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## DECLARATION OF SCOTT MOUNTAIN PROTECTIVE COVENANTS

### Table of Contents

#### ARTICLE I: DEFINITIONS

- 1.01 Association
- 1.02 Declarant
- 1.3 Improvement
- 1.4 Initial Development
- 1.5 Lot
- 1.6 Owner
- 1.7 Scott Mountain
- 1.8 Sold
- 1.9 These Covenants

#### ARTICLE II: PROPERTY SUBJECT TO THESE COVENANTS

- 2.1 Initial Development
- 2.2 Annexation of Subsequent Developments

#### ARTICLE III: LAND CLASSIFICATIONS

- 3.1 Initial Development
- 3.2 Additional Land Classifications

#### ARTICLE IV: PRIVATE AREAS

- 4.1 Use and Occupancy
  - (1) Maintenance
  - (2) Adjacent Common Area
  - (3) Residential Use
  - (4) Business and Commercial Uses
  - (5) Offensive Activities
  - (6) Animals
  - (7) Signs
  - (8) Parking
  - (9) Vehicles in Disrepair
  - (10) Rubbish and Trash
  - (11) Temporary Structures
  - (12) Dwelling Size
  - (13) Building Setbacks
  - (14) Exterior Finish
  - (15) Exterior Lighting
  - (16) Structures in the Common Area
  - (17) Completion of Construction
  - (18) Landscape Completion
  - (19) Easements
  - (20) Fences and Hedges
  - (21) Tree Removal
  - (22) Service Facilities

#### ARTICLE V: ARCHITECTURAL CONTROL COMMITTEE

- 5.1 Architectural Review
  - (1) Major Construction
  - (2) Minor Work

- (3) Architectural Control Committee Association
- (4) Procedure
- (5) Membership Appointment and Removal
- (6) Liability
- (7) Action
- (8) Nonwaiver
- (9) Appeal
- (10) Effective Period of Consent

#### ARTICLE VI: COMMON AREAS, PUBLIC WALKWAYS & COMMON ACCESS WAYS

- 6.1 Common Areas
- 6.2 Public Walkways
- 6.3 Common Access Ways

#### ARTICLE VII: SCOTT MOUNTAIN OWNERS ASSOCIATION

- 7.1 Organization
- 7.2 Membership: Voting
- 7.3 Delegation by Declarant
- 7.4 Powers and Obligations
- 7.5 Capital Improvement Assessments
- 7.6 Liability

#### ARTICLE VIII: MAINTENANCE: ASSESSMENTS AND FUND

- 8.1 Maintenance
- 8.2 Maintenance Assessment
- 8.3 Maintenance Fund
- 8.4 Adjustments

#### ARTICLE IX: ENFORCEMENT

- 9.1 Use of Common Areas
- 9.2 Use of Lots
- 9.3 Landscape
- 9.4 Maintenance of Common Access Ways
- 9.5 Default in Payment of Assessments and Fines
- 9.6 Enforcement by Clackamas County
- 9.7 Expenses and Attorney's Fees
- 9.8 Nonexclusive and Accumulation of Remedies

#### ARTICLE X: MISCELLANEOUS PROVISIONS

- 10.1 Amendment and Repeal
- 10.2 Duration
- 10.3 Cost of Living Adjustments
- 10.4 Construction; Severability; Number; Captions
- 10.5 Notices and Other Documents
- 10.6 Limitation of Liability of Declarant
- 10.7 Mortgagee Consent

**DECLARATION OF  
SCOTT MOUNTAIN PROTECTIVE COVENANTS**

This Declaration of Protective Covenants is applicable to SCOTT MOUNTAIN, Block 1, Lots 1 through 40 inclusive; Block 2, Lots 1 through 21 inclusive; Block 3, Lots 1 through 17 inclusive; Block 4, Lots 1 through 10 inclusive; Tracts "A" and "B"; and Walkways "A" through "E" inclusive.

WHEREAS, NUPACIFIC COMPANY, INC., an Oregon Corporation, hereinafter referred to as Declarant, is owner in fee simple of certain real property located in the County of Clackamas, State of Oregon, known as SCOTT MOUNTAIN, a duly recorded plat.

WHEREAS, the Declarant desires to declare of public record its intentions to create certain restrictive conditions and covenants to the ownership of said property.

