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2007-018854

Klamath County, Oregon



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EASEMENTS OF HERR AKERS

THIS DECLARATION is made this _____ day of _____, 2007 by
Vincent D. Herr and Samantha L. Herr, Oregon residents (Declarant).

RECITAL: Declarant owns approximately 80 acres within Klamath County, Oregon. Declarant proposes to develop this property as a planned development to be known as Herr Akers, the initial development of which is pursuant to a Subdivision Application approved by Klamath County, Oregon and recorded at Klamath Falls, Klamath County, Oregon.

Purchasers of property within Herr Akers hereby consent to these conditions, covenants and restrictions for Herr Akers as the same may hereafter be amended. All purchasers who acquire property in the Herr Akers Subdivision shall purchase the property subject to the conditions as set forth below.

Declarant will record a plat of Herr Akers in the plat records of Klamath County, Oregon.

NOW THEREFORE, Declarant hereby declares that the property described in the plat of Herr Akers as shown thereon shall be held, sold and conveyed subject to the following easements, covenants, and restrictions and charges, which will run with such property and shall be binding upon all parties having or acquiring and right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1 DEFINITIONS

The terms as used in this Declaration are defined in Exhibit "A".

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Initial Development.** Declarant hereby declares that all the real property described in Exhibit "B" is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

The development. Tract 1497, contains 7 single family Lots of 5 acres or larger in size.

ARTICLE 3 RESTRICTIONS ON USE OF RESIDENTIAL LOTS

Whereas the developer of Herr Akers desires to preserve its natural qualities and amenities for the benefit of this community, they herewith set forth the following conditions and restrictions on uses of the Lots.

3.1 Use of Lots and Roads. All Lots, except as designated here otherwise, shall be used as single family residential dwellings with associated outbuildings, all buildings are to be approved by the Architectural review committee.

3.2 Design and Architectural Control. Neither building nor driveway shall be constructed, placed, or altered on any Lot until the construction plans and specifications (site plan) have been approved by the Architectural Review Committee as to quality of workmanship and material, harmony of external design with existing structures and as to location with respect to topography and compliance with this Declaration. The Architectural Review Committee may impose a reasonable fee to cover plan review costs.

3.3 Residence Buildings. No residence buildings shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not to exceed two stories in height and private garage for at least two and not more than six automobiles. A third story may be included if it is a basement. No residential building, garage or accessory building shall exceed 28 feet in height (measured at the uphill foundation/ground surface level), regardless of the number of stories and unless approved by the Architectural Review Committee. No single family dwelling shall be less than 2000 square feet for the main structure exclusive of porches and garages. Each residence building shall have fire suppression devices installed at the time of construction as approved by the Fire Marshal for Fire District #1.

3.4 Accessory Buildings. In addition to the single family residence and garage described above, no more than one accessory building shall be permitted on each Lot, unless otherwise allowed herein. It shall be constructed in compliance with the set back requirements and the approved material and finishes described in these Articles. In addition thereto, said accessory building may not exceed the total square footage size of the primary residence plus the garage and porches nor exceed 28' in height unless approved by the Architectural Review Committee.

3.5 Well House Buildings. Well house facilities are encouraged to be placed within the accessory buildings or residence. If the well location is far removed from either of those then an individual well house may be constructed, provided its design, size and materials are compatible with those used on the residence.

3.6 Materials and Finishes. On each Individual Lot the residence, garage and accessory buildings must be finished with the same or complimentary exterior materials.

Galvanized metal, tar paper or asphalt composition siding shall not be permitted on any building or structure. No bright galvanized metal or other reflective roof surfaces shall be permitted. Asphalt tile roofs will be permitted but only in subdued tones as approved by the Architectural Review Committee. Tile roofs of all types will be considered for approval by the committee. All metal surfaces including roofs, flues, exposed flashing vents, pipes, trim, antennas, etcetera, shall be of good quality and anodized or painted to blend with the exterior colors of the dwelling and shall be non-reflective.

