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Clackamas County Official Records  
Sherry Hall, County Clerk

2006-059774

Declarant: Sun Ridge Construction, Inc.  
After Recording Return To:  
Sun Ridge Construction, Inc.  
PO Box 758  
Boring, OR 97009



\$76.00

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**COVENANTS, CONDITIONS and RESTRICTIONS**

**FOR**

**WENZEL PARK ESTATES**

**A subdivision of Clackamas County, Oregon**

THIS DECLARATION made on the date hereafter set forth above.

WHEREAS, the undersigned is the owner of that certain real property in the County of Clackamas, State of Oregon, hereinafter referred to as "said property", more particularly described as follows:

Wenzel Park Estates as platted in Book 133, Page 001,  
Plat Records of Clackamas County, Oregon.

NOW, THEREFORE, the undersigned hereby declare that all of the said property is and shall be held, sold and conveyed upon and subject to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, livability and aesthetic quality of said property. These conditions, covenants, restrictions, reservations, and easements constitute covenants to run with the land and shall be binding upon all present and future owners of the property of and interest therein:

**1. DEFINITIONS**

The following words when used in the Declaration shall have the following meanings:

1. "Building Site" shall mean and refer to a lot, or to any parcel or said property under one ownership which consists of a portion of one of such lots or contiguous portions of two or more contiguous lots if a building is constructed thereon.
2. "Declarant" shall mean and refer to Sun Ridge Construction, Inc.
3. "Dwelling Unit" shall mean and refer to that portion of any structure, intended to be occupied by one family, as a dwelling under applicable zoning and building laws and restrictions.

4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of said property and to any parcel of said property and to any parcel of said property under one ownership consisting of a portion of one or more of such lots and/or contiguous portions of two or more contiguous lots and upon which a dwelling has been constructed or occupied.
5. "Owner" shall mean and refer to the record owner (including contract sellers), whether one or more persons or entities, of all or any part of said property, excluding those having such interest merely as security for the performance of an obligation.
6. "Said Property" shall mean and refer to the certain real property hereinbefore described.
7. "Set Back" means the minimum distance between the dwelling unit or other structure referred to and given street or road or lot line. These are established by Clackamas County.

## 2. USE OF LAND

No building or structure shall be created, constructed, maintained or permitted upon said property, except upon a building site, as hereinabove defined, and no building or structure shall be erected, constructed, maintained or permitted on a building site other than a single detached dwelling unit, except that appurtenances to any dwelling unit, such as private garages, garden houses or similar structures, architecturally in harmony therewith, and a permanent construction, may be erected within the building limits hereinafter set forth.

## 3. BUILDING COMPLETION

All buildings shall be complete and painted within nine months from the time of construction thereof is commenced. Any variations due to hardship, shall be approved by the Architectural Control Committee.

## 4. ARCHITECTURAL CONTROL

1. No building, including incidental outbuildings, structure, improvements, obstruction, ornament, fence, wall, hedge, or landscaping shall be erected, placed or altered on said property, until construction plans, specifications and plans showing location or structure and location of any trees to be removed have been approved by the Architectural Control Committee to quality of workmanship and materials, harmony or external design with existing structures, and location with respect to topography and finished grade elevation and view obstruction and conformance to the approved grading and drainage plan. The building plans to be submitted shall consist of one complete set of plans and specifications in the usual

form showing insofar as appropriate, (1) the size and dimension of the improvements, shown on a plat map, drawn to scale, (2) the exterior design, (3) exterior color schemes, (4) location of improvements on the lot, including driveway, parking areas, and (5) location of existing trees to be removed. These plans and specifications shall be left with the committee until 60 days after notice of completion has been received by the Committee. This is for the purpose of determining whether, after an inspection by the Committee, the improvements comply substantially with the plans and specifications submitted. In the event that the Committee shall determine that such improvements do not comply with such plans and specifications, it shall notify the property owner in writing within the 60 day period, whereupon the property owner shall within a 60 day period either remove such improvements or alter it so that it will comply with such plans and specifications.