NOW, THEREFORE, the Declarant does hereby certify and declare that the following reservations, conditions and covenants shall become and are hereby made a part of all conveyances of Block 1, Lots 1 through 40 inclusive; Block 2, Lots 1 through 21 inclusive; Block 3, Lots 1 through 17 inclusive; Block 4, Lots 1 through 10 inclusive; Tracts "A" and "B"; and Walkways "A" through "E" inclusive, within the plat of SCOTT MOUNTAIN, recorded \_\_\_\_\_, 19\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_, of Plat records of Clackamas County, Oregon, and that the following reservations and covenants shall by reference become a part of any such conveyances and shall apply thereto as fully and with the same effect as if set forth at large therein.

**ARTICLE I**

As used in these Covenants, the terms set forth below shall have the following meanings:

- 1.1 Association means the nonprofit corporation to be formed to serve as an owners' association as provided in Article VII hereof and its successors and assigns
- 1.2 Declarant means NuPacific Company, Inc., an Oregon Corporation and its successors and assigns.
- 1.3 Improvement means every building of any kind, fence, wall, driveway, swimming pool, storage shelter, or other product of construction efforts on or in respect to land.
- 1.4 Initial Development means the property shown as Scott Mountain on that certain plat entitled Scott Mountain filed in the Plat Records of Clackamas County, Oregon, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in Book \_\_\_\_ of Plat at Page \_\_\_\_.
- 1.5 Lot means any numbered plot of land shown upon any recorded subdivision plat or partition map of Scott Mountain, except those areas designated on such plats or maps as "Tracts" or "Walkways".
- 1.6 Owner means the person or persons (including Declarant except where otherwise expressly provided) holding the beneficial ownership of a lot. The rights, obligations and other status of being an owner commence upon acquisition of the beneficial ownership of a lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an owner from obligations incurred prior to termination.
- 1.7 Scott Mountain means the land described in Article II hereof, including the initial development and any property annexed thereto as provided in Section 2.2.
- 1.8 Sold means that legal title has been conveyed or that a contract of sale has been executed under which the purchaser has obtained the right to possession.
- 1.9 These Covenants means all of the limitations, restrictions, covenants and conditions set forth in this Declaration with respect to Scott Mountain, as the same may be amended and supplemented from time to time hereafter in accordance with the provisions of this Declaration.

**ARTICLE II**  
**Property Subject to These Covenants**

- 2.1 Initial Development - Declarant hereby declares that all of the real property described below is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to these Covenants:

The property shown as Scott Mountain on that certain plat entitled Scott Mountain filed in the Plat Records of Clackamas County, Oregon, on the \_\_\_ day of \_\_\_\_\_, 19\_, in Book\_\_\_ of Plats at Page \_\_\_\_.

The above-described real property, together with other real property from time to time annexed thereto and made subject to these Covenants pursuant to Section 2.2, shall constitute Scott Mountain.

- 2.2 Annexation of Subsequent Developments - Declarant may from time to time and in its sole discretion annex to Scott Mountain any adjacent real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of adjacent real property to annex the adjacent real property owned by them to Scott Mountain. The annexation of such adjacent real property shall be accomplished as follows:

- (1) The holder or holders of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish any additional or different limitations, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to these Covenants.
- (2) The property included by any such annexation shall thereby become a part of these Covenants, and Declarant and the Association shall have and shall accept and exercise administration of these Covenants with respect to such property.
- (3) Notwithstanding any provision apparently to the contrary, a declaration with respect to any annexed area may:
  - (a) Establish such new land classifications and such limitations, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property;
  - (b) With respect to existing land classifications, establish such additional or different limitations, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of such annexed property.

**Article III**  
**Land Classifications**

- 3.1 Initial Development - All land within the Initial Development of Scott Mountain is included in one or another of the following classifications:

- (1) "Private areas", being the areas shown as numbered lots in the plat of Scott Mountain, exclusive of the common access ways described below.
- (2) "Common areas", being the areas shown as Tracts "A" and "B" in the plat of Scott Mountain.
- (3) "Public Walkways", being the areas shown as Walkways "A" through "E", inclusive, in the plat of Scott Mountain.
- (4) "Common access ways", being the following common driveways:
  - (a) The driveway located on Lots 2 and 3, Block 2, which driveway shall be for the exclusive use of Lots 1, 2, 3 and 4 of Block 2, Scott Mountain.
  - (b) The driveway located on Lots 4 and 5, Block 4, which driveway shall be for the exclusive use of Lots 4 and 5 of Block 4, Scott Mountain.
  - (c) The driveway located on Lots 8 and 9, Block 4, which driveway shall be for the exclusive use of Lots 8 and 9 of Block 4, Scott Mountain.

- 3.2 Additional Land Classifications - Additional land classifications may hereafter be established in annexed areas as provided in Section 2.2.