3.7 Painting and Exterior Colors. No bright and/or highly reflective colors shall be used unless approved by the Architectural Review Committee. Natural earth tones are encouraged.

3.8 Mobile and Manufactured Homes. Neither mobile homes nor manufactured homes shall be permitted on any Lot within Herr Akers. Similarly, there shall be no tents, trailers, garages, outbuildings of any nature used or permitted as residences upon the lot. One travel trailer or motor home per residence may be kept on a lot, in an inconspicuous place, provided there is no residential use of the same.

3.9 Set Back. No dwelling or other building shall be erected within 50 feet of the subdivision's internal property lines, including the property lines along the internal roadways, unless approved by the Architectural Review Committee. Set back lines on the subdivision's external property lines shall be as governed by Klamath County.

3.10 Grading and Fill Restrictions. Mass grading of a site will not be permitted unless approved by the Architectural Review Committee. Permanent earth work shall be that required for building sites, foundations and driveways. Temporary construction disturbances (i.e. for septic tanks, leach lines utility lines, ect.) shall be restored as much as possible to the original grade or to a natural looking appearance. All construction disturbances shall be corrected so as to restore the ground terrain to a near natural appearance within 90 days following completion of occupancy of the structures built on site.

3.11 Surface Drainage. Site surface drainage shall not be so altered, constructed, accelerated or dammed on the subject property so as to adversely affect any neighboring Herr Akers Subdivision property. All driveway construction on individual lots shall be provided with appropriate culvert construction to avoid blocking roadside ditches and impairing drainage ways.

3.12 Sewage. Sewage disposal systems shall be by septic tank and leach line fields or other permitted disposal systems. Installation and construction of sewage systems shall be pursuant to rules, regulations and permit authority of the State of Oregon, Department of Environmental Quality and its delegated authority and the Klamath County Department of Environmental Health.

3.13 Animals. Up to two horses, cattle llamas or emus per two acres may be grazed and maintained on each lot unless a greater number is approved by the Architectural Review Committee. Livestock, which shall be contained by fencing and household pets, shall be limited by number and type so as to constitute no nuisance to adjoining neighbors.

3.14 Antennas. No antennas shall be placed on the premises in front of any residence, garage or accessory building. Satellite receiver discs shall be no larger than 18" in diameter and shall be placed in harmony with the layout of the home, avoiding the front of the residence if possible.

3.15 Storage Areas. All outdoor storage areas, garbage cans, utility boxes, trash areas shall be fenced or screened with material which matches or is compatible with the exterior finish of the residence. No damaged, disabled or other vehicle not readily in driving condition shall be stored on the subject property except if enclosed in a closed garage or accessory building.

3.16 Commercial Venture. No commercial venture shall be allowed on any of the residential property herein which results in the maintenance, repair, storage, fabrication or salvage of vehicles, equipment or hazardous chemicals on the premises.

3.17 Signs. No signs, except for street signs and the subdivision's entrance sign, shall be displayed to the public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent; or signs used by the subdivision developer and/or by a home builder during the construction and sales periods; or one sign of not more than two square feet providing the names of the residents of the property. No signs advertising any on-site home business shall be allowed except as described herein. Signs advertising political candidates or issues may be placed on the premises during election periods but must be removed within 7 days of the end of the appropriate election.

3.18 Condition of Lot. Each owner shall maintain the Owner's residence and Lot and any other improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitations, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval of the Architectural Review Committee. In addition, each Lot owner shall keep all plantings neatly maintained. Damage caused by fire, flood, storm, earthquake, riot, vandalism or other causes shall likewise be the responsibility of each Lot owner and shall be restored within a reasonable period of time. No Lot, shall be used for storage or as a dumping ground for equipment, vehicles, rubbish, garbage, or debris. All waste shall be kept in sanitary containers and shall be protected from animals out of view and reach.

3.19 Driveway Surfaces. All driveways and areas utilized for parking of vehicles shall have paved, concrete or suitable gravel.

