



After recording return to:

William F. Buchanan  
Karnopp Petersen LLP  
1201 N.W. Wall Street  
Suite 300  
Bend, Oregon 97701

Until a change is requested, all tax  
statements shall be sent to the  
following address:

No Change

### PERPETUAL RESTRICTIVE COVENANT

For good and valuable consideration, **J.L. WARD CO., an Oregon corporation** ("Grantor"), hereby covenants to each of the owners, and their successors and assigns, of the real property located in the area generally known as Mountain High, Deschutes County, Oregon, and more specifically described in Exhibit "A" attached hereto and by this reference incorporated herein ("Grantees") a restrictive covenant more particularly described herein (the "Restrictive Covenant") pertaining to the real property described in Exhibit "B" attached hereto and by this reference incorporated herein (the "Property").

The Restrictive Covenant shall be subject to all prior liens and encumbrances of record relating to the Property, and the City of Bend's condemnation action in Deschutes County Circuit Court. Case No. 02CV0202 ST, and any additional restrictions set forth by the judgment in *Mountain High Homeowners Association v. J.L. Ward Co.*, Deschutes County Circuit Court Case No: 03CV0451AB, if any.

The terms of the Restrictive Covenant are as follows:

- A. Grantor is the current owner of the Property.
- B. Upon the commencement of the Restrictive Covenant and until its termination or expiration, the Property shall be limited in use to that of an open space, natural area, golf course, park, playground or recreation site. Facilities consistent with these uses shall be permitted but shall not be required, including but not limited to,

gazebos, golf clubhouse and related facilities, driving ranges, club houses, restrooms, concessions, swimming pools, tennis courts, paths and trails, and any other recreational facilities that may be private or open to public use at Grantor's sole discretion.

C. The Restrictive Covenant is perpetual and may only be terminated if the then owners representing a majority of the platted lots then in existence within the land described in Exhibit "A" consent in writing to such termination in the form of a document which shall be recorded in Deschutes County, Oregon.

D. The purpose of this Restrictive Covenant is (i) to restrict the use of the Property to provide for open space, and (ii) to allow for changing conditions for the use of the open space to accommodate unforeseen circumstances.

E. Grantor, and its successors and assigns, reserves the sole and exclusive right to use alter, repair, restructure, convey, lease, dedicate, or reorganize the Property subject to the terms and conditions of the Restrictive Covenant. Grantor, and its successors and assigns, further reserves the right to grant access rights to the Property for other uses including, but not limited to, construction, maintenance, fire suppression, fire escape routes and emergency access.

F. Subject to the terms and conditions of the Restrictive Covenant, Grantor and its successors and assigns, reserves the right to include and rely upon the Property or portions thereof in any land use applications.

G. No right to use or occupy the Property is granted herein or reserved to Grantee.

H. All the restrictions set forth herein are expressly intended to be appurtenant to the Property and run for the time period(s) set forth in Paragraph C above to Grantees and their successors and assigns.

I. Any sale, assignment, conveyance or other transfer of the Property or any interest therein by Grantor shall be subject to the terms and conditions of the Restrictive Covenant.

DATED: January 10, 2005.

"Grantor"

J.L. WARD CO., an Oregon corporation

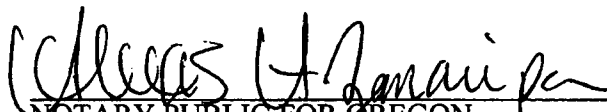
  
\_\_\_\_\_  
JAN L. WARD, President

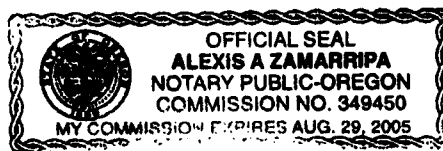
STATE OF OREGON

County of Deschutes

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)ss.  
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The foregoing instrument was acknowledged before me this 10 day of January, 2005, by JAN L. WARD, as President of J. L. WARD CO., an Oregon corporation.