#### **ARTICLE IV Private Areas**

- 4.1 Use and Occupancy -The owner of a lot within a private area in Scott Mountain shall be entitled to the exclusive use and benefit, of such lot, except as otherwise expressly provided herein, but his lot shall be bound by and he shall comply with the following and all other provisions of these Covenants for the mutual benefit of all owners of property within Scott Mountain.
- (1) Maintenance - Each owner shall maintain the grounds and improvements of his lot in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard.-
  - (2) Adjacent Common Area -The owner of a lot which blends together visually with any common area shall, if Declarant or the Association elects from time to time so to require, permit Declarant or the Association to enter upon lot to perform mowing and other maintenance in connection with the maintenance of such common area.
  - (3) Residential Use -No lot shall be used except for residential purposes, except that nothing in these Covenants shall be construed so as to prevent a builder from using his lot as a temporary sales model.
  - (4) Business and Commercial Uses - No trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service, or business be kept or stored on any lot, excepting the right of any homebuilder and the Declarant to construct residences on any lot, to store construction materials and equipment on said lots in the normal course of said construction and to use any single family residence as a sales office or model home for purposes of sales in Scott Mountain.
  - (5) Offensive Activities -No noxious or offensive activity shall be carried on in a private area, nor shall anything be done or placed upon any lot which interferes with or jeopardizes enjoyment of other lots or common areas within Scott Mountain.
  - (6) Animals - No domestic animals of any kind shall be raised, kept, or permitted within private areas other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance.
  - (7) Signs - No signs shall be erected or maintained on any lot (excluding Scott Mountain entry-way signs) except that not more than one “For Sale” or “For Rent” sign placed by the Owner, the Declarant or by a licensed real estate agent, not exceeding twenty four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any lot, and except one professional sign of not more than three square feet which must comply with Clackamas County sign ordinances.
  - (8) Parking - Parking of boats, trailers, motorcycles, trucks, truckcampers and like equipment shall not be allowed on any part of the property nor on public streets adjacent thereto excepting only within the confines of an enclosed garaged or screened area, the plans of which must have been reviewed and approved by the Architectural Control Committee prior to construction, and no portion of same may project beyond the screened area. No vehicle shall be permitted to park on public right-of-way within Scott Mountain for a period exceeding twenty-four (24) hours without written permission of the Architectural Control Committee.
  - (9) Vehicles in Disrepair - No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any lot or on the Common Area or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an “extreme state of disrepair” when its presence offends the occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him by the Declarant or the Architectural Control Committee, they may have the vehicle removed from Scott Mountain and charge the expense of such removal to the Owner.

- (10) Rubbish and Trash - No lot or part of the Common Area shall be used as a dump for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings and dirt and other material resulting from landscaping work shall not be dumped onto streets, or Common Areas or any lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings, or any such materials from any lot or any street or Common Area where deposited by him within ten (10) days following the date on which notice is mailed to him by the Declarant or the Architectural Control Committee, they may have such materials removed and charge the expense of such removal to the Owner.
- (11) Temporary Structures - No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently. All structures must comply with the Uniform Building Code.
- (12) Dwelling Size - The ground floor area of a one-story dwelling, exclusive of open porches and garage shall be not less than 1600 square feet. In the case of a two-story dwelling, the lower or ground floor living level shall be not less than 1000 square feet. In the event of a multi-level dwelling, the area of the one-story portion and the area of the upper level of the two-story portion shall constitute a minimum of 1300 square feet. A split entry or split foyer type home and a daylight basement home shall have a main floor area of not less than 1300 square feet. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not less than two standard size automobiles. The existing structure on Lot 14, Block 3 of Scott Mountain shall be exempt from this restriction. The Architectural Control Committee upon application may, in its discretion, waive any violation of this provision which it finds to have been inadvertent.
- (13) Building Setbacks - No building shall be located on any lot nearer to the front, rear or side lot lines than as permitted by Clackamas County zoning ordinances. In any event, no building shall be located on any lot nearer than 25 feet to the front lot line or nearer than 25 feet to any side street line. No building shall be located nearer than 7 feet to a side lot line or nearer than 25 feet to the rear lot line. For purposes of these Covenants, eaves, steps and open porches shall not be considered as part of a building provided however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. The existing structure on Lot 14, Block 3 of Scott Mountain shall be exempt from the requirements of this subsection. The Architectural Control Committee upon application, may in its discretion waive any violation of this subsection which it finds to have been inadvertent, provided the same would not constitute a violation of County ordinances for which no variance has been obtained.
- (14) Exterior Finish -The exterior of all construction on any lot shall be designed, built, and maintained in such a manner as to blend in with the natural surroundings, existing structures and landscaping within Scott Mountain. Exterior colors must be approved by the Architectural Control Committee in accordance with the provisions of Article V. Exterior trim, fences, doors, railings, decks, eaves, gutters, and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structure they adjoin.
- (15) Exterior Lighting - Any exterior lighting which is visible from any street, any part of the Common Area, or any other lot in Scott Mountain must be approved prior to installation by the Architectural Control Committee in accordance with the provisions of Article V.
- (16) Structures in the Common Area - No building, wall, fence, paving, landscaping, or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Area. The Architectural Control Committee shall have authority to abate any such trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.
- (17) Completion of Construction - The construction of any building on any lot, including painting and all exterior finish, shall be completed within eight (8) months of the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Control Committee. The building area shall be kept reasonably clean and in workmanlike

