

COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WEST HILL ESTATES SUBDIVISION, PHASE I
POLK COUNTY, OREGON

THESE COVENANTS, CONDITIONS AND RESTRICTIONS are made by Mountain View Estates Development Co., Inc., (hereafter the "Subdivider") effective upon the date of recordation of this instrument.

RECITALS

A. Subdivider is the owner of all the real property described in the attached Exhibit "A" (hereafter the "property"). Subdivider intends to improve and subdivide the real property in several phases. Each phase and all phases together shall be referred to as the "subdivision," as the context requires.

B. In order to provide for the orderly development of the property and provide for consistent development and construction within the subdivision, the Subdivider hereby adopts these covenants, conditions and restrictions to apply to all development and construction upon this property.

COVENANTS, CONDITIONS AND RESTRICTIONS

1. RECITALS: The recitals set forth above are incorporated herein by this reference.

2. COVENANTS RUN WITH THE LAND: All of the covenants, conditions and restrictions contained in this instrument shall run with the land described in the attached Exhibit "A." No land, parcel, or lot upon the property shall be conveyed, except subject to all these covenants, conditions and restrictions. All of these covenants, conditions and restrictions are declared inserted by reference in any and all deeds to any part of the subdivision. The covenants, conditions and restrictions are for the benefit of the property owners of any other land within the subdivision.

The subdivision may be developed in one or more phases. Each phases of the subdivision shall be considered as a part of the entire subdivision for the purpose of the application of these covenants, conditions and restrictions.

3. ARCHITECTURAL CONTROL COMMITTEE: There is hereby established an Architectural Control Committee for the subdivision. The Architectural Control Committee shall have the powers and duties as provided herein.

The members of the Architectural Control Committee shall be appointed as serve at the pleasure of the subdivider until such time as the subdivider transfers all its powers and duties to the West Hill Estates Homeowners Association (hereafter the "Homeowners Association") provided for herein. Thereafter the members shall be elected in accordance with the Bylaws of the Homeowners Association. Until the transfer, the subdivider shall

keep a record of all members of the Architectural Control Committee at its corporate offices.

4. PRIOR APPROVAL OF PLANS: No owner of any land within the subdivisions shall erect, pace or alter any building or other structure in this subdivision until the building plans, specifications, exterior design, color and plot plan have been approved in writing by the Architectural Control Committee. The Architectural Control Committee review shall include, but not be limited to, review of the size, conformity, value, location, and harmony of the external design with the existing structures in the subdivision, and as to the location of the building with respect to the topography and finished ground elevation.

The Architectural Control Committee shall have the right to require all application for approval be submitted on forms to be provided by the Committee, or in a format which facilitates its review of proposed structures.

All plans or applications submitted to the Architectural Control Committee shall be deemed approved if the Architectural Control Committee does not advice the applicant of objections within thirty (30) days following submission.

The Architectural Control Committee shall withhold consent for the construction of all manufactured housing in the subdivision, including, but not limited to, mobile homes and modular homes.

5. SITES OF STRUCTURES: All buildings within the subdivision shall be single family residences or ancillary structures customarily constructed in conjunction with a single family residence. No duplexes or other multiple unit structures shall be built within the subdivision without the prior written consent of the Architectural Control Committee.

No residence shall be erected or placed upon any lot which has an area less than 1,500 square feet unless otherwise approved by the Architectural Control Committee. Garages, porches, overhangs, outside steps, eaves and basements shall not be included in the calculation of square footage.

No dwelling house shall be commenced, erected, or completed which occupies fewer square feet of livable floor area than is specified in the following table:

ONE STORY a minimum of 1,500 square feet, plus a two car garage.

TWO STORY a minimum of 1,800 square feet with no less than 1,200 square feet on the ground floor.

Basement or cellar areas (including daylight basement areas) shall not be included in the calculations of livable floor area.

No dwelling house shall be commenced, erected or completed of which any portion, other than normal eaves or overhangs, is nearer to the street or sideline on which it most closely abuts, than is specified in the following table:

FRONT SETBACK . . twenty (20) feet.

