parking area.
 - viii. Samples of materials to be used as may be reasonably requested by the ACC
 - ix. Setbacks required by local land-use or building regulations.
 - x. Utility lines and connections.
 - xi. Scale of drawings.
 - xii. Specifications describing types of construction and exterior materials to be used, including, without limitation, the colors and manufacture thereof.
 - xiii. 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, including costs of collection, and attorney fees at trial and on appeal therefrom.
- F. Turnover of Control. Developers may, at anytime, 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 positions 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 act 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 rates 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, including costs of collection, and attorney fees at trial and on appeal therefrom.

- II. 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:

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 detract from the neighborhood visually. All landscaping, including that portion within in the City of Bend's street easement, shall be maintained in attractive condition.

17. FIREARMS:

No firearms, air pistols, archery, slingshots, 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) to size and generally to any other items or activities 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 sideline 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. 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 Tri-Peaks I 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. The 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 shall be encouraged to submit their name to the ACC. The 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, signage and lighting controls within The Property.
- D. The HOA's board shall have the following powers: (1) to govern the affairs of the HOA; (2) to adopt and amend bylaws and rules and regulations; (3) to adopt and amend budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from owners, which shall not exceed \$120 per year per lot; (4) to hire and terminate managing agents and other employees, agents and independent contractors; (5) to 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) to make contracts and incur liabilities; (7) to regulate the use, maintenance, repair,

replacement and modification of any common areas; (8) to cause additional improvements to be made use part of any common area; (9) to 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) to impose and receive, any payments, fees or 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) to impose reasonable charges for the preparation and recordation of amendments to these Protective Covenants or statements of unpaid assessments; (13) to 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; and (14) to 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 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 the 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.

20. 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 then current term, signed by a majority of the present owners of the lots has been recorded in the deed records or 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 those Protective Covenants 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 the 30 days of a determination of violation shall be subject to a fine of \$100.00 per day of violation beyond the 30-day period, until the violation is 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. The prevailing party in any such judicial action shall be entitled to recover their reasonable costs, including costs of collection, and attorney fees at trial and on appeal therefrom.

- 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, including 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.
- E. 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 building and structural, landscaping, improvements, or ornamentation plans with the requirements of the Protective Covenants. The prevailing party in any such judicial action shall be entitled to recover their reasonable costs, including costs of collection, and attorney fees at trial and on appeal therefrom.
- F. Severability. Invalidation of any portion 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.

- G. 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 prior to the recording of the 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 property records of Deschutes County.
- H. 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.

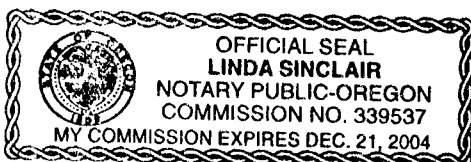
IN WITNESS WHEREOF, Developers and owners have caused this instrument to be executed for recording as the Protective Covenants, Conditions, and Restrictions for Tri-Peaks I this 19 day of March 2003.

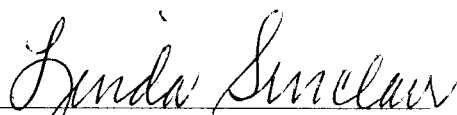

RAY R. ROSECRANS


LAURIE A. ROSECRANS

STATE OF OREGON, County of Deschutes) ss.

The foregoing instrument was acknowledged before me this 19 day of March, 2003, by RAY R. ROSECRANS and LAURIE A. ROSECRANS.




Notary Public for Oregon
My Commission Expires: 12/21/2004