order during the construction period. All lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

- (18) Landscape Completion - All front yard landscaping must be completed within six months from the date of occupancy of the residence constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval by the Architectural Control Committee.
- (19) Easements - Easements for installation and maintenance of utilities and drainage facilities are reserved over the rear and side five (5) feet of each lot, as well as on other portions of certain lots, all of record. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. 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 or utility company is responsible.
- (20) Fences and Hedges - Plantings or site obscuring fences shall not exceed four feet in height in the front yard or on side lot lines forward of the building line with the greatest setback on the lot or the adjoining residential lot. The maximum height of a site obscuring fence located on the remainder of the lot shall not exceed six feet in height. Fences shall be well constructed of suitable fencing materials and shall not detract from the appearance of the dwelling house located upon the lot or building site or be offensive to the owners or occupants thereof, or detract from the appearance of the dwelling houses located on the adjacent lots or building sites. All fence plans must be submitted prior to construction commencement to the Architectural Control Committee as set forth in Section 5.1
- (21) Tree Removal - No trees with a diameter of six (6) inches, or more, measured at a height of five (5) feet above ground level, may be removed from those portions of any lot which lie outside of the building site (including driveway) without prior written approval from the Architectural Control Committee,
- (22) Service Facilities - Clothes lines and other service facilities shall be screened so as not to be viewed from the street or Common Area.

## **ARTICLE V Architectural Control Committee**

5.1 Architectural Review - No structure, including storage shelters, shall be commenced, erected, placed or altered on any lot until the construction plans and specifications and a plat showing the nature, shape, heights, materials, colors, and proposed location of the structure have been submitted to and approved in writing by the Architectural Control Committee. It is the intention and purpose of this covenant to assure quality of workmanship and materials, harmony of external design with the existing structures as to location with respect to topography, finish grade elevations, and to avoid plan repetition. The requirements of this section shall not apply to any structure erected prior to the date upon which this instrument is recorded, but shall apply to any alterations of such a structure. In all cases in which Architectural Control Committee consent is required by these Covenants, the following provisions shall apply:

- (1) Major Construction - in the case of initial or substantial additional construction of a dwelling, the owner shall prepare and submit to the Architectural Control Committee such plans and specifications for the proposed work as the committee may require. Material required by the committee may include, but not necessarily be limited to, the following:
  - (a) A plot plan indicating location of all improvements.
  - (b) Drawings showing elevations, exterior materials and exterior color scheme of all improvements.

The Architectural Control Committee shall render its decision with respect to the proposal within 15 days after it has received all material required by it with respect thereto.