2. The initial membership of the Committee shall be appointed by the Declarant.
3. The Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining member or members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. One year after completion of construction of all dwellings on all building sites within this subdivision (both phases), two-thirds of the then recorded owners of the lots shall have the power by a duly recorded written instrument to change the membership of the Committee or withdraw from the committee or restore to it any of its powers and duties.
4. The Committee's approval or disapproval as required in these covenants, shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within 30 days after plans and specifications have been submitted to it in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, it shall be presumed that approval has been given and the related covenants shall be deemed to have been fully complied with.
5. Declarant, or their successors, assume no responsibility by virtue of approving any plan for the improvement, construction or alteration of any structure hereunder.
6. It shall be the duty of the owner or occupant of any building site to maintain in proper condition the area between the property line of said building site and the nearest curb or improved street, including public sidewalks within said area.
7. Neither the Architectural Control Committee nor any member thereof shall be held 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 by the

Committee or a member thereof, provided that the member has, in accordance with actual knowledge possessed by him, acted in good faith.

#### 5. DWELLING UNIT CONSTRUCTION

1. No building may be erected on any of the said building sites unless it contains a minimum of 1,500 square feet of floor area, exclusive of open porches, garages, garden houses and other appurtenances. In the case of a two-story dwelling the minimum shall be a total of 2,200 square feet. On lots with constricted building pads, the Committee will consider exceptions to the minimum.
2. Siding material must be of good quality, specified as to type and approved by the Committee.
3. Exterior stain or paint colors shall be approved by the Architectural Control Committee. Windows shall be of wood or vinyl construction. All dwelling units shall have a double car garage or larger. Roofing shall be of wood shake or shingle, tile, metal shake, or a reasonable substitute acceptable to the Architectural Control Committee. Composition roofing shall be permitted but must be a laminated or dimensional shingle with a minimum life of 25 years. Roof colors must be approved by the Committee.

#### 6. EXISTING TREES

All existing trees, 12 inches in diameter and greater, are a part of a tree preservation plan. Any proposed removal must be approved by the County Planning Director.

#### 7. HEDGES, FENCES AND WALLS

1. No shrubs, trees, or bushes shall be allowed to grow to a height which unduly restricts the view from adjoining property and the Architectural Control Committee, at its discretion, after an investigation, may require an offending shrub, tree or bush to be pruned, trimmed or removed.
2. Fence material, style and location shall be approved by the Committee and be in compliance with the applicable codes of Clackamas county.

#### 8. LANDSCAPING

All front yard landscaping must be completed within two months from the date of completion of the residence constructed thereon. A variance of an additional two months is available if unsuitable weather persists. The rear yard must be completed within one year of completion. Any variances to these time parameters must be approved by the Architectural Control Committee. Maintenance of the landscaping in an attractive condition is required.

## 9. SIDEWALKS & STREET TREES

Purchasers of building sites shall install, at purchasers cost, concrete sidewalks to County standards and requirements. They shall also install required street trees to be specified as to quantity and type by Clackamas County.

## 10. EASEMENTS

Said property shall be subject to mutual and reciprocal easements as shown on the recorded plat.

## 11. PROPERTY USE RESTRICTIONS

1. Unless written approval is first obtained from the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any building or dwelling unit. The only exception shall be a professional sign of not more than five square feet advertising the property for sale during the sales period. No sign advertising the property for rent or lease shall be allowed to be displayed within the first twelve months following the initial sales closing date. Exceptions to this restriction shall be developer or builder owned properties. Individual property owners may request an exception from the Architectural Control Committee for personal emergency purposes only, with approval given at the discretion of the Architectural Control Committee.
2. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said property, except dogs, cats or other household pets provided that such household pets are not kept, bred or maintained for any commercial purposes or do not become a nuisance.
3. No part of said property shall be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in a sanitary container. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be screened from public view.
4. No noxious or offensive activity or noxious or offensive or unsightly conditions shall be permitted upon any part of said property, nor shall anything be done thereof which may be or become an annoyance or nuisance to the neighborhood.
5. No trailer, camper-truck, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said property.
6. No boats, trailers, (except pickups), campers or truck campers and like equipment, or junk cars or other unsightly vehicles shall be allowed on any part of said

property nor on public ways adjacent thereto, excepting only within the confines of an enclosed garage or other screened enclosure, and no portion of same may project beyond the enclosed areas except under such circumstances, if any, as may be prescribed by written approval by the Architectural Control Committee. All other parking of equipment shall be prohibited except as approved by the Architectural Control Committee.

