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Sanderson Company  
975 SW Colorado Ave. Ste. 105  
Bend, OR 97702

DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2004-43154



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## WHEELER RANCH

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

SANDERSON COMPANY, an Oregon Corporation and Baldwin-Herndon Oregon Trust, the Owners of the real property located in Deschutes County, Oregon, and described as follows:

See Exhibit "A" attached hereto and incorporated by reference,

Do hereby establish the following protective covenants, conditions and restrictions for said property, said covenants to run with the land:

#### 1. DEFINITIONS

Defined terms appear throughout this Declaration with the initial letter of such term capitalized. Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows:

- 1.1 "Association" shall mean and refer to Wheeler Ranch Homeowner's Association, Inc., its successors and assigns.
- 1.2 "Board" shall mean and refer to the Board of Directors of Wheeler Ranch Homeowner's Association, Inc.
- 1.3 "Common Areas" shall mean all real property owned or to be maintained by the Association for the common use and enjoyment of the Owners. The Common areas presently contemplated, are maintenance of cul de sac planted areas; maintenance of alleys; and repair; snow removal of alleys; maintenance and repair.
- 1.4 "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Deschutes County Clerk.
- 1.5 "Developer" shall mean and refer to Sanderson Company, an Oregon Corporation, and its successors or assigns.
- 1.6 "Lot" shall mean and refer to any plot of land shown upon any recorded map of the Properties.

- 1.7 "Majority of Members" shall mean and refer to the Members holding more than 65% of the total votes entitled to be cast with respect to a given matter (not just those represented at a meeting); and any specified fraction or percentage of the Members means the Members holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter. Unless otherwise specified, and provided herein requiring the approval of the Members means the approval of a Majority of Members.
- 1.8 "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.
- 1.9 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.10 "Properties" shall mean and refer to that certain real property subject to the Declaration of Covenants, Conditions and Restrictions of Wheeler Ranch.
- 1.11 "Transition Date" shall mean and refer to the first to occur of:
- 1.11.1 May 1, 2007
  - 1.11.2 The day on which title to the last Lot in the Property owned by the Developer is conveyed to any third party for value, other than as security for performance of an obligation (for purposes hereunder, "third party" shall be defined as any person or entity that is not the Developer, a lineal descendant of the principal shareholders of the Developer, or spouses of any such lineal descendant); or
  - 1.11.3 Such date as Developer requires the Members to assume control of the Association, it being the Developer's right (but not obligation) to require the Members to assume control of the Association at any time.

## 2. HOMEOWNERS ASSOCIATION

- 2.1 Purpose. The Association shall be formed by the Developer for the purpose of managing the Common Areas and enforcing the Declaration.
- 2.2 Membership. Every person or entity who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be

separated from the Owner's interest in Wheeler Ranch. All Members shall have rights and duties as specified in this Declaration, and in the Articles, By Laws, Rules and Regulations of the Association. The Association shall be governed by a Board of Directors as set out in the Bylaws.

- 2.3 Voting Rights. Subject to Section 2.4 below, there shall be one vote for each membership in the Association. An Owner shall be entitled to one membership in the Association for each Lot owned, so long as he/she is the owner of the Lot. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment by the Association.

If the Owner of a Lot is other than (1) individual, the Owner shall specify in writing to the Association the individual who is the Member of the Association for the Lot. In the absence of such written specification, assessments shall nevertheless be charged against the Lot and the Owner thereof, but there shall be no right to vote the Membership. The Member must be an individual who is either an Owner or, if the Owner is or includes a person other than an individual; an individual who is a partner, if the Owner is or includes a partnership; or an Officer of the Corporation, if the Owner is or includes a corporation; or a beneficiary of the trust, if the Owner is or includes a trust; or an owner of the entity, if the Owner is or includes a person other than an individual, a partnership, corporation or a trust. The Member, as specified, shall be the only person entitled to vote for the Owner of the Lot at Association meetings and elections. An Owner may change the individual who is the Member for his Lot, provided each individual is eligible to be a Member hereunder, in such manner and with such frequency, and subject to such reasonable processing fees, as the Board from time to time may permit.