- (2) Minor Work - In the case of minor additions or remodeling, change of existing exterior color scheme or exterior material, fence, greenhouse, or swimming pool construction or any other work not referred to in paragraph (1) above, the owner shall submit to the Architectural Control Committee such plans and specifications for the proposed work as the committee determines to be necessary to enable it to evaluate the proposal. The Architectural Control Committee shall render its decision with respect to the proposal within 15 days after it has received all material required by it with respect thereto.
- (3) Architectural Control Committee Discretion - The Committee may in its sole discretion withhold consent to any proposed work if the committee finds that the proposed work would be inappropriate for the particular lot or incompatible with the design standards that Declarant intends for Scott Mountain. Considerations such as siting, shape, size, color, design, height, impairment of the view from other lots within Scott Mountain or other effect on the enjoyment of other lots or common areas, disturbance of existing terrain and vegetation, and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work.
- (4) Procedure - In the event the Committee fails to render its approval or disapproval within 30 working days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related Covenants shall be deemed to have been fully complied with.
- (5) Membership: Appointment and Removal - The Architectural Committee, hereinafter referred to as Committee, shall consist of as many persons, but not less than three, as the Declarant may from time to time appoint. The Declarant may remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Declarant shall keep on file at its principal office a list of names and addresses of the members of the Committee. A member of the Committee shall not be entitled to any compensation for services performed pursuant to these Covenants. The powers and duties of such Committee shall cease one year after completion of construction of all the single family dwellings and the sale of said dwellings to the initial owner/ occupant on all of the building sites within the property.
- (6) Liability - Neither the Architectural Control Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member thereof, provided only that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.
- (7) Action - Except as otherwise provided herein, any two members of the Architectural Control Committee shall have power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decisions only by written instrument setting forth the action taken by the members consenting thereto.
- (8) Nonwaiver - Consent by the Architectural Control Committee to any matter proposed to it and within its jurisdiction under these Covenants shall not be deemed to constitute a precedent or waiver impairing its rights to withhold approval as to any similar matter thereafter proposed or submitted to it for- consent.
- (9) Appeal - Any Owner adversely affected by action of the Architectural Control Committee, may appeal to the Association. Appeals shall be made in writing within ten (10) days of the Committee's action, and shall contain specific objections and/or mitigating circumstances justifying the appeal. A final conclusive decision shall be made by the Association within fifteen (15) working days after receipt of said notification.
- (10) Effective Period of Consent - The Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been commenced or the owner has applied for and received an extension of time from the Design Committee.

## ARTICLE VI

### Common Areas, Public Walkways and Common Access Ways

- 6.1 Common Areas -The owners of lots within Scott Mountain and their respective invitees shall be entitled to the exclusive use of common areas within the project, subject, however, to the restriction that the common areas

shall be dedicated for open space and those recreational uses which do not harm or otherwise disturb the natural setting of the areas or the trees or vegetation thereon. The common areas shall not be platted or otherwise divided into lots for residential use. Nothing herein shall prevent the placing of a sign or signs on the common areas identifying the subdivision, provided such signs are approved by the Architectural Control Committee and comply with any applicable Clackamas County sign ordinances. Declarant (or, after delegation, the Association) may establish reasonable rules regulating the use of common areas, which rules shall be known as the Scott Mountain Rules. Declarant, (or, after delegation, the Association) upon approval in writing of the owners of a majority of the lots and approved by order or resolution of the Clackamas County Planning Commission (or the then equivalent thereof), may dedicate or convey any portion of the common areas to a park district or other public body for open space or recreational use.

- 6.2 Public Walkways - The public walkways have been dedicated to the public for walkway purposes and shall be used by owners of lots within Scott Mountain jointly with members of the public. In the event the applicable public body should ever vacate such dedication, such walkways shall become common areas within the meaning of these Covenants and shall be used exclusively for walkway purposes by owners of lots within Scott Mountain and their invitees.
- 6.3 Common Access Ways - Common access ways shall be used exclusively for driveway and access purposes by the owners of lots have the exclusive use thereof and their invitees. The owners of each of the lots having the exclusive use of a particular common access way shall be responsible for the maintenance of such driveway, the cost of which shall be borne in equal portions by such owners. Each such owner shall have a perpetual easement over the common access way for ingress and egress, and the benefits and burdens thereof, including the obligation of maintenance, shall be appurtenant to and run with the lots so benefited or burdened.

## **ARTICLE VII**

### **Scott Mountain Owners Association**

Declarant shall organize an association of all of the owners of property within Scott Mountain. Such association, its successors and assigns (the "Association") shall be organized under the name "Scott Mountain Owners Association" or a name similar thereto, and shall have property, powers and obligations as set forth in these Covenants for the benefit of Scott Mountain, and all owners of property located therein.

- 7.1 Organization - Declarant shall within seven years after recording of this Declaration organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.
- 7.2 Membership: Voting - Every owner of one or more lots within Scott Mountain shall, immediately upon creation of the Association and thereafter during the entire period of such owner's ownership of one or more lots within Scott Mountain, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance or membership. Each owner shall have one vote on all matters submitted to the membership of the Association for each lot owned by him within Scott Mountain.
- 7.3 Delegation by Declarant - Declarant may at any time and from time to time delegate, convey or otherwise assign to the Association Declarant's interest in the common areas within Scott Mountain and the powers and obligations of Declarant pursuant to these Covenants, and such interest, powers and obligations shall thereupon vest in the Association without the necessity of any acceptance thereof by the Association. Such delegations, conveyances or other assignments may grant to the Association authority which is exclusive or which is concurrent with Declarant, and may be made in general terms or with reference to specific items. If specific delegations, conveyances or other assignments are made, they shall cover only those items which are expressly described therein; provided, however,

that correlative powers and obligations shall be treated together. The timing and manner of such delegations, conveyances or other assignments shall be solely within the discretion of the Declarant; provided, however, that Declarant shall complete the delegation, conveyance or other assignment of all of its interest in the common areas within Scott Mountain, and all of Declarant's powers and obligations under these Covenants with respect to Scott Mountain no later than: (a) when 150 lots within Scott Mountain are owner occupied; or (b) 15 years after the date this Declaration is recorded, whichever is earlier. The responsibility of Declarant under these Covenants with respect to any property, powers or obligation shall cease upon the exclusive conveyance, delegation or other assignment thereof to the Association. Any delegation pursuant to this section shall be in writing, executed by Declarant and recorded in the Deed Records of Clackamas County, Oregon.

- 7.4 Powers and Obligations - The Association shall have, exercise and perform all of the following powers and obligations:
- (1) The powers and obligations granted directly to the Association by these Covenants, or granted by such Covenants to Declarant and in turn delegated, conveyed or otherwise assigned by Declarant to the Association.
  - (2) The powers and obligations of a nonprofit corporation pursuant to general nonprofit corporation laws of the State of Oregon.
  - (3) Any additional or different powers and obligations necessary or desirable for the purposes of carrying out the functions of the Association pursuant to these Covenants or otherwise promoting the general benefit of owners of property within Scott Mountain. The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in these Covenants made in accordance with Section 10.1 hereof, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and the nonprofit corporation laws of the State of Oregon
- 7.5 Capital Improvement Assessments - At any time after the Association has more than 25 members, exclusive of Declarant, the Association may elect to purchase, construct or otherwise acquire additional equipment, facilities or other capital improvements for the general use and benefit of all of the members of the Association, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment." Any such assessment shall be levied against all of the lots within Scott Mountain, except those to which Declarant is owner or any owner whose ownership of one or more lots is solely for the purpose of constructing homes thereon for resale. Any action by the Association pursuant to this section shall be effective only if approved by the vote or written consent of owners owning not less than 80 percent of the lots within Scott Mountain subject to such assessment.
- 7.6 Liability - Neither the Association nor any officer or member of its board of directors shall be liable to any owner or to Declarant for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Association, its board of directors or any member of its board of directors, provided only that the board member has, in accordance with the actual knowledge possessed by him, acted in good faith.

## **ARTICLE VIII**

### **Maintenance: Assessments and Fund**

- 8.1 Maintenance - Declarant shall maintain, or provide for the maintenance of, the common areas and public walkways (unless the maintenance thereof is assumed by a public body), and all improvements thereon of whatever kind for whatever purpose. Declarant shall delegate or otherwise assign its obligation of maintenance to the Association, within the time set forth in Section 7.3.
- 8.2 Maintenance Assessment - Declarant (or, after delegation, the Association) shall assess and collect from every owner, and every owner shall pay, an annual maintenance assessment sufficient to pay the common expenses, including reserves, but not more than NINETY DOLLARS (\$90) per lot unless such maximum assessment is increased as provided in Section 8.4 The annual assessment shall be made as of May 1 of each year commencing May 1, 1976, unless deferred by Declarant, and shall be payable in a lump sum with a 3 percent discount on or before May 15 or at the rate of 1/12th the annual assessment per month on or before the 5th day of each month; provided, however, that no such maintenance assessment shall be made with respect to lots as to which Declarant is owner or any owner whose ownership of one or more lots is solely for the purpose of constructing

homes thereon for resale. All amounts received as maintenance assessments hereunder shall be placed in the Maintenance Fund to be established and used as provided herein.