SIDE SETBACK . . seven (7) feet on all buildings.

6. EASEMENTS: Easements for the installation and maintenance of utilities, drainage facilities, recreation facilities, and other facilities are reserved as shown on the plat of the subdivision. Within these easements no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the purpose of the easement, or obstruct the flow of waters in any drainage channel or pipeline. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which a public authority may be responsible.

In addition, the subdivider shall retain an easement over all lots which abut Orchard Heights Road, NW for the purpose of erecting and maintaining a wall along the property line adjacent to the road. The subdivider may affix signs and markers to the surface of the wall which faces the road. The subdivider may transfer the wall, together with the easement to erect and maintain it and all other rights associated with the wall, to the Homeowners Association, which thereafter shall be solely responsible for it.

7. RECREATIONAL FACILITIES: Subdivider intends to request permission from the City of Salem to develop, in conjunction with the City of Salem, recreational facilities upon the land owned by the city adjacent and to the east of Phase I of the subdivision. Additional easements may be reserved from lots in the subdivision to provide access to the recreational facilities. The City of Salem has not granted Subdivider permission to develop the recreational facilities, and no such permission may ever be granted.

8. BUILDING MATERIALS: All building materials to be incorporated into and visible as a part of the external structure of any building or other structure in the subdivision may be regulated by the Architectural Control Committee.

In particular, all roofing material for any building or structure shall be of wood (shake or shingle) or bartile, unless otherwise approved in writing by the Architectural Control Committee.

All siding materials shall be natural wood, brick or stone. If other man-made lap siding materials are used, the following design requirements are to apply unless otherwise approved in writing by the Architectural Control Committee:

- a. The material must be approved;

- b. No metal clips, metal joints, or other easily visible fasteners may be used;
- c. The material must be nailed on 16 inch centers;
- d. Twenty percent (20%) of all sides facing a public street, excluding areas devoted to windows, entry doors, and garage doors, shall have masonry finish. Masonry materials must be approved by the Architectural Control Committee.
- e. No T1-11 or other vertical plywood type siding will be applied without express approval of the Architectural Control Committee.

Exterior finishes shall be semi-transparent or solid strains in earth tone colors unless otherwise approved by the Architectural Control Committee. The Architectural Control Committee shall have thirty (30) days following receipt of a color sample of all exterior finishes to grant approval.

The Architectural Control Committee may, from time to time, provide written guidance to owners concerning approved building materials and techniques. Such written guidance may include a list of pre-approved substitute materials for roofing and siding, together with the approved applications of those materials.

9. LANDSCAPE, HEDGES AND FENCES: All front and side yards must be completely landscaped within six (6) months of initial occupancy. All grounds and related structures shall be maintained in harmony with surrounding landscaping. No weeds, noxious plants, or unsightly vegetation shall be planted or allowed to grow.

No fence or hedge shall be erected, placed or permitted to remain on any lot unless approved by the Architectural Control Committee. Fences and hedges shall not exceed six (6) feet in height. Fences shall be well constructed of suitable materials and shall not detract from the appearance of the adjacent structures and buildings. Fences within six feet of the brick or stone wall along Orchard Heights Road, NE or hedges abutting it, may not exceed the height of the brick wall at the point where the fence is nearest to the wall, and shall taper to the height of the wall over the adjacent six (6) feet.

No high output exterior lighting, including but not limited to mercury vapor and halide lights, shall be installed without prior approval of the Architectural Control Committee.

Not less than seventy-five (75) percent of all walks and drives on any lot must be constructed of exposed aggregate concrete unless other materials are approved in advance by the Architectural Control Committee.

Planting of new trees and shrubs that would exceed in height of the ridgeline of the roof of the house is prohibited without Architectural Control Committee approval. All plantings which grow higher than the ridgeline of the roof of the house on any lot must be

pruned, topped, or otherwise limited to grow no higher than the ridgeline of the roof of the house.