3.20 Nuisances. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon, which may be or may become an annoyance or nuisance to the neighborhood.

3.21 Lighting. Plans for exterior lighting shall be included in the original site plan reviewed by the Architectural Review Committee. No vapor lighting fixtures shall be permitted. All exterior lighting or noise-making devices shall be installed or maintained on a lot only after written approval of the Architectural Review Committee.

3.22 Utilities. Klamath County's approval conditions of this initial Herr Akers Subdivision, Tract 1497 require that the utility lines within the Subdivision are placed underground. Utilities on subsequent lands subdivided and/or annexed into Herr Akers shall be as approved by Klamath County.

3.23 Firearms. Shooting of center-fire or rim-fire rifles or pistols or of rifled slugs shall not be allowed on the Subdivision lands except to protect life and property pursuant to the Oregon Revised Statutes.

3.24 Fire Protection. Klamath County's approval conditions require installation of a fire protection systems in all new homes to be built within Herr Akers subdivision. An approved 13D sprinkler system will be required in each new residence built in Herr Akers Subdivision. This provision does not apply to existing structures as of the date of this Declaration.

ARTICLE 4 MAINTENANCE OF NATURAL BEAUTY AND WILDLIFE

To help maintain the natural beauty and the natural wildlife of the area the following apply:

4.1 Natural Vegetation. All property owners are encouraged to retain the natural vegetation of the properties, especially Ponderosa Pine, Juniper Trees, wild plums (bushes) and Mountain Mahogany (bushes), which are particularly desired by deer, and their continued presence will help keep deer "out of the roses". Therefore, cutting of live trees and brush species whose trunks are larger than 5" in diameter, as measured three feet from the ground along the trunk, shall require permission from the Architectural Review committee, except when the plants or trees are located within 50' of the dwelling or outbuilding, being built or are on driveways to the home or outbuilding. Commercial timber harvesting shall not be allowed on Herr Akers without the Architectural Review Committee's approval. Trees with commercial value which are removed during

construction of residences, driveways or outbuilding may be sold or otherwise utilized by the owner without contacting the Architectural Review Committee.

4.2 Fencing. Perimeter and cross fencing is acceptable as long as the fence is not higher than 4 feet and allows deer to safely pass either under, through or over the fence. Deer-proofing fencing of greater height is acceptable around residential and outbuilding compounds provided the fenced-in area covers less than 10% of the total area of the lot.

4.3 Wildlife Conflict. The Oregon Department of Fish and Wildlife asks that each property owner, through this Declaration, be aware of all human/wildlife conflicts inherent with rural subdivisions such as Herr Akers. Accordingly, Lot Owners are advised as follows;

(a) Owners should be aware that cougars and rattlesnakes are known to exist in the area and can be a danger to humans, pets and livestock.

(b) Artificial feed of deer, raccoons and skunks shall not be allowed.

(c) The County leash law shall be adhered to in order to discourage dogs from funning free in the Subdivision.

(d) Ornamental plantings will create an attractive nuisance situation with deer and are discouraged.

(e) the above fencing specifications shall be followed to permit deer passage without causing injury to the animals.

4.4 Protection From Adjacent Lands. To protect the views and privacy of the owners of Tract 1497, the following Conditions shall apply: neither the Declarant nor any lot owner shall grant utility or access easements to any portions of Herr Akers.

ARTICLE 5 ARCHITECTURAL REVIEW COMMITTEE

5.1 Architectural Review. No improvement shall be commenced, erected, placed or altered on any of, except Lots owned by Declarant and under construction pursuant to Tract 1497, until the construction plans and specifications showing the nature, shape, heights, material, colors and proposed location of the improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of external design with the existing improvements and as to location with respect to topography and finished grade elevations, and to avoid plan repetition. The procedure and specific requirements for review and approval of residential construction may be set forth in design guidelines adopted from time to time by the Architectural

Review Committee. The committee may charge a reasonable fee to cover the cost of processing the application. In all cases which the Architectural Review Committee consent is required by this declaration, the provisions of this Article shall apply.