  
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NOTARY PUBLIC FOR OREGON



## **EXHIBIT "A"**

All existing numbered lots located in the following recorded plats and any replats thereof:

1. Mountain High, Deschutes Co. Plat No. 538
2. Aspen Village at Mountain High
3. Willow Creek, Plat No. 703
4. Alpine Village II at Mountain High, Plat No. 745

EXHIBIT B

PROPERTY DESCRIPTION  
OPEN SPACE PARCEL 1

A tract of land containing 21.4 acres lying in the SE1/4 Section 17, and NE1/4 Section 20 T.18 S., R.12 E., W.M., Deschutes County, Oregon, and more particularly described as follows:

Beginning at a point which lies S50°54'29"W from the NE corner of said Section 20, said point marked by a 3" brass cap and being the initial point of the plat of Aspen Village at Mountain High;

Thence N44°57'25"W along the boundary of said Aspen Village 526.24 feet;

Thence N28°46'41"W 73.11 feet;

Thence N26°25'09"E 139.20 feet;

Thence S86°35'40"E 403.65 feet;

Thence S70°31'26"E 497.40 feet to the west right of way of Mountain High High Loop;

Thence N04°57'09"E along the west right of way of Mountain High Loop 136.93 feet;

Thence around a 574.04 radius curve right 168.21 feet (long chord bears N13°20'50"E 167.60 feet) to a 5/8" iron rod which bears N88°30'38"W 241.38 feet from the NW corner of said Section 20;

Thence leaving said right of way and going N78°21'02"W 587.31 feet to a 5/8" iron rod with a plastic cap marked "Bryant LS 920";

Thence around a 2664.79 foot radius curve left 584.97 feet (long chord bears S80°52'22"W 583.80 feet) to a 5/8" iron rod with a plastic cap marked "Bryant LS 920";

Thence N09°00'04"W 150.89 feet to a 5/8" iron rod with a plastic cap marked "Bryant LS 920", said point lying on the southerly right of way of the Burlington Northern Santa Fe Railroad;

Thence along said railroad right of way around a 2814.79 foot radius curve 520.38 feet (long chord bears S 37°37'51"W 519.64 feet);

Thence S63°30'17"W 118.95 feet to the initial point of the plat of St. Andrews Village at Mountain High marked by a 2 1/2" iron pipe with a 3" brass cap marked "David Evans and Associates";

Thence leaving said right of way and going S01°43'44"E 1383.97 feet to a 5/8" iron rod with a plastic cap marked "Bryant LS 920";

Thence continuing S01°43'44"E 22.41 feet more or less to the northerly right of way of Mountain High Drive;

Thence along said right of way around a 360.06 foot radius curve 194.44 feet (long chord bears S78°53'18"E 192.09 feet);

Thence N85°38'26"E 68.46 feet to the southwest corner of the plat of Willow Creek at Mountain High;

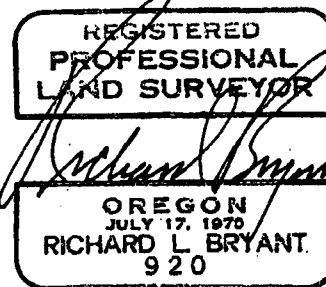
Thence N17°03'41"W along the west line of the plat of Willow Creek 292.40 feet;

Thence N04°00'00"W 663.00 feet;

Thence N07°32'55"W 462.44 feet;

Thence N79°48'10"E 119.61 feet;

Thence around a 143.72 radius curve left 14.56 feet (long chord bears N03°32'59"W  
14.55 feet);  
Thence around a 25.00 foot radius curve left 24.72 feet (long chord bears N34°46'34"W  
23.72 feet);  
Thence around a 40.00 foot radius curve right 189.33 feet (long chord bears N72°29'58"E  
55.97 feet);  
Thence around a 25 foot radius curve left 17.17 feet (long chord bears S08°25'42"W  
16.83 feet);  
Thence around a 183.72 foot radius curve right 27.26 feet (long chord bears S06°59'29"E  
27.24 feet);  
Thence N79°48'10"E 87.08 feet;  
Thence S34°17'12"E 451.32 feet;  
Thence S46°44'52"E 358.52 feet  
Thence S40°12'45"E 204.06 feet;  
Thence S32°16'11"E 336.10 feet;  
Thence S49°10'40"E 320.74 feet to the westerly right of way of Mountain High Loop;  
Thence N32°10'09"E along the westerly right of way of said Mountain High Loop  
146.32 feet to the southerly corner of the plat of Aspen Village at Mountain High;  
Thence N32°48'20"W along the westerly boundary of said plat 307.41 feet;  
Thence N27°29'38"W 301.80 feet to the point of beginning of this description.



