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Vol. m98 Page 5514

FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION

aka

MISTY MOUNTAIN SUBDIVISION FIRST ADDITION  
at Klamath County, Oregon

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

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DECLARATION ESTABLISHING COVENANTS, CONDITIONS & RESTRICTIONS for the  
MISTY MOUNTAIN SUBDIVISION at Klamath County, Oregon

This declaration is made this \_\_\_\_\_ day of \_\_\_\_\_ 1997, by Phillip B. Doddridge III and Edward Brennan, owners and optionees, and hereinafter referred to as "Declarants".

RECITALS

A. Phillip B. Doddridge and Edward Brennan are the owner/optionees of certain real property described as Tract 1321, County of Klamath, State of Oregon, which is more particularly described on Exhibit A attached hereto, which is incorporated herein by this reference.

B. Declarants propose to create a subdivision of twenty-four (24) lots and homes known as FIRST ADDITION TO MISTY MOUNTAIN at Klamath Falls composed of real property described on Exhibit A. It is the intent of Declarants to improve and to sell the above described property, restricting it in accordance with a common plan designated to preserve the value and residential quality of said land, for the benefit of its future owners and the surrounding community. It is deemed desirable for the preservation of the value and desirability of the real property in FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION, to subject the real property in FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION to the following covenants, conditions, restrictions and easements, subject to all local and legal authority and regulations, so as to promote the health, safety and welfare of the subdivision and the surrounding community.

DECLARATIONS PERTAINING TO  
FIRST ADDITION TO MISTY MOUNTAIN at KLAMATH COUNTY

A. NOW, THEREFORE, It is hereby declared that the real property described in Exhibit A as and when it is separately platted and declared to be a part of FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION, shall be sold, conveyed, rented and improved subject to the provisions of this Declaration. Each person or entity, upon acceptance of a deed or land sale contract to purchase a lot in FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION, covenants and agrees to comply with the provisions of this Declaration including all of it's covenants, conditions and restrictions hereinafter set forth expressly for their use and benefit of said property and of each and every person or entity who now or in the future owns any portion or portions of said real property. All of the limitations, uses, obligation, covenants, restrictions and conditions stated herein shall run with the real property, shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof. Each and all of said limitations, uses, obligations, covenants, conditions and restrictions shall be deemed to be and shall be construed as equitable servitude enforceable by any of the owners of any of the individual lots or any portion thereof, and by the County of Klamath, as set forth herein.

ARTICLE 1  
DEFINITIONS

**SECTION 1.1 Definitions.** Unless the context clearly indicates a different meaning thereof, the terms used herein, in the Map, in the plan, and in any deeds conveying lots in the subdivision shall have the meaning specified in this article.

- a. **"Subdivision":** shall refer to that subdivision known as the FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION, located in Klamath County, Oregon.
- b. **"County":** Shall refer to the County of Klamath and/or to the appropriate department or agency thereof.
- c. **"Lot":** Shall mean any of the 24 numbered lots shown in the Final Subdivision Map for the FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION as recorded in the Book of Maps of the Official Records of Klamath County, Oregon, at Page \_\_\_\_\_. It means a unit of land in the FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION which is platted for the purpose of constructing thereon one living unit.
- d. **"Map":** shall mean the final subdivision map for the FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION.
- e. **"May":** Means the act is permissive.
- f. **"Shall":** Means "must" and denotes mandatory action.
- g. **"Owner":** Shall mean or refer to the holder or holders of record fee title to any lot within the FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION. "Owner" shall also include a contract seller (vendor) under an installment land sale contract and shall exclude those persons having an interest in a parcel merely as a security for performance of an obligation. "Owner" shall include any grantee or grantees in any deed conveying a lot, including any person, trust, estate, partnership or corporation.
- h. **"Plat":** Means the final map, diagram, drawing, replat or other writing containing the descriptions, locations and other information pertinent to the lots, utilities, egress and ingress for the subdivision.
- i. **"Declarants":** Means Phillip B. Doddridge and Edward Brennan.
- j. **"Dwelling":** (Living Unit) As pertains to the FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION, means a conventionally constructed ("stick built") home designed for occupation and domicile of one family. All dwellings must be of conventional construction as defined by the Uniform Building Code of Oregon to preserve the original integrity of the subdivision. See "Restriction" for specific property details. Mobile homes and Manufactured homes are not permissible within FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION.

k. "Drive": As pertains to FIRST ADDITION TO MISTY MOUNTAIN SUBDIVISION it means "Misty Mountain Drive".

## ARTICLE 2 CONSTRUCTION AND PLACEMENT OF DWELLING AND

SECTION 2.1 "Types of Dwelling". The dwelling or living space can only be a conventionally constructed unit. Only "stick-built" dwellings will be allowed. A garage may only be of conventional construction and may be adjoining the dwelling or separate from it.

SECTION 2.2 "Roof Materials". Roof materials must be of a fireproof or fire-resistant substance.

SECTION 2.3 "Completion of Construction". No building shall be occupied until it has been completed in accordance with all the requirements contained herein and with all the requirements of the county.

SECTION 2.4 "Foundation and Permanence". All dwellings, garages or structures will be permanently attached to a cement/ concrete foundation/slab subject to County codes.

## ARTICLE 3 USE RESTRICTIONS

SECTION 3.1 "Limitations Upon All Use Restrictions". Each and all of the provisions of this Article shall be subject to the rights of, and shall in no way limit the rights of, Declarants as set forth in other provisions of this Declaration. This section may not be modified or eliminated without the prior written approval of Declarant.

SECTION 3.2 "Intended Use". Each Lot within the subdivision is intended to be used for residential purposes only. Any dispute with regard to Use not covered in these Declarations will be submitted to the county with County codes as final authority.

## ARTICLE 4 RIGHTS AND EASEMENTS

SECTION 4 "Declarant's Rights and Easements". Notwithstanding any provision in this Declaration to the contrary, Declarants shall have the following special rights and easements until all phases of the subdivision have been platted and submitted by Declarants and until all Lots owned by Declarant in all phases have been sold and conveyed. Declarants may transfer the special rights and easements to other developers.

a. "Construction and Sales, Sales Offices and Models". Declarants and its agents shall have the right to engage in all forms of

construction and sales activities within the subdivision, including the right to maintain a sales office and model unit in one or more of the Lots or living units which the Declarant owns. The Declarants and his agents shall have the right to use and occupy the sales offices and models during any day of the week.

b. "For Sale signs". The Declarants and its agents may maintain "For Sale" or "For Rent" signs at any locations in the Subdivision.

c. "Temporary Structures or Trailers". Declarants and its agents shall have the right to place and use temporary structures, trailers, or fences on Declarants Lots to assist Declarants in its construction or sales activities.

d. "Declarants' Easements". The Declarants hereby reserves an easement over the entire Subdivision as reasonably needed to complete Declarants purpose in the Subdivision (further amplified in SECTION 4.1(e) below).

e. "Construction by Declarants". Nothing in this Declaration shall limit the right of Declarant and its successors in interest to alter the Lots, or to construct such additional improvements as Declarant deems advisable prior to completion and sale of the entire Subdivision. Such right shall include, but not be limited to, erecting, constructing and maintaining in the Subdivision such structures and displays as may be necessary for the conduct of its business of completing construction and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time to establish on the Subdivision additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary for the development and disposal of real property in the Subdivision. Declarants reserve the right to alter its construction plans and designs as it deems appropriate. Declarants shall exercise its right contained in this subsection in such a way as not to unreasonably interfere with the rights of Owners to use and enjoy and occupy their respective Lots.

## ARTICLE 5 GENERAL PROVISIONS

SECTION 5.1 "Enforcement". In the event the Owner of any Lot or part thereof or of any interest therein violates any provision hereof, the Owner of any other Lot or part thereof or of any interest therein (including Declarant) or the County, may bring any appropriate proceeding at law or in equity against the defaulting Owner to enforce specific compliance with this declaration and the provisions herein contained, or to recover damages for such violation as may have been incurred by the plaintiff Owner in such proceeding or action. The successful party in any such action may recover a reasonable attorneys' fee fixed by the court in addition to any other relief awarded. Failure by Declarant or the county, or by any other property Owner or Owners, or their representatives, heirs, successors, or assigns, to enforce any of the Covenants, Restrictions, Reservations, Easements or charges herein contained shall in no event be deemed a waiver of the right to do so

thereafter unless otherwise herein provided. Nothing contained in any provision of this Declaration shall be understood or construed to prevent the placement, erection, maintenance or operation by Declarant, its duly authorized agent, licensee, or any public body or public utility corporation of any equipment, structure, building, sign or business related to or connected with the subdivision, development or sale of the real property described or any part thereof, upon any part of said property owned or controlled by Declarant. Declarant hereby reserves, and Declarant, its duly authorized agent, licensee, or such public utility corporation, shall have the express right and authority to place, erect, maintain and operate any such equipment, structure, building, sign or business so long as not to interfere with the use and enjoyment of any property or the residential plan and design of the subdivision.

SECTION 5.2 "Subordination". The Conditions, Covenants, Restriction, or Reservations set forth in this Declaration, or any breach thereof, shall not defeat the lien of any mortgage or deed of trust; provided, however, that the purchaser at any foreclosure sale under any such mortgage or deed of trust and at trustee's sale under any such deed of trust, and his or its successors and assigns, shall take and thereafter hold the title subject to all of the conditions, covenants, and reservations set forth herein.

SECTION 5.3 "Severability". In the event any covenant, Condition, Restriction or Reservation herein contained is held or declared to be invalid or unenforceable in whole or in part, by any order, judgment or decree of any court or other authority, then such decision shall in no way affect the validity of the other Covenants, Conditions, Restrictions or Reservations herein contained, and they shall remain in full force and effect.

SECTION 5.4 "Binding on Successors". The Covenants, Conditions Restrictions and Reservations herein contained are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2017, at which time the same shall be automatically extended for successive periods of ten (10) years, unless the record Owners of a majority of the Lots subject hereto record an instrument terminating these restrictions not more than one (1) year prior to nor later than the commencement of any such ten (10) year period. Any such termination shall take effect upon expiration of the period during which it is given.

SECTION 5.5 "No Waiver". Failure by Declarants, or by any Owner to enforce any Covenant, Condition or Restriction herein contained, or contained in rules and regulations, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement thereafter as to the same or any other Covenant, Condition, Restriction, Easement, or Provision.

SECTION 5.6 "Singular Includes Plural; Construction: Effect of Headings". Whenever their context of these Declaration so requires, the singular shall include the plural, the plural shall include the singular, and use of the masculine form shall include the feminine and neuter, and vice versa. The provisions of this Declaration shall be



liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential subdivision. Article and section headings herein have been included for convenience only, and shall not be considered in resolving matters of construction, interpretation, or application.

SECTION 5.7 "Effect of Declaration". This Declaration is made for the purposes set forth in the recitals hereto, and Declarants make no warranties or representation, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration and its Articles, rules and regulations, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarants shall have no liability whatever if any of the said provisions is judged to be unenforceable in whole or part, or under any certain circumstances.

IN WITNESS WHEREOF, Declarants have executed this instrument this  
19th Day of February, 1998

Phillip B. Doddridge III  
 Phillip B. Doddridge III

Edward Brennan  
 Edward Brennan

STATE OF OREGON )

County of Klamath )

) ss

This instrument was acknowledged before me on February 19, 1998,  
 by PHILLIP B. DODDRIDGE, III, AND EDWARD BRENNAN.

Carole A. Linde  
 NOTARY PUBLIC FOR OREGON

MY COMMISSION EXPIRES: 8/15/00.

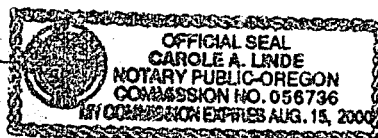




EXHIBIT A  
LEGAL DESCRIPTION

A parcel of land situated in the SW1/4, SE1/4 of Section 36, T39S, R7E, Willamette Meridian, and a portion of Lot 12 of "Tract 1189-Misty Mountain", situated in the NW1/4, NE1/4 of Section 1, T40S, R7E, Willamette Meridian, All in Klamath County, Oregon. More particularly Described as follows:

Beginning at the initial Point, as marked by a 2"x36" galvanized iron pipe.

From which the 1/4 corner common to said sections 1 and 36 bears S89° 58' 04" W 595.18 feet;

Thence N00° 16' 35" W along the west line of Deed Volume M93 Page 25,769 of the Klamath County Deed Records 747.33;

Thence N89° 43' 25" E 350.00 feet;

Thence S00° 16' 35" E 10.54 feet;

Thence N89° 43' 25" E 386.66 feet to the east line of that tract of land described in said deed volume M93 Page 25,769;

Thence S00° 10' 19" E 739.93 feet to the North line of said "Tract 1189";

Thence S89° 58' 04" W along said north line 675.32 feet;

Thence along a curve to the right (radius point bears S89° 58' 04" W 290.43 feet and central angle equals 20° 44' 45") 105.16 feet;

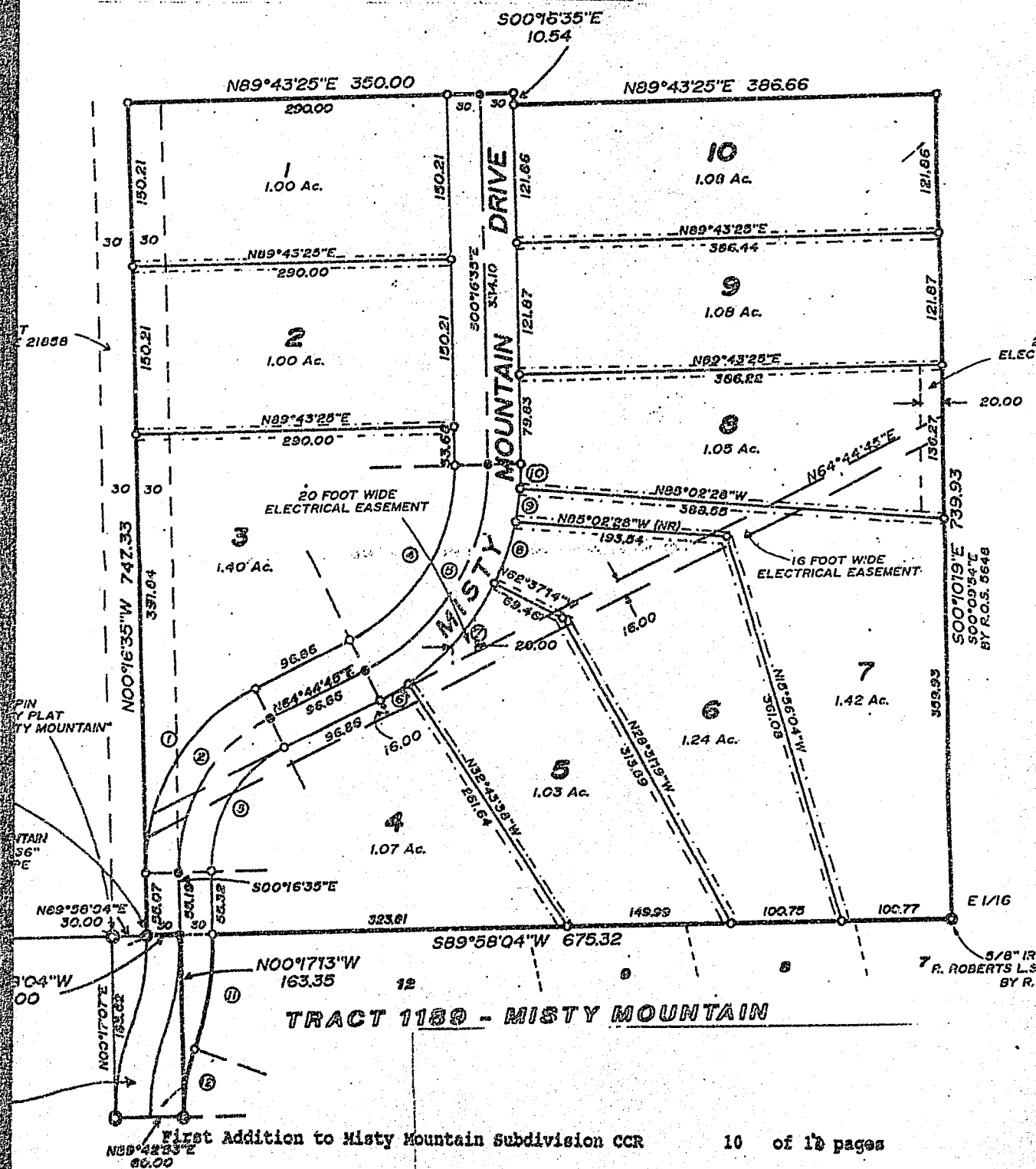
Thence along the arc of a curve to the left (radius point bears S69° 50' 10" E 170.00 feet and Central Angle equals 20° 47' 48") 61.70 feet;

Thence N00° 17' 13" W 163.35 feet;

Thence S89° 58' 04" W 30.00 feet to the point of beginning, containing 12.62 acres.

In Klamath County, State of Oregon.

**EXHIBIT B**  
**ORIGINAL SUBDIVISION MAP**



**TRACT 1189 - MISTY MOUNTAIN**

First Addition to Misty Mountain subdivision CCR

10 of 18 pages

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Phil Doddridge the 20th day  
of February A.D., 19 98 at 2:13 o'clock P. M., and duly recorded in Vol. M98  
of Deeds on Page 5514

FEE \$55.00

Return: Phil Doddridge  
7575 Cannon  
KFO 97603

By Bernetha G. Letsch, County Clerk  
Kathleen Rose