7. No exterior antennas or aerials shall be permitted. A satellite dish may be allowed, but specific approval as to size, location and screening must be obtained from the Architectural Control Committee prior to its installation.
8. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes nor any pole, tower or structure, supporting said outdoor overhead wires, shall be erected, placed or maintained within said property. All purchasers of building sites, their heirs, successors and assigns shall use underground service wires to connect their dwelling units to the underground electric or telephone utility facilities.
9. No outbuildings, sheds, pool houses or storage facilities shall be constructed upon the lot without written approval from the Architectural Control Committee.

#### 12. OTHER BUILDINGS

1. A designated real estate company may be granted the right to construct and maintain a sales office upon suitable site of said property during the period of construction and sale of all the dwelling units to be built on the subdivision.
2. Builders are permitted to erect temporary or portable sheds or have temporary trailers as tool houses and for other uses common to residential construction and to maintain them until each structure is finished.

#### 13. OPEN TRACTS

Tracts A through F are identified on the recorded plat:

1. Tracts A, D & E are owned by the Wenzel Park Estates Home Owners Association. They are storm water detention facilities and are subject to a recorded maintenance agreement between Clackamas County Service District No. 1 (CCSD #1) and the Wenzel Park Estates Home Owners Association. CCSD #1 also has specified rights as to access and operation of these detention facilities as specified on the recorded plat.
2. Tracts B & C are owned by the Wenzel Park Estates Home Owners Association. These tracts are open spaces and must be maintained by the Association, and are subject to CCSD #1 rules and regulations and the recorded conservation easement.

3. Tract F is owned by the Wenzel Park Estates Home Owners Association and is to serve as a potential emergency access way to the property south of Wenzel Park Estates. Maintenance shall be the responsibility of the Home Owners Association.

#### 14. EMERGENCY ACCESS EASEMENT

Per the recorded plat, there is a 20 foot wide emergency access easement across the parcel of land to the east, known as Tax Lot 2901, which connects to S.E. Hemmen Avenue. The purpose of this easement is for emergency vehicle access only. There is an access easement agreement recorded as document No. 2005-030211 executed by and between the developer, Sun Ridge Construction, Inc. and; Robert G. Wenzel, Lloyd T. Wenzel and Elaine M. Powers. This easement agreement is hereby assigned to the Wenzel Park Estates Home Owners Association, which assumes all the second parties obligations thereunder.

#### 15. LOTS 17 & 18 SHARED ACCESS

Per the recorded plat, there is a private access easement on Lot 17 for the benefit of Lot 18 and Tract F. Maintenance of this private access easement shall be shared equally between Lot 17 and Lot 18.

#### 16. ENTRANCE MONUMENT

The entrance monument for Wenzel Park Estates shall be owned and maintained by the Wenzel Park Estates Home Owners Association.

#### 17. WENZEL PARK ESTATES HOME OWNERS ASSOCIATION

1. Organization. The Association has been formed by the Declarant on March \_\_\_\_\_, 2006 as an Oregon non-profit mutual benefit corporation, and the Association shall be known as the Wenzel Park Estates Home Owners Association, Inc. The Association shall act through the Board, the membership of which shall be established pursuant to the Association's Bylaws.
2. Membership. Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, 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 confined or evidenced by any certificate or acceptance of membership.
3. Voting rights. The association shall have two classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of the Developer and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Developer and shall be entitled to three votes for each Lot owned.