PROPERTY DESCRIPTION  
OPEN SPACE PARCEL 2

A tract of land containing 4.27 acres lying in the NE1/4 Section 20 T.18 S., R.12 E., W.M., Deschutes County, Oregon, and more particularly described as follows:  
Beginning at a point which lies S28°42'16"W 1675.85 feet from the NE corner of said Section 20, said point marked by a 5/8" iron rod with a plastic cap marked "Bryant LS 920";

Thence N35°34'01"E 2.07 feet more or less to the southerly right of way of Mountain High Drive and the northerly line of the plat of Mountain High Replat;

Thence N75°09'19"E along said right of way and boundary 18.95 feet;

Thence around a 437.11 foot radius curve right 85.79 feet (long chord bears N80°46'40"E 85.65 feet);

Thence N86°23'58"E 30.00 feet;

Thence leaving said right of way and continuing along the boundary of Mountain High Replat S12°55'01"E 87.59 feet;

Thence S16°38'50"E 43.96 feet;

Thence S24°19'18"E 50.00 feet;

Thence S65°11'57"W 168.98 feet;

Thence S 40°44'25"W 218.73 feet;

Thence S27°29'11"W 26.85 feet to the boundary of Mountain High;

Thence S30°07'43"E along said boundary 215.39 feet;

Thence S10°12'40"W 70.57 feet to the center of the Arnold irrigation canal;

Thence N79°42'29"W along said canal 291.43 feet;

Thence around a 125.00' radius curve left 116.82 feet (long chord bears S73°31'11"W 112.61 feet);

Thence S46°44'52"W 191.76 feet;

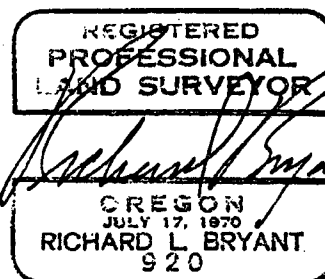
Thence around a 375.00 foot radius curve left 10.41 feet (long chord bears S45°57'11"W 10.41 feet);

Thence leaving said right of way and going N44°53'01"W 8.54 feet to a 5/8" iron rod with a plastic cap marked "Bryant LS 920";

Thence continuing N44°53'01"W 79.06 feet to a 5/8" iron rod with a plastic cap marked "Bryant LS 920"

Thence N45°06'58"E 527.60 feet to a 5/8" iron rod with a plastic cap marked "Bryant LS 920";

Thence N35°34'01"E 428.63 feet to the point of beginning of this description.



PROPERTY DESCRIPTION  
OPEN SPACE PARCEL 3

A tract of land containing 2.53 acres lying in the N1/2, Section 20 T.18 S., R.12 E., W.M., Deschutes County, Oregon, and more particularly described as follows:  
Beginning at a point which lies S42°40'54"W 2889.60 feet from the NE corner of said Section 20, said point marked by a 5/8" iron rod with a plastic cap marked "Bryant LS 920";  
Thence S53°31'29"W 86.68 feet to a 5/8" iron rod with a plastic cap marked "Bryant LS 920";  
Thence N55°26'35"W 806.55' feet to a 5/8" iron rod with a plastic cap marked "Bryant LS 920";  
Thence N60°30'09"W 153.24 feet with a plastic cap marked "Bryant LS 920";  
Thence N36°43'40"E 38.11 feet to a plastic cap marked "Bryant LS 920";  
Thence S60°53'44"E 431.58 feet to a plastic cap marked "Bryant LS 920";  
Thence S60°22'37"E 44.70 feet;  
Thence S68°51'26"E 56.09 feet;  
Thence N59°27'38"E 68.00 feet;  
Thence N88°24'12"E 40.23 feet;  
Thence S71°52'26"E 41.49 feet;  
Thence S01°55'46"E 35.77 feet;  
Thence S19°38'30"E 58.76 feet;  
Thence S 59°18'40"E 72.01 feet;  
Thence S18°58'07"E 48.13 feet;  
Thence S07°15'55"E 7.86 feet;  
Thence S41°05'22"E 92.19 feet;  
Thence S38°43'56"E 92.83 feet to the point of beginning of this description;