No trees over ten feet (10') tall shall be removed without the approval of the Architectural Control Committee.

10. NO REZONING OR REDIVISION: No property within the subdivision may be rezoned or redivided without the written consent of the Architectural Control Committee.

11. NO ANIMALS: No animals of any kind shall be raised, bred or kept in the subdivision, except dogs or cats or other household pets may be kept so long as they are not bred, maintained or kept for commercial purposes. No animal of any kind, including dogs and cats, shall be allowed to interfere with the quiet enjoyment of the other residents in the subdivision, or permitted untended upon the streets or upon premises of other occupants of the subdivision.

12. NO COMMERCIAL USE: No property in the subdivision shall be used for business or commercial purposes. No occupant of property within the subdivision shall park, nor permit to be parked, any commercial vehicle such as log trucks, dump trucks, tractor trailer rigs, or any other vehicle except passenger automobiles (including pickups) upon property, including streets, in the subdivision. No owner or occupant shall permit, initiate, or carry on any obnoxious or offensive activities within the subdivision nor allow conditions on the lot or parcel owned or occupied to become a nuisance or annoyance to the neighborhood.

No commercial signs shall be erected on the property, except real estate sales signs of not more than five (5) square feet advertising property within the subdivision for sale or rent, and signs on the wall facing Orchard Heights Road NW.

13. SCREENING: Trash, garbage and other waste shall not be kept except in sanitary containers, screened from public view. No lot shall be used as a dumping ground for trash, garbage, waste or debris.

All heat pumps and condenser units (or other utilities and devices commonly placed out of doors) shall receive special consideration to provide visual screening and noise attenuation. Placement of all such devices shall be subject to Architectural Control Committee approval.

All boats, trailers, recreational vehicles, equipment, campers and the like must be parked off the streets of the subdivision, and must be screened from the street and adjoining lands.

Owners or occupants within the subdivision shall not engage in nor continue uses which unreasonably interfere with use of other property within the subdivision. The following activities shall conclusively be deemed to unreasonable interfere with other property in the subdivision:

- a. construction of passive solar systems that reflect the sun or other lights onto other subdivision property;
- b. construction and maintenance of radio transmission and reception towers and antenna;
- c. construction and maintenance of exterior radio and television antennae and other receptors (including satellite dish type antennae); and
- d. construction and maintenance of flagpoles.

Passive solar heating systems may be allowed by the Architectural Control Committee if the panels or collectors are integrated into the structure with regard to the overall appearance and design, and no rights of the abutting land owners are jeopardized.

14. **COMPLETION OF IMPROVEMENTS:** All structures (including flat work and landscaping) constructed within the subdivision shall be erected and completed within one year after the commencement of construction. All remodeling, reconstruction, or enhancement of structures shall be completed within one year of the commencement of construction. Commencement of construction shall be deemed to be the date upon which a building permit was first issued for the construction, or, if no building permit was obtained, the date on which lot clearing, demolition or remodeling commenced.

15. **HEIGHT RESTRICTIONS:** Certain lots, to be identified as development occurs, shall have height restrictions included in their deeds. It is the intention of the subdivider that such restrictions shall be for the benefit of all owners of land in the subdivision, and all owners in the subdivision may enforce the restrictions as third party beneficiaries.

Dwellings and other buildings or structures built on lots with height restrictions shall be constructed so that they do not exceed the height restrictions in the deed. To determine the highest point on the dwelling, building or structure, measurement shall be taken where the structure intersects the ground at the highest point of the natural slope. Natural slope shall mean the slope or grade as existed on the date of the original sale by the subdivider.

The height of plants and shrubs is also restricted under the provisions of Paragraph 9, herein.

16. **MAILBOXES AND NEWSPAPER RECEPTACLES:** All mailboxes and newspaper receptacles shall be of the standard design initially approved by the Architectural Control Committee. All replacements shall be of the same design.

17. **WEST HILL ESTATES HOMEOWNERS' ASSOCIATION:** Until the West Hill Estates Homeowners' Association is formed, the Subdivider shall perform all functions assigned to the Association.

Subdivider expects to delegate from time to time to an association representing all unit owners within West Hill Estates Covenants, Conditions and Restrictions and will eventually delegate to the association all of his responsibilities to the end that the association shall take over all duties of the Subdivider. In order to facilitate the accomplishment of such purposes the Subdivider shall organize an association to represent the owners of all the property within West Hill Estates not later than January 1, 1993.

Subdivider shall have the right to organize the association on such basis as shall appear to Subdivider to be most advantageous to the unit owners of West Hill Estates at the time of organization subject, however, to the following conditions:

- (a) The association shall be incorporated as a nonprofit corporation under the general non profit corporation laws of the State of Oregon;
- (b) The articles of incorporation of the association shall provide, for its perpetual existence, but in the event the association shall at any time be dissolved, whether inadvertently or deliberately, it shall immediately be succeeded by an unincorporated association of the same name. In that event all of the power, and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, which vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible any such successor unincorporated association shall be governed by the articles of incorporation and bylaws of the incorporated association as if they had been made to constitute the governing documents of the unincorporated association;
- (c) The articles of incorporation of the association shall provide that each unit owner shall be a member of the association with one vote for each unit owned by him. The articles shall provide that representation of each unit owner through membership in the association shall commence, exist and continue simply by virtue of ownership of a unit, shall expire automatically upon termination of such ownership and need not be confirmed or evidenced by any certificate or acceptance of membership;
- (d) The articles of incorporation shall provide that the association will at any time and from time to time accept the responsibilities of the Subdivider contained in these Covenants, Conditions and Restrictions which Subdivider may delegate to the association, provided that Subdivider shall provide funds from the maintenance fund to the association necessary to enable it to carry out the responsibilities which it assumes. Also, the articles of incorporation shall provide that the association will accept title to the private ways and common areas within West Hill Estates at such time as Subdivider may elect to convey the same to the association;

- (e) The articles of incorporation of the association shall provide that the association shall exercise and perform all of the following Powers and obligations:
- (i) The powers and obligations delegated, conveyed or otherwise assigned to the association by Subdivider;
 - (ii) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon; and
 - (iii) Any additional or different Powers and obligations necessary or desirable for the purpose of carrying out the functions of the association pursuant to these covenants, conditions and restrictions, or otherwise promoting the general benefit of unit owners within West Hill Estates
- (f) The articles of incorporation of the association shall be subject to amendment as provided in the Oregon nonprofit corporation law and the bylaws of the association and shall be subject to amendment by the board of directors of the association.

Neither the association nor any officer or director thereof shall be liable to any unit owner or to Subdivider for any damage, loss or prejudice suffered or claimed account of any action or failure to act of the association, provided only that the association, in accordance with actual knowledge possessed by it, has acted in good faith.

Neither the Subdivider nor any officer or director thereof shall be liable to any unit owner or to the association for any damage, loss or prejudice suffered or claimed account of any action or failure to act of the subdivider, provided only that the subdivider, in accordance with actual knowledge possessed by it, has acted in good faith. The subdivider shall have no further liability for any matter related to the subdivision from and after transfer of all powers to the Homeowners' Association.

All rights, powers and privileges reserved to the Subdivider may transferred to the Homeowners' Association, which shall thereafter exercise such rights, powers and privileges as though it was the subdivider.

18. Right of Assessment: Subdivider (or after delegation as provided herein, the Homeowners Association) may make assessments against the property within the subdivision, for the maintenance of the common areas, the adjacent recreational areas (if developed), the wall, enforcement activities and other reasonably necessary activities related to the subdivision. The assessments may also be used to establish and maintain the Homeowners' Association. Assessments shall be uniform against all developed lots within the subdivision. Undeveloped lots (those not yet fully platted and for which streets, sewers and utilities are not complete) shall not be assessed. The initial assessment shall be \$25.00 per improved lot. Special assessments may be made in the even of an emergency.