- 8.3 Maintenance Fund - Declarant (or, after delegation, the Association) shall keep all funds received by it as maintenance assessments, together with any proceeds from any condemnation of any part of the common areas and any other funds received by it pursuant to these Covenants which are by the terms of such covenants to be deposited in the Maintenance Fund, separate and apart from its other funds in an account to be known as the "Maintenance Fund," and shall use such fund only for the following purposes:
- (1) Payment of the cost of maintaining lighting, entrance and other signs, common areas, public walkways and other facilities designed to serve the general benefit of such owners.
  - (2) Payment of taxes assessed against common areas within Scott Mountain and any improvements thereon.
  - (3) Payment of the cost of garbage and trash disposal for common areas and public walkways.
  - (4) Payment of the cost of insurance, including insurance protecting the Committee, Declarant and the Association against liability arising out of their functions and activities in the administration of these Covenants.
  - (5) Payment of the cost of enforcing these Covenants, including the cost of maintaining the common access ways if the same are not maintained by the owners responsible therefor.
  - (6) Payment of the cost of other services which the Declarant deems to be of general benefit to owners of property within Scott Mountain including, but not limited to legal and secretarial services.
  - (7) In the event any condemnation of a portion of the common areas should result in a surplus in the Maintenance Fund not needed for payment of the other items described herein, such surplus shall be divided by the number of lots in Scott Mountain and such amounts paid equally to the holder of any first mortgage or deed of trust on each lot, or if none, to the owner of the lot.
- 8.4 Adjustments - The Declarant (or, after delegation, the Association) may adjust the amount of the maximum annual maintenance assessment in accordance with increases in cost of living, as set forth in Section 10.3. In addition, in the event the Declarant (or, after delegation, the Association) deems the Maintenance Fund to be inadequate for the purposes set forth above, taking into account the need for reasonable reserves for such purposes, the maximum annual maintenance assessment provided for by Section 8.2 may be increased on a uniform basis in such amount as is approved in writing or at a meeting of the owners by the owners of 60 percent of the lots within Scott Mountain which are subject to assessment and which vote on such change.

## **ARTICLE IX Enforcement**

- 9.1 Use of Common Areas - In the event any owner shall violate any provision of these Covenants or the Scott Mountain Rules relating to the use of common areas, Declarant (or, after delegation the Association) may impose upon such owner a fine not to exceed \$25 for each such violation. Such fine shall become payable upon delivery to the owner of notice thereof, and shall be paid into the Maintenance Fund.
- 9.2 Use of Lots - In the event any owner constructs or permits to be constructed on his lot an improvement contrary to the provisions of these Covenants, or in the event an owner maintains or permits any improvement, activity, condition or other thing on his lot contrary to the provisions of such Covenants, Declarant (or, after delegation, the Association) may no sooner than 60 days after delivery to such owner of written notice of the violation enter upon the offending lot and remove the cause of such violation, or alter, repair or change the item which is in violation of such covenants in such a manner as to make it conform thereto. Declarant or the Association may assess such owner for the entire cost of the work done pursuant to this section. Such amount shall become payable upon delivery to the owner of notice of the amount due, and shall be paid into the Maintenance Fund to the extent that the costs being reimbursed were paid out of the Maintenance Fund.
- 9.3 Landscape - In the event any owner fails to comply with the provisions of these Covenants limiting removal of trees, Declarant, (or, after delegation, the Association) may impose on such owner a fine in an amount not to exceed \$25 per inch of the diameter at the stump of each tree removed in violation of such covenants. Declarant

or the Association may also restore the original landscape insofar as is reasonably possible, and charge the owner for the entire cost involved in such restoration. Such fines and costs shall become payable upon delivery to the owner of notice of the amount thereof; fines shall be paid into the Maintenance Fund, and costs shall be paid into the Maintenance Fund to the extent that the amounts being reimbursed were paid out of the Maintenance Fund.

- 9.4 Maintenance of Common Access Ways - In the event the owners responsible therefore do not maintain a common access way, Declarant (or, after delegation, the Association) may no sooner than 60 days after delivery to such owners of written notice of the violation, enter upon the common access way and perform such maintenance. Declarant or the Association may assess such owners in equal proportions for the entire cost of the work done pursuant to this section. Such amount shall become payable upon delivery to the owner of notice of the amount due, and shall be paid into the Maintenance Fund to the extent that the costs being reimbursed were paid out of the Maintenance Fund.
- 9.5 Default in Payment of the Assessments and Fines - Each assessment or fine levied pursuant to these Covenants shall be a separate, distinct and personal debt and obligation of the owner against whom the assessment or fine is levied. Sale or transfer of the lot by the owner shall not release him from the personal liability imposed hereunder. If the owner fails to pay such fine or assessment or any installment thereof when due, the owner shall be in default and the amount of the fine or assessment not paid together with costs and attorneys' fees as elsewhere provided for herein shall become a lien upon the lot or lots against which the fine or assessment was made upon recordation by Declarant or the Association of a notice of lien. Such liens shall be subordinate to the lien of any mortgage or deed of trust upon such lot or lots which was made in good faith and for value and which was recorded prior to recordation of the notice of lien. Declarant or the Association may commence proceedings to foreclose any such lien at any time within one year following such recordation.
- 9.6 Enforcement by Clackamas County - The provisions of these Covenants relating to the preservation and maintenance of common areas, public walkways and common access ways shall be deemed to be for the benefit of Clackamas County as well as Declarant and the owners of lots within Scott Mountain, and the County may enforce such provisions by appropriate proceedings at law or in equity.
- 9.7 Expenses and Attorneys Fees - In the event Declarant, the Association or Clackamas County shall bring any suit or action to enforce these Covenants, to collect any money due to them or any of them there under, or to foreclose a lien, the prevailing party shall be entitled to recover all costs and expenses incurred by him in connection with such suit or action, including a foreclosure title report and such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal thereof.
- 9.8 Nonexclusiveness and Accumulation of Remedies - An election by Declarant, the Association or Clackamas County to pursue any remedy provided for violation of these Covenants shall not prevent concurrent or subsequent exercise of another remedy permitted under such covenants. The remedies provided in these Covenants are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable laws.

## **ARTICLE X Miscellaneous Provisions**

- 10.1 Amendment and Repeal - These Covenants or any provision thereof as from time to time in effect with respect to all or any part of Scott Mountain, may, at any time with the written consent of Declarant, or at any time more than 15 years after the date on which this Declaration is recorded without the consent of Declarant, be amended or repealed as provided by the vote or written consent of owners owning not less than 75 percent of the lots within Scott Mountain. Any such amendment or repeal shall become effective only upon (a) recordation of a certificate of Declarant or the president, secretary or an assistant secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required therefore herein, and (b) recordation of either (1) an opinion of the Planning Director of Clackamas County (or the then equivalent thereof), or his designate, that the proposed amendment does not relate to preservation or maintenance of the common areas, public walkways and common access ways or the existence of an entity responsible to the owners for accomplishing the same, or (2) a resolution or order passed by the Planning Commission of Clackamas County (or the then equivalent of such body) approving the amendment.

- 10.2 Duration - These Covenants shall run with the land and shall be and remain in full force and effect at all times with respect to all property Included within Scott Mountain and the owners thereof for an initial period of 30 years commencing with the date on which this Declaration is recorded. Thereafter, these Covenants shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within Scott Mountain, any subsequent annexed properties and the owners thereof for successive additional periods of ten years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic, and without the necessity of any notice, consent, or other action whatsoever; provided, however, that these Covenants may be terminated at the end of the initial or any additional period by resolution approved not less than six months prior to the intended termination date by the vote or written consent of owners owning not less than 75 percent of the lots within Scott Mountain. Any such termination shall become effective only if (a) a certificate of Declarant or the president, secretary or an assistant secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required therefor herein, is duly acknowledged and recorded in the Deed Records of Clackamas County, Oregon, not less than six months prior to the intended termination date, and (b) prior to the intended termination date, such termination has been approved by an order or resolution of the Planning Commission of the Clackamas County (or the then equivalent of such body), and a copy of which shall have been recorded in the Deed Records of Clackamas County, Oregon.
- 10.3 Cost of Living Adjustments - The dollar amounts set forth in Section 8.2 with respect to maintenance assessments, and Section 9.1 and 9.3 with respect to penalties for violations, may in the discretion of Declarant (or, after delegation, the Association) be increased by one percent for each one percent increase occurring after January 1, 1976, in the United States Department of Labor Bureau of Labor Statistics Consumer Price Index, all Items, for Portland, Oregon, or the successor of such index.
- 10.4 Construction; Severability; Number; Captions - These Covenants shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs of this Declaration. Nevertheless, each provision of these Covenants shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. Failure by the Declarant, Clackamas County or the Association to enforce any Covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Covenants.
- 10.5 Notices and Other Documents - Any notice or other document permitted or required by these Covenants may be delivered either personally or by mail. Delivery by mail shall be deemed made 24 hours after having been deposited as certified or registered mail in the United States Mail, with postage prepaid, addressed as follows: if to Declarant, the Architectural Control Committee or the Association, 2611 S.W. Third, Room 303, Portland, Oregon 97201; if to an owner, at the address given by him at the time of his purchase of a lot, or at his lot within Scott Mountain. The address of a party may be changed by him at any time by notice in writing delivered as provided herein.
- 10.6 Limitation of Liability of Declarant - Neither Declarant nor any officer or director thereof, shall be liable to any owner or the Association on account of any action or failure to act of Declarant in performing its duties or rights hereunder, provided only that Declarant has, in accordance with actual knowledge possessed by it, acted in good faith.
- 10.7 Mortgagee Consent - Notwithstanding any other provision of these Covenants, the common areas may not be alienated, nor may these Covenants be amended so as to change the ratio of assessments against the owners, without the prior written consent of the holders of all first mortgages or deeds of trust on lots in Scott Mountain.

Recorded by M. George D. Poppen, Clackamas County Clerk  
June 18, 1975 4:55 p.m.  
Seal Document 75-16155