- 2.4 Temporary Developer Control. All of the rights, duties and functions of the Association shall be exercised only and entirely by the Developer until the Transition Date. To carry out this provision, Developer may, from and after the date of recording hereof, adopt and enforce temporary Bylaws, rules and regulations for the Association; may give notices and call meetings; determine, assess, collect, receive and expend assessments and Association funds; hire a manager or other employees of service agencies as required; purchase supplies and equipment and determine and generally exercise all powers necessary to carry out the provisions of the Declaration. Acceptance of an interest in the Properties described in this Declaration indicates acceptance of the management authority of Developer until the Transition Date and, in carrying out the same, Developer is entitled to the power, indemnities and protections set forth in the Declaration for the Association,

2.5 Property Rights in Common Areas. Every member, and his/her guests of tenants, shall have a right and easement of enjoyment in the Common Areas, which rights and easements shall be appurtenant to and shall pass with the transfer of every Lot, subject to the following restrictions:

2.5.1 The right of the Association to adopt rules and regulations;

2.5.2 The right of the Association to exclusive use and management of said Common Areas for utilities such as pumps, pipes, wires, conduits and other utility equipment, supplies and materials;

2.5.3 The rights reserved to the Developer in the Declaration; and

2.5.4 The other restrictions, limitations and reservations contained or provided for in this Declaration, the Articles and By Laws of the Association, and rules or regulations adopted by the Association.

2.6 Maintenance.

2.6.1 The Association shall maintain the Common Areas and improvements located thereon in the same condition as a reasonable prudent Owner would maintain his own home so that Wheeler Ranch will reflect a high pride of ownership.

2.6.2 Each Owner hereby covenants and agrees to maintain his respective property in the same condition as a reasonable prudent Owner would maintain his own home so that Wheeler Ranch will reflect a high pride of Ownership. If any Owner shall fail to so maintain his property, the Association shall have the right to notify said Owner in writing of the maintenance required. If said maintenance shall not be performed within thirty (30) days from the date of said notice is delivered to the non-performing Owner, the Association shall have all remedies as provided in this Declaration.

2.7 Common Expense.

2.7.1 Certain expenses shall be paid by the Association for the benefit of all Owners and shall be referred to as common expenses. The common expenses shall be paid by the Association from funds collected annually at the beginning of each new year and special assessments to be paid by Owners.

All expenses of maintaining and operating the Common Areas, whether held by the Developer or the Association, shall be common expenses. The common expenses shall include, but not be limited to, the following:

- a. The cost of maintaining insurance coverage on Common Areas held by the Association or the Developer, and
- b. Any other expense which shall be designated as a common expense in the Declaration of, from time to time, by the Association.

2.7.2 An adequate reserve fund for the replacement of Common Area improvements shall be established and shall be funded by depositing into said fund a portion of the assessments collected from the Owners. That portion of the assessments deposited into said reserve fund shall be determined by the Developer until the Transition Date, and thereafter by the Association.

## 2.8 Assessments.

2.8.1 From and after the date the first sale from the Developer to an Owner is executed and the transaction relating thereto is closed, each Lot shall be subject to annual assessments or charges in an amount to be determined by the Developer until the Transition Date, and thereafter by the Association. The amount of assessments shall be that necessary to pay common expenses. The amount of the assessments may be increased or decreased periodically as may be necessary from time to time to properly provide for payment of said common expenses.

2.8.2 The Association shall, upon written demand, furnish a certificate in writing, setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made for the issuance of these certificates.

2.8.3 In addition to the assessments authorized above, the Association, by and through its Board of Directors, may levy, in any year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of facilities in the Common Areas, including the necessary fixtures and personal property related thereto, or for any other purpose determined necessary by the Board of Directors of the Association. The special assessment to be charged shall be equal for all Lots. Special assessments may be payable in monthly installments, quarterly installments, or such other periodic installments as shall be determined by the Association.

## 2.9 Collection of Assessments. Enforcement of Declaration, Attorneys' Fees and Costs

2.9.1 All assessments, together with interest, costs of collection and reasonable

attorneys' fees, shall be a charge against and shall be a continuing lien upon said Lot against, which each such assessment is made.

2.9.2 If any assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from the due date at the higher of 12% or the maximum rate allowed by law. Each owner hereby expressly vests in the Association or its agents the right and power to bring all actions against such nonpaying Owner personally for the collection of delinquent assessments as a debt and to enforce lien rights of the Association by all methods for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in like manner as an Oregon mortgage on real property, and each owner hereby expressly grants to the Association the power of sale in connection with such liens. The liens shall be in favor of the Association, shall be for the benefit of the Association, and the amount of said liens shall include interest, costs of collection and reasonable attorneys' fees. The Association shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event the Association employs an attorney to enforce said liens, or the collection of any amounts due, or to enforce compliance with specific performance of this Declaration, Articles, Bylaws, rules and regulations of the Association or provisions of this Declaration, the Association shall be entitled to the award of reasonable attorneys' fees and costs incurred. In the event any Owner shall be in arrears in the payment of the assessments due or shall be in default of the performance of any of the terms of the Articles, Bylaws, or rules and regulations of the Association or this Declaration for a period of thirty (30) days, said Owner's right to vote shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied. In addition, the Association shall have such other remedies against such delinquent Owners as may be provided in the Articles, Bylaws, rules and regulations of the Association.

2.10 Indemnification. To the fullest extent permitted by law, every director and officer of the Association and Developer (to the extent a claim may be brought against the Developer by reason of his appointment, removal or control over Members of the Board) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, against all expenses and liabilities, including without limitation, attorneys' fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she may be a party, or in which he/she may become involved, by reason of his/her being or having served in such capacity on behalf of the Association (or in the case of Developer by reason of having appointed, removed, controlled or failed to contract Members of the Board), or any settlement thereof, whether or not he/she is a director or officer or serving in such other specific capacity at the time such expenses are incurred, provided that the

Board shall determine, in good faith, that such officer, director, or other person or developer, did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

- 2.11 Non-Liability of Officers. To the fullest extent permitted by law, neither the Developer, the President, the Board, any committees of the Association, or any Member thereof, nor any directors or officers of the Association, shall be liable to any Member, owner, occupant, the Association, or any other person for any damage, loss of prejudice suffered or claimed on account of any decision, approval or disapproval of drawings or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith in which Developer, the President, the Board or such committee or person reasonably believed to be within the scope of their respective duties.

### 3. STRUCTURES

- 3.1 Building Plans. No structures shall be erected or constructed, nor any structure remodeled or altered, including as to exterior color or materials, on any lot unless a complete set of building plans and specifications and site plan (which shall include the purpose, shape, height, materials, exterior color schemes and location of the structure) shall have been submitted to and approved by the Developer or the Board. The plans and specifications shall be submitted in a form satisfactory to the Developer or the Board, which may withhold its approval by reason of its reasonable dissatisfaction with the location of the structure on the lot, color scheme, finish, architecture, height, impact on view from another lot or lots, appropriateness of the proposed structure, materials used therein, or because of its reasonable dissatisfaction with any other matter which, in the reasonable judgment of the Developer or the Board, would render the proposed structure inharmonious with the general plan of development and/or design concepts of the property or with other structures nearby.
- 3.2 Completion of Construction. Any structure erected or placed on a lot and all landscaping approved by the Board in connection therewith shall be completed as to external appearance within six (6) months from the date construction is started provided, however, reasonable extensions shall be granted by the Developer or Board due to inclement weather.
- 3.3 Craftsman Style Homes. The exterior of the homes will be Craftsman Style.

3.4 Design Guidelines: All Phases shall be the same, unless otherwise provided in the way of an amendment to these CC&R's.

1. Front Porches required —6 foot minimum depth.
2. First floor decks to have a maximum of 12" open space between deck and Natural ground.
3. Deck piers must be buried.
4. All windows and doors must be trimmed.
5. Exterior Columns — minimum 6" square.
6. Walkways from home to curb.
7. Roof Type: The roof on each dwelling shall be no less than equal to a Twenty-five (25) year laminate architectural composition. All other material used then Class A or Class B Fire Retardant.
8. Siding and Windows: Horizontal siding or approved vertical siding shall be on the front, sides and rear of each house. If T1-11 is used, then 2" or better batt will be required to cover seams — minimum batt intervals of 2 feet (2'). Aluminum frame windows will not be allowed,
9. Lighting: A shrouded light will be required in front of each house. Front yards and Parkways — sod only. Trees in parkway to be a minimum of 1 1/2" caliper. Automatic sprinklers to be installed in parkway and front lawn. Flower bed 24" wide along the front of the house, where grade permits.
10. Fencing: Board approved only.

4. GENERAL COVENANTS

- 4.1 Subdivision. No lot may be subdivided.
- 4.2 Nuisances. No activity shall be carried on upon any Lot or permitted thereon which may be or becomes a nuisance to the neighborhood.
- 4.3 Animals. Animals shall not be allowed, except traditional small household pets. All pets must be kept within the boundary of the Owner's Lot.
- 4.4 Refuse. No trash, garbage, rubbish, refuse or other solid waste of any kind, including particularly, inoperable automobiles, appliances and furniture, shall be thrown, dumped, stored, disposed of, or otherwise placed on any part of the subdivision, Garbage and similar solid waste shall be kept in sanitary containers well suited for that purpose.
- 4.5 Landscaping. As part of completion of construction, the contractor for each house shall landscape the front yard and parkway with sod, plant shrubs

in the front yard flower bed, plant trees within the parkway, install an automatic irrigation system to include both the front yard and parkway. Lawns shall be weeded and mowed weekly.

- 4.6 Natural Drainage. Owner(s) shall not change or interfere with the natural drainage of any part of the developed area without the prior written approval of the Board.
- 4.7 Signs. There shall be no billboard or advertising sign of any kind erected, placed or maintained on any Lot or Lots or on any building or structure thereon, except, a "For Sale" sign used by a builder to advertise a Lot; rental signs of any type whatsoever shall not be permitted on any Lot; nor "For Sale" signs for future sale of an existing home. The maximum size sight shall be six (6') square feet. The Board may approve larger signs.
- 4.8 Businesses. No store or business shall be carried on upon said premises or permitted thereon.
- 4.9 Vehicle Repairs. No major or extended vehicle repairs shall be performed unless inside a closed garage.
- 4.10 Repair. All buildings located on any Lot shall be kept in good repair and in generally attractive condition.
- 4.11 Conveyances: Notice Required. The right of a Lot Owner to sell, transfer or otherwise convey the Lot shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf, An Owner intending to sell a Lot shall deliver a written notice to the Board, at least two weeks before closing, specifying the lot being sold; the name and address of the purchaser, of the closing agent, and of the title insurance company insuring the purchaser's interest; and the estimated closing date. The Board shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Lot, whether or not such information is requested.
- 4.12 Fencing. All fencing and privacy screens must be approved by the Board as to conformity with the location, style, amount and quality of any other fencing and privacy screens on or about the property. Each owner shall maintain in good repair all fencing and other privacy screens on or about his/her lot which are approved by the Board.
- 4.13 Storage of RV's and Other Personal Equipment. All sports equipment (jet skis, snowmobiles, boats, recreational vehicles, etc.) trailers of any kind, and/or any other personal equipment must be stored behind the Owner's

six foot fence.

4.14 **Maintenance of Building and Lots.** Each Owner shall, at the Owner's sole expense, keep the interior and exterior of the building on the Owner's Lot in a clean and sanitary condition, free of rodents and pests, and in good order. condition and repair and shall do all redecorating and painting at any time necessary to maintain the appearance and condition of the building at a level substantially identical to the buildings on the other Lots. Each Owner shall also, at such Owner's sole expense, keep all portions of the Owner's Lot in a clean, neat and orderly condition, including without limitation all driveways and landscaping, so that all portions of the Owner's Lots are at all times maintained at a level substantially identical to the other Lots. If the Board gives any Owner written notice directing the Owner to remedy a violation of this section and the Owner fails to do so within seven (7) days after receipt of such notice, the Board and/or its agents, contractors or employees shall thereafter be entitled; and is hereby declared to have an easement to go upon such Owner's Lot and do any and all things reasonably necessary to remedy such violation. The Board shall be entitled to bill such Owner for all costs and expenses incurred in so doing and such bill shall constitute an assessment against the Owner's Lot that may be enforced in accordance with the provisions of this document.

4.15 **Electrical, Television and CATV Service.** There shall not be any overhead wires or services of any kind for distribution of electrical energy, telecommunications or CATV purposes, nor any pole, tower or other structure supporting outdoor overhead wires shall be erected, placed or maintained. Only underground services will be permitted. All satellite dishes of any kind or size will need to be approved by the Board.

## 5. COMMON EXPENSES

5.1 **Signs.** The Association shall provide maintenance and repair for all signs relating to the subdivision.

5.2 **Miscellaneous Expenses.** The Association, as determined by the Board, shall provide repair and maintenance for future common areas or improvements.

## 6. LIMITATION ON DEVELOPER'S LIABILITY

6.1 Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner, acknowledges and agrees that neither Developer (including without

limitation any assignee of the interest of the Developer hereunder), nor any director, officer or shareholder of Developer (or any partner or shareholder in any such assignee) shall have any personal liability to the Association, or any Owner, Member or other person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Association accept, in the case of Developer (or its assignee), to the extent of its interest in the property; and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

## 7. AMENDMENT

- 7.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a duly-held meeting of the Members upon the approval thereof of a majority of Members, or without any meeting if all Members have been duly notified and if a majority of members consent in writing to such amendment.
- 7.2 Effective Amendment. It is specifically covenanted and agreed that any properly adopted amendment to this Declaration will be completely effective to and amend any and all of the covenants, conditions, restrictions and easements contained herein which may be affected and any or all clauses of this Declaration or the plat, unless otherwise specifically provided in the section being amended or the amendment itself.
- 7.3 Amendment of Plat. Except as otherwise provided herein, the plat may be amended by revised versions of revised portions thereof referred to and described as to affect an amendment to this Declaration adopted as provided for herein. Such amendment to the plat shall be effective, once properly adopted, upon recordation in the appropriate governmental office in conjunction with the Declaration amendment.
- 7.4 Developer's Right to Amend. Notwithstanding any other provision of this Section 7, until May 1, 2007 Developer reserves the right to amend this Declaration or the plat without the approval of the Board or the Members; provided, however, that no such amendment shall have the effect of changing the boundaries of an Owner's Lot without the consent of the Owner.

8. TERM: TERMINATION

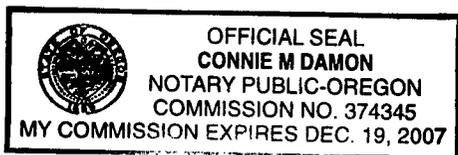
8.1 This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for twenty (20) years from the date of its recordation, and thereafter shall continue for consecutive periods often (10) years each, unless there is an affirmative vote, not more than three hundred sixty (360) days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by a vote of the majority of Members at a duly-held meeting of the Members, or without any meeting if all Members have been duly notified and if a majority of Member's consent in writing to such termination within said three hundred sixty (360) day period. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the Deschutes County Clerk, Oregon, a certificate of termination, duly signed by the president or vice-president of the Association and attested by the secretary or assistant secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration, as of the date the next extension of the term of this Declaration would otherwise have commenced, shall have no further force and effect, and the Association shall be dissolved.

SANDERSON COMPANY

By Rowe Sanderson III  
Rowe Sanderson III, President

STATE OF OREGON     )  
  ) ss.  
County of Deschutes    )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of July, 2004, by Rowe Sanderson III, as President of Sanderson Company, an Oregon corporation.



Connie M. Damon  
Notary Public for Oregon  
My commission expires: Dec. 19, 2007

EXHIBIT "A"

**LEGAL DESCRIPTION**

A parcel of land located in the northeast one-quarter of Section 14, Township 22 South, Range 10 East, Willamette Meridian, Deschutes County, Oregon, more particularly described as follows:

Lots 1 through 12, Wheeler Ranch, Phase 1, as recorded with the Deschutes County Clerk in Plat Cabinet G-301.