4. Powers and Obligations. The Association shall have, exercise and perform all of the following powers, duties and obligations:
  - (a) The powers, duties and obligations granted to the Association by this Declaration.
  - (b) The powers and obligations of a non-profit corporation pursuant to the general non-profit corporation laws of the State of Oregon.
  - (c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or which otherwise are for the general benefit of the Owners within the Property.
  - (d) The maintenance of all common facilities, including the subdivision entrance sign/monument, the open spaces and water quality and retention system as noted on the plat as Tracts A, B, C, D & E, and the maintenance of the emergency access easement as identified in Paragraph 14 of the Covenants, Conditions and Restrictions.
  - (e) The Association shall be responsible for liability insurance and local taxes.
5. Liability. Neither the Association nor any officer or member of the Board nor any member of its Architectural Control Committee shall be liable to any Owner or to the Association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of the board or Architectural Control Committee, provided only that the officer, Board member or member of the Architectural Control Committee has acted in good faith based on actual knowledge. Each officer and member of the Board or of the Architectural Control Committee shall be indemnified by the Association against all expenses and liabilities, including reasonable attorney's fees, incurred or imposed upon such individual in such capacity; provided, however there shall be no indemnity if such individual is adjudged guilty of willful misconduct or bad faith in connection with the matter as to which indemnification is sought.



6. Reporting and Audits. An annual report of the receipts and expenditures of the Association shall be rendered by the Board to all Owners and to all mortgagees of Lots who have requested the same within 90 days after the end of each fiscal year. From time to time the Board, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the Owners and such mortgagees.
7. Availablilty of Records. Upon request, during normal business hours or under other reasonable circumstances, the Association shall make available to Owners and lenders, and to holders, insurers or guarantors of any first mortgages, current copies of this Declaration, the Bylaws of the Association, other rules concerning the Property, and the books, records and financial statements of the Association.

#### 8. GENERAL PROVISIONS

1. These conditions, covenants, restrictions, reservations and easements shall be binding upon all parties hereto and all persons claiming under them for a period of 10 years from the date they are recorded, after which times they shall be automatically and continually extended for subsequent periods of 10 years each unless a majority of all Owners of said Lots, at each renewal period starting 30 days before the beginning of the next 10-year period, subject to rules which may be prescribed by the Architectural Control committee, agree to change said covenants in whole or part. The Declarant has the sole and exclusive authority to terminate, revoke, or amend these covenants and restrictions until the last lot has been sold and built upon.
2. Invalidation of any one of these covenants by judgment of court order shall in now way affect any of the other covenants, which shall remain in full force and effect.
3. In the event of any violation of any of the provisions of this declaration, the Declarant or any other person or persons owning real property within the plat may, at their option, exercise the right to enforce these covenants by bringing action in a court of law. Failure by any party to enforce any covenant or restriction herein contained should in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any action brought to enforce the provisions of the declarations shall be entitled to recover costs, including reasonable attorney fees incurred.
4. Neither the Declarant nor any officer or director thereof shall be liable to any owner on account of action or failure to act by Declarant in performing their duties or rights hereunder, provided the Declarant, in accordance with actual knowledge possessed by them, acted in good faith.

IN WITNESS WHEREOF, the owner and developer of Wenzel Park Estates caused this instrument to be executed for recording as the Protective Covenants, Conditions and Restrictions for Wenzel Park Estates Phase 1 this 4<sup>th</sup> day of May, 2006.

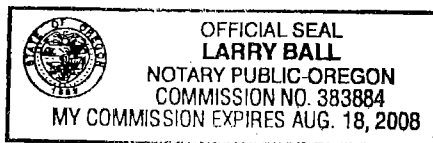
SUN RIDGE CONSTRUCTION, INC.

By: Rodney G. Sauer  
Rodney G. Sauer, President

STATE OF OREGON            )  
  )  
County of CLACKAMAS    )

BE IT REMEMBERED, That on this 4<sup>th</sup> day of MAY, 2006, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named WENZEL PARK ESTATES PHASE 1 Owners, consisting of Rodney G. Sauer, known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Larry Ball  
Notary Public of Oregon  
My Commission Expires August 18, 2008