5.2 Committee Decision. The Architectural Review Committee shall render its decision respect to the construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

5.3 Committee Discretion. The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends to Herr Akers. Consideration such as siting, shape, size, color, design, heights, solar access, impairment of the view from other Lots within Herr Akers or existing terrain and vegetation, wildlife protection 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.

5.4 Variance. The Architectural Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted; however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to the Declaration; or (c) stop the Architectural Review Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuances of any permit, the cost of compliance, or the terms of any financing shall not necessarily be considered a hardship warranting a variance.

5.5 Membership; Appointment and Removal. Initially, the Architectural Review Committee shall consist of as many persons, but not less than three, as the Declarant from time to time appoint. On or before _____, the Declarant will appoint two Herr Akers Subdivision lot owners, and preferably an owner/resident, to serve on the Committee for a period of one, two and three years respectively. The Declarant may continue to have a representative on the committee if the representative is also a lot owner of the Subdivision. Once Committee positions are filled by three owners the succeeding representatives shall be designated by a majority vote of the Herr Akers Homeowner Association in annual meetings. Members of the Architectural Review Committee shall not be entitled to any compensation for services performed pursuant to the provisions of this Declaration.

5.6 Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the 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 decision only by written instrument setting forth the action taken by the consenting members.

5.7 Liability. Neither the Architectural Review Committee nor any member of the Committee 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 of the Committee, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

5.8 Nonwaiver. Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

5.9 Effective Period of Consent. The Architectural Review Committee's consent to any proposed work shall automatically be revoked two years after issuance unless construction of the work has been commenced or the owner has applied for and received an extension of time from the Committee.

ARTICLE 6 LAND DESIGNATION AND PROPERTY RIGHTS

6.1 Use and Occupancy. The owner of a Lot in Herr Akers shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration. The Lot shall be bound by and the Owner shall comply with the restrictions made applicable to such Lot by this Declaration or by any supplement to this Declaration.

6.2 Easements Reserved. In addition to any easements shown on the recorded plats as set forth in the real property records of Klamath County, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

6.2.1 Right of Entry. Declarant, or the Architectural Review Committee may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration. In addition, the utility service provider and its agents or employees shall have the authority to access all parts of the Owner's Lot on which common utilities (electricity and telephone) may be located, for the purpose of operation, maintaining or constructing such facilities, inspecting the condition of the facilities, and completing repairs. The Owner will be given advance notice if possible.

In the case of an emergency, as determined solely by the utility service provider, no prior notice will be required. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

6.2.2 Utility Easements. Easements for installation and maintenance of utilities and potential drainage facilities may be reserved over portions of certain Lots, as shown on or described in the recorded plat. Within the 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.

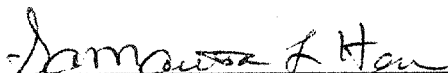
6.3 Consolidation of Lots. The Owner of two adjoining Lots may elect to consolidate such Lots into one Lot. The consolidation shall be effectuated by the owner recording in the deed records of Klamath County a declaration stating that the two Lots are consolidated. Thereafter, the consolidated Lots shall constitute one Lot for all purposes of this Declaration, including voting rights and assessments.

6.4 Roads. Roads within Herr Akers shall be remain private roads, upon recording of the final plats.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first written above.



Vincent D. Herr



Samantha L. Herr

STATE OF OREGON)
)
County of Klamath) ss.

Personally appeared before me the above named Vincent D. Herr and acknowledged this to be his voluntary act and deed on this 2 day of ~~November~~ 2007.





Notary Public for the State of Oregon
My Commission Expires:

STATE OF OREGON)
)
County of Klamath) ss.

Personally appeared before me the above named Samantha L. Herr and acknowledged this to be his voluntary act and deed on this 2 day of ~~November~~ 2007.





Notary Public for the State of Oregon
My Commission Expires: