

Deschutes County Official Records

Nancy Blankenship, County Clerk

2021-33262



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This Space Provided for Recorder's Use

After Recording Return To:

Foreman, Sturm & Thede, LLP
c/o Brian Gingerich
70 SW Century Dr.
Suite 100-484
Bend, OR 97702

DOCUMENT TITLE

First Amendment to Building And Use Restrictions of First On The Hillside Subdivision (and related Exhibits)

LEGAL DESCRIPTION

FIRST ON THE HILLSITE subdivision, Deschutes County, Oregon (the "Subdivision"), the plat for which was filed with the Clerk of Deschutes County, Oregon on April 8, 1965.

**FIRST AMENDMENT TO BUILDING AND USE RESTRICTIONS OF FIRST ON THE
HILLSITE SUBDIVISION**

This FIRST AMENDMENT TO BUILDING AND USE RESTRICTIONS OF FIRST ON THE HILLSITE SUBDIVISION (“First Amendment to B&URs”) is made by majority vote of the Lot owners of said subdivision in accordance with Exhibit A hereto and is effective as of the date set forth on Exhibit A.

RECITALS

- A.** The First on the Hillside Subdivision (the “Subdivision”) was established via plat filed with the Deschutes County Clerk on April 8, 1965.
- B.** North Century Seven, Inc., the sole owner of the Subdivision as of April 8, 1965, established that same date the Building And Use Restrictions (“B&URs”) of the Subdivision, which were recorded on April 8, 1965 at vol. 143 pg. 18 of the Deschutes County Deed Records.
- C.** Paragraph 15 of the original B&URs establishes that the B&URs may be amended “by vote of a majority of the then owners of the lots” within the Subdivision.
- D.** Accordingly, the Lot owners of the Subdivision have by majority vote more particularly described in Exhibit A hereto, authorized the First Amended Building And Use Restrictions Of First On The Hillside Subdivision (“First Amended B&URs”).
- E.** The Lot Owners of the Subdivision now wish to formally adopt the First Amended B&URs set forth below.

NOW, THEREFORE, the First Amended B&URs of the Subdivision are as follows:

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FIRST AMENDED BUILDING AND USE RESTRICTIONS

FIRST ON THE HILLSITE SUBDIVISION

DESCHUTES COUNTY, OREGON

The following First Amended Building And Use Restrictions ("First Amended B&URs") apply to all the real property known as the FIRST ON THE HILLSITE subdivision, Deschutes County, Oregon (the "Subdivision"), the plat for which was filed with the Clerk of Deschutes County, Oregon on April 8, 1965.

Article I: Definitions

The following terms have the following meanings within these First Amended B&URs:

- (1) "The Property" means the real property described in the legal definition above, and which constitutes the Subdivision.
- (2) "Lot" means any numbered lot of land shown on the recorded Subdivision plat corresponding to the property or on a subsequent division of such lot that was recorded prior to the adoption of these First Amended B&URs.
- (3) "Owner" means the record owner(s) of fee simple title to any Lot. When any Lot is subject to a purchase and sale contract in its executory period (the period after the seller and buyer have executed said contract but before closing), the term "Owner" will mean the buyer under said agreement.
- (4) "Roadway" means any street, highway, walkway, or other thoroughfare as shown on the recorded plat of the Subdivision.

Article II: General Provisions

Section 1. Use and Occupancy. Each Owner shall be entitled to the exclusive use and benefit of each Lot owned by him or her, except as expressly provided herein.

Section 2. Buildings and Structures. No building or other structure of any kind whatsoever shall be constructed on said Property for use for any other purpose than a residence together with such other incidental buildings as may be and are ordinarily used in connection with a residence; provided, however, that North Century Seven, Inc., shall have the right to construct a community center complex on said Property as it sees fit. A private stable or barn may be maintained to maintain horses or cattle for personal use.

Section 3. Animals. No swine shall be kept or maintained on premises.

Section 4. Location of Buildings. No building shall be erected on any residential Lot, any portion of which shall be nearer than twenty-five (25) feet to the front Lot line, or nearer than

fifteen (15) feet to any side street line, nor nearer than ten (10) feet to any side Lot line, nor nearer than ten (10) feet to any rear Lot line. For the purposes of these restrictions, eaves, steps and porches shall be considered as part of a building.

Section 5. Trade Activity. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 6. Temporary or Other Structures. No trailer, basement, tent, shack, garage or other outbuilding constructed or placed upon any portion of said tract shall at any time be used as a temporary or permanent residence. No structure of any kind shall be moved onto any Lot excepting a small structure for use by a builder as his construction shack during the construction period. No temporary dwelling shall be constructed.

Section 7. Dwelling Units Per Lot. There shall be no more than two (2) dwellings on any Lot, nor shall any dwelling be constructed on a fraction of a Lot under an area of 10,000 square feet. No type of dwelling other than a single-family residence may be constructed within the Property. Each dwelling shall be allowed to include a single accessory dwelling unit ("ADU" as defined by the City of Bend Development Code). No dwelling except an ADU shall be constructed to contain less than 800 square feet of living area.

Section 8. Subdivision of Lots. No Lot may be further subdivided or partitioned.

Section 9. Exterior Finishes. All buildings which may be placed or constructed on any portion of the above-described tract excepting the portions or whole thereof constructed of brick or stone shall be painted or process painted as to exterior within six months of the date said buildings are completed.

Section 10. Foundations. All residences, dwellings and other buildings erected shall be placed on a solid continuous poured concrete or masonry block foundation.

Section 11. Sewers. All dwellings shall have an individual sewage disposal system or city sewer installed in compliance with the requirements of the State Sanitary Authority or Health Authority having jurisdiction.

Section 12. Advertising and Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five square feet advertising the Lot for sale or rent, or signs used by a builder to advertise the Lot during the construction and sales period.

Section 13. Garbage and Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and such rubbish, trash, garbage or other waste shall not be kept except in sanitary containers at all times, and all incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

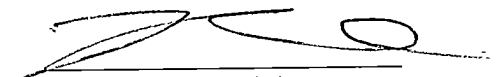
Section 14. Enforcement and Waiver. Any Owner, or the owner of any recorded mortgage upon any part of said property, shall have the right to enforce, by any proceeding at law or in

equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereinafter imposed by the provisions of this document. Failure by any of the property Owners or their legal representatives, heirs, successors or assigns, to enforce any of such conditions, restrictions, or changes herein contained shall in no event be deemed waiver of the right to do so.

Section 15. Binding on Owners. These First Amended B&URs shall run with the land and shall be binding on the Owner(s) or tenant(s) of said Property and all persons claiming by, through or under them for a period of twenty-five years from the date that this document is recorded, after which time said First Amended B&URs shall be automatically extended for successive periods of ten years.

Section 16. Amendment. Any part or all the First Amended B&URs may be amended at any time by a majority vote of a quorum of the Owners. A quorum means at least 60% of the Owners have returned a ballot and cast a vote. Failure to return a ballot or cast a vote will not be counted. Any such vote shall be conducted by mailed ballot to the Owner(s) with a 30-day period allowed for ballots to be cast. Returned ballots shall be counted and reported by a fiduciary party engaged for that purpose. Each Lot shall have one vote, and in the case of multiple Owners of a Lot who cannot agree on how to cast that vote fractional votes of those Owners shall be allowed. All amendments so approved shall be recorded by Owners in the appropriate deed records of Deschutes County, Oregon and shall be binding on Owners and properties as if they had been part of the original Building and Use Restrictions as recorded April 9, 1965.

Section 17. Severability. Invalidation of any part of these First Amended B&URs by court order, judgment or decree shall in no way affect any of the other remaining provisions hereof which shall, in such case, continue to remain in full force and effect.


Brian L. Gingerich, Attorney



State of Oregon,

County of Deschutes,

This record was acknowledged before me on 1st of June, 2021 by Brian L. Gingerich, on behalf of a majority of Lot Owners of the First On The Hillside Subdivision.

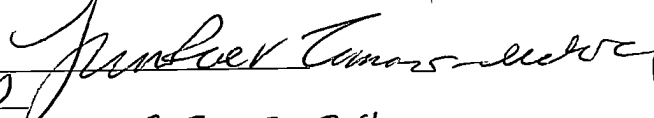
Signature of notarial officer: 
Title of Office: Notary
My commission expires: January 20, 2024

Exhibit A

Approval of First Amended Building and Use Restrictions of First On The Hillside Subdivision.

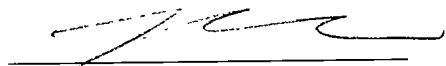
- A. The First On The Hillside Subdivision (“Subdivision”), the plat for which was filed with the Deschutes County Clerk on April 8, 1965 is subject to the Building and Use Restrictions (“B&URs”) recorded the same date at vol. 143 pg. 18 of the deed records for Deschutes County;
- B. Paragraph 15 of the B&URs says that the B&URs may be amended “by vote of a majority of the then owners of the lots” within the Subdivision;
- C. Certain Lot owners in the Subdivision have proposed to amend the B&URs by replacing them with the First Amended B&URs, as set forth above;
- D. Said Lot owners engaged the law firm Foreman, Sturm and Thede, LLP (“FST”), to coordinate and conduct a vote of the Lot owners of the Subdivision regarding whether to adopt the First Amended B&URs;
- E. The language “by vote of a majority of the then owners of the lots” could reasonably be interpreted to mean (1) “approval by fifty-one percent (51%) of the owners of lots within the Subdivision, where each lot owner may cast one vote” or (2) “approval by fifty-one percent (51%) of the lots within the Subdivision, where each lot owner may cast one vote for each lot he or she owns;”
- F. Therefore, out of an abundance of caution and to ensure compliance with paragraph 15 of the B&URs, FST counted all votes twice. The first count, Count One, attached votes to ownership. Therefore, each owner and co-owner of one or more Lots within the Subdivision was afforded a single vote; i.e. one vote per owner regardless of the number of Lots owned. There were no fractional votes. The second count, Count Two, attached votes to Lots. Therefore, each Lot was entitled to one vote to be cast by the owner(s) of said Lot. Where a Lot was co-owned, and the co-owners voted differently or less than all the Lot Owners voted, said votes were counted as fractional votes for that Lot; i.e., if a Lot is owned by 2 individuals, each individual’s vote was counted as a ½ vote. Each owner was given thirty (30) days, beginning on the day the owner’s ballot was postmarked and/or hand delivered, in which to return the ballot fully executed, after which time said owner was presumed to have voted “No”.
- G. There are 123 Lots within the Subdivision and 177 Owners of said Lots. A total of 123 ballots were sent to the 178 Owners. 93 ballots were returned. 30 ballots were not returned. The unreturned ballots represent 30 Lots and 41 Lot Owners. Counting Lot votes per ballot returned (including fractional votes) 82.5 Lots voted “Yes” and 10.5 Lots voted “No” with 30 unreturned ballots per Lot as counted as “No” votes, there were 82.5 Lot votes cast in favor and 40.5 Lot votes cast against. Of the possible 177 Owner votes, 118 Owners voted “Yes”, and 18 Owners voted “No” with unreturned ballots per Owner counted as 41 “No” votes, there were 118 Owner votes cast in favor and 59 Owner votes cast against.

NOW, THEREFORE, having identified the record owner of each lot through the Deschutes County, Oregon Property Information ("DIAL") system as it existed in April of 2021, and circulated ballots to all the owners of the Lots within the Subdivision, and thirty (30) days having passed since postmarking and/or hand delivery of the same, FST has counted all ballots, and the results are as follows:

Count One (Owner votes): 118 in favor (66.66%), 59 against (33.33%). Therefore, Count One was approved by a majority of the Lot Owners of the Subdivision.

Count Two (Lot votes): 82.5 in favor (67.07%), 40.5 against (33.93%). Therefore, Count Two was approved by a majority of the Lots in the Subdivision.

Accordingly, the First Amended B&URs are adopted, as of the date below.



Brian Gingerich
Foreman, Sturm and Thede, LLP
Ballot Coordinator

Dated this 15th day of June, 2021

State of Oregon,

County of Deschutes,

This record was acknowledged before me on 1st of June 2021 by Brian L. Gingerich, on behalf of a majority of Lot Owners of the First On The Hillside Subdivision.

Signature of notarial officer: Jennifer Terrazas-Medina

Title of Office: Notary

My commission expires: January 20, 2024