The Subdivider, or after delegation, the Board of Directors of the Homeowners Association shall have the power to set the amount of all assessments, provided however, that the board shall not increase the amount of the annual assessment by more than 25% over the prior assessment, nor impose a special assessment, without a majority vote of all the members of the Homeowners Association at an annual or special meeting.

Each assessment levied or imposed pursuant to the Covenants, Conditions and Restrictions of West Hill Estates, together with interest thereon, shall be a separate, distinct and personal debt obligation of the unit owner or resident of West Hill Estates against whom the assessment is levied or imposed or from whom the amount is due. If a unit owner fails to pay any such assessment, or any installment thereof when due, the unit owner shall be in default and the amount of the assessment not paid, together with interest, costs and attorneys' fees as elsewhere provided for herein, shall become a lien upon the unit or units owned by the Subdivider (or Homeowners' Association) of West Hill Estates in the records of mortgages of Polk County, Oregon, of a notice of lien setting forth the amount due and a description of the units against which the lien is imposed. Such lien shall not take effect until notice thereof has been so filed. Thus, such lien shall be subordinate to the lien of any mortgage upon any unit which is accepted in good faith and for value and which was recorded prior to the filing of the notice of lien. The Subdivider (or Homeowners' Association) of West Hill Estates may commence proceedings to foreclose any such lien at any time within three years following the date of such filing.

In the event that the Subdivider (or Homeowners' Association), of West Hill Estates shall bring any suit or action to enforce any provision contained in the Covenants, Conditions and Restrictions to collect any money due to it thereunder or to foreclose a lien, the defendant in such suit or action shall pay to the Subdivider (or Homeowners' Association) all costs and expenses which the Subdivider (or Homeowners' Association) shall incur in connection with such suit or action, including a foreclosure title report, and such amount as the court may determine to be reasonable as attorney's fees therein, including attorney's fees incurred in connection with any appeal from a decision of the trial court or an intermediate appellate court.

19. RIGHT OF ENTRY: The Subdivider (or Homeowners' Association) of West Hill Estates or any member of the Architectural Control Committee may at any reasonable time, and from time to time at reasonable intervals, enter upon any unit within West Hill Estates for the purpose of determining whether or not the use of such unit or improvement thereon is then in compliance with the Covenants, Conditions and Restrictions of West Hill Estates. No such entry shall be deemed to constitute a trespass or otherwise to create any right of action in the unit or occupant of such parcel.

20. Miscellaneous Provisions:

(a). Amendment and repeal. With the consent of the Subdivider of West Hill Estates any provision of this Covenants, Conditions and Restrictions of West Hill

Estates may at any time be amended or repealed or provisions may be added by either of the following methods.

- (1). Unit owners owning 75 percent of the units may consent in writing to the amendment or repeal of a provision or to the addition of a new provision; or
- (2). West Hill Estates Homeowners' Association may consent to such amendment, repeal or addition.

For the purpose of this section on Amendment and Repeal, the Subdivider shall be deemed the "unit owner" of each lot, developed or undeveloped, shown on the recorded plat, which the Subdivider owns.

West Hill Estates Homeowners' Association shall be deemed to have consented to the amendment or repeal of a provision contained in the Covenants, Conditions and Restrictions of West Hill Estates or to the addition of a new provision if the following procedure shall have been followed:

- (1). The board of directors of West Hill Estates Homeowners' Association shall have adopted a resolution setting forth the proposed amendment, provision for repeal or proposed additional provision and directing that it be submitted to a vote at a meeting of the members, which may be either an annual or a special meeting.
- (2). Written notice setting forth the proposed amendment, provision for repeal or proposed additional provision, or a summary of the changes to be effected thereby, shall be given to each unit owner at least 60 days prior to the time of the meeting at which the proposed amendment, provision for repeal or proposed additional provision is to be considered.
- (3). Written notice setting forth the proposed amendment, provision for repeal or proposed additional provision, of a summary of the changes to be effected thereby, shall also be given to each member of the West Hill Estates Homeowners' Association with his notice of the meeting of the members at which the proposed additional provision is to be considered.
- (4). At the meeting of the members at which the proposed amendment, provision for repeal or proposed additional provision is to be considered, the proposed amendment, provision for repeal or proposed additional provision shall be submitted to a vote of the members. The proposed amendment, provision for repeal or proposed additional provision shall be adopted upon receiving two thirds of the votes entitled to be cast by all the members of the Association.

Notwithstanding any other provision in this section, any amendment of these Covenants, Conditions and Restrictions which changes the ratio of assessment against unit owners shall require the written approval of all holder of mortgages or trust deeds on units within West Hill Estates.

Any amendment or repeal of a provision of the Covenants, Conditions and Restrictions of West Hill Estates or additional provision shall become effective only upon the filing in the records of deeds of Polk County, Oregon, of a certificate of the president, secretary or assistant secretary of the Subdivider (or Homeowners' Association) of West Hill Estates setting forth in full the amendment, amendments, additional provision or repeal approved as provided in this section and certifying that said amendment, amendments, additional provision or repeal approved in the manner required herein.

(b). Joint owners. In any case in which two or more persons share the ownership of any unit, regardless of the form of ownership, the responsibility of such persons to comply with the provisions of the Covenants, Conditions and Restrictions of West Hill Estates shall be a joint and several responsibility. The act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest provided, however, that in the event that such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Subdivider or Homeowners' Association, as the case may be, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

(c). Election by the Subdivider (or Homeowners' Association) of West Hill Estates to pursue any remedy provided for the violation of any provision of the Covenants, Conditions and Restrictions of West Hill Estates shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder or which is permitted by law. The remedies provided in the Covenants, Conditions and Restrictions of West Hill Estates are not intended to be exclusive but shall be in addition to all other remedies, including actions for damages or suits for injunctions or for specific performance available under applicable law.

(d). Construction; severability; number; captions. The Covenants, Conditions and Restrictions of West Hill Estates shall be construed as an entire document to accomplish the purposes stated in the introductory paragraphs of the Covenants, Conditions and Restrictions. Nevertheless, each provision of the Covenants, Conditions and Restrictions of West Hill Estates shall be deemed independent and severable, and the invalidity or enforceability of the remaining part of that or any other provision.

As used herein the singular shall include the plural and the plural singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for the provisions of the Covenants, Conditions and Restrictions of West Hill Estates.

(e). Notices. Any notice permitted or required by the Covenants, Conditions and Restrictions of may be delivered either personally or by mail. Delivery by mail shall be deemed to have been accomplished 24 hours after the notice has been deposited as certified or registered mail in the United States mail, with postage prepaid, addressed as follows:

(1). If to the Architectural Control Committee or the Subdivider of West Hill Estates

West Hill Estates Inc.
Attn: Dan Chandler
P.O. Box 12397
Salem, Or 97309,

(2). If to a unit owner, at the address given by him to the time of his purchase of a unit or at the address of his unit within West Hill Estates, at the option of the person giving the notice.

The address of any person may be changed by him at any time by notice in writing delivered as provided herein.

(f). These covenants run with the land and shall be binding upon all parties and all persons claiming under them until January 1, 2016, at which time these covenants, conditions and restrictions shall be automatically extended for successive ten-year periods, unless by a vote of the majority of the owners of the lots or parcels, it is agreed in writing to change or revoke these covenants, conditions and restrictions in whole or in part.

IN WITNESS WHEREOF the Subdivider has signed this instrument and arranged for its recordation in the real property records of Polk County, Oregon.

Mountain View Estates
Development Co., Inc.

By: _____
Daniel R. Chandler, President

STATE OF OREGON

County of Marion

The foregoing instrument was acknowledged to before me this _____ day of September, 1991, by Daniel R. Chandler as President of Mountain View Estates Development Co., Inc.

Notary Public for Oregon
My commission expires:

