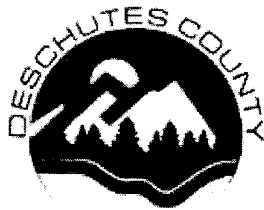




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# Deschutes County Clerk

## Certificate Page



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**AMENDED AND RESTATED DECLARATION  
COVENANTS, CONDITIONS AND RESTRICTIONS  
MOUNTAIN HIGH HOA, formerly known as MOUNTAIN HIGH  
HOMEOWNERS ASSOCIATION**

Bend, Oregon

Effective: November 15, 2007

1. The Mountain High HOA, formerly known as Mountain High Homeowners Association, (Association) a non-profit Oregon corporation, subject to the Oregon Planned Community Act, makes this Amended and Restated Declaration of Covenants, Conditions and Restrictions ("Declaration").
2. The Developer, the J.L. Ward Construction Co., an Oregon Corporation, was the Owner of the real property described in the official plat of Mountain High Subdivision recorded in Volume 19, page 39, record of Townplats, Deschutes County, Oregon, hereinafter referred to as "plat of Mountain High." The Developer planned and created thereon the Community of Mountain High as a Residential Planned Community subject to the Oregon Planned Community Act, (OPCA).
3. The Community of Mountain High contains a variety of single family detached housing, common areas and common facilities.
4. The Owners and Association desire to provide for the preservation and enhancement of the property values, amenities and opportunities within Mountain High, contributing to the personal and general health, safety, and welfare of the residents and for the maintenance of the land and improvements thereon, and to this end subject the real property described in the plat of Mountain High, together with such additions and modifications as may hereafter be made, to the Covenants, Conditions and Restrictions (CC&R's) hereinafter set forth, each and all of which is and are for the benefit of said Property and each Owner thereof.
5. The Developer and Associations have previously recorded original and amended, CC&R's in the Deschutes County Records as listed below:

DOCUMENT NAME	Vol. #	Page #	Date Recorded
Mountain High Declaration of Covenants, Conditions & Restrictions	327	705	08/28/80
Amendment to Mountain High Declaration of CC&R's	196	0388	11/08/89
Amendment to Mountain High Declaration of CC&R's	230	0549	03/12/91
Amendment to Mountain High Declaration of CC&R's	283	0814	11/23/92
Aspen Village at Mountain High Declaration of CC&Rs	0143	2717	04/06/87
Amendment to Aspen Village at Mountain High Declaration of CC&R's	218	1847	08/27/90
Amendment to Aspen Village at Mountain High Declaration of CC&R's	339	1043	05/16/94
Amendment to Aspen Village at Mountain High Declaration of CC&R's	343	1549	06/22/94
Willow Creek at Mountain High Declaration of CC&R's	192	1450	09/20/89
Amendment to the Willow Creek Declaration of CC&R's	321	1554	12/02/93
Alpine Village II Declaration of Covenants, Conditions & Restrictions	306	2431	07/28/93
Amended Mountain High Declarations of Covenants, Conditions and Restrictions (hereinafter called First Amended CC&R's)	1999	2591	01/20/99
Amendment to the Mountain High Homeowners Association Covenants, Conditions and Restrictions (hereinafter called Second Amended CC&Rs)	1999	15024	03/29/99
Third Amended Mountain High Declaration of Covenants, Conditions and Restrictions	1999	35484	07/21/99
Fourth Amended Mountain High Declarations of Covenants, Conditions and Restrictions	1999	43685	09/09/99

This Amended and Restated version of the Mountain High CC&R's combine and supersede previous CC&R's described in the table at item #5 on page one (1) of this document.

6. This Amended and Restated version of the CC&R's recognizes the scrivener error in Item 6 of the "Third Amended Mountain High Declaration of Covenants, Conditions and Restrictions" dated July 21, 1999. Item 6 incorrectly references Volume 6, Page 98, and is hereby corrected to reference Volume 192, Page 1450.
7. This Amended and Restated version of the CC&R's recognizes the Statement of Association Information dated November 17, 1999, recorded Volume 1999, Page 55342, to provide Constructive Notice said property is subject to the Amended Mountain High Declarations of Covenants, Conditions & Restrictions recorded January 20, 1999 in Deschutes County Records.
8. The Developer owns additional properties within the proposed development known as Mountain High. The parties intend that additional land may become subject to the CC&R's, and additional property, both Villages and individual Ownership, may be subject to the CC&R's and may become members of the Mountain High HOA.
9. The real property described in the plat of Mountain High and such additions and modifications thereto as may thereafter be made is and are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth.
10. The Developer hereby delegates and assigns to the Mountain High HOA the power of owning, maintaining, and administering the common properties and facilities; administering and enforcing the Covenants, Conditions and Restrictions; collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

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**ARTICLE I.**  
**DEFINITIONS**

- 1.1 **Assessment** shall mean any charge imposed or levied by a homeowners association on or against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned community or provisions of ORS 94.550 to 94.783.
- 1.2 **Association** shall mean and refer to the Mountain High HOA, formerly known as Mountain High Homeowners Association, a non-profit corporation, its successors and assigns.
- 1.3 **Architectural Control and Landscape Committee** shall refer to the Architectural Control and Landscape Committee of Mountain High, and may be referred to as "ACLC."
- 1.4 **Bylaws** shall mean and refer to the Bylaws of the Association as recorded in the Deschutes County Records.
- 1.5 **CC&R's** shall mean and refer to the most current amended or restated Mountain High Declaration of Covenants, Conditions and Restrictions as recorded in the Deschutes County Records which will be deemed to have superceded all previously recorded CC&R's and amendments thereto.
- 1.6 **Class I planned community** shall mean a planned community as defined in the OPCA that: (a) contains at least 13 lots or in which the declarant has reserved the right to increase the total number of lots beyond 12; and (b) has an estimated annual assessment, including an amount required for reserves under the OPCA exceeding \$10,000 for all lots or \$100 per lot whichever is greater.
- 1.7 **Common Expenses** shall mean expenditures made by or financial liabilities incurred by the homeowners association and include any allocations to the reserve account under the OPCA.
- 1.8 **Common Property** shall mean and refer to those areas of land shown on the recorded plat of Mountain High, including any improvements therein, which have been or are intended to be conveyed to the Association and are devoted to the common use and enjoyment of the Members.
- 1.9 **Common Facilities** shall mean, for example, those roadways, recreational facilities, community fences, landscaping, gates, flags, signs, mailboxes, and other features developed and maintained for the benefit of all residents of the community of Mountain High that are located upon Common Property.
- 1.10 **Declaration** shall mean and refer to the covenants, conditions and restrictions set forth in this current Amended and Restated Declaration of Covenants, Conditions and Restrictions as recorded in the Deschutes County records.
- 1.11 **Developer- Declarant** shall mean and refer to the J.L. Ward Company, an Oregon corporation, 20505 Murphy Road, Bend, Oregon 97702, and its successors and assigns.
- 1.12 **Governing Documents** shall mean the Declaration, Bylaws, Rules and Regulations and plats.
- 1.13 **Homeowners Association** shall mean the organization of owners of lots in a planned community, created under OPCA, required by a governing document.
- 1.14 **Lot** shall mean any numbered Lot or unit of land shown upon any recorded subdivision plat of said property.
- 1.15 **Majority or "majority of votes" or "majority of owners"** shall mean more than 50 percent of the votes in the planned community. It does not mean a majority of a quorum.

- 1.16 **Mortgagee** shall mean any person who is: (a) A mortgagee under a mortgage; (b) A beneficiary under a trust deed; or (c) The vendor under a land sale contract.
- 1.17 **Members** shall mean and refer to members of the Association, which shall consist of all Owners within Mountain High Villages subjected to the Governing Documents.
- 1.18 **Occupants** shall mean and refer to the occupant of the residence including Owner, tenant, or other person authorized to occupy the premises.
- 1.19 **Owner** shall mean the recorded Owners, whether one or more persons or entities of the fee simple title to any Lot situated upon said Property, or a contract purchaser if his/her record Owner retains such title merely to secure an obligation. Owner does not include those having an interest merely as security for the performance of an obligation.
- 1.20 **Percent of Owners or "percentage of owners"** shall mean the owners representing the specified voting rights as determined under ORS 94.658.
- 1.21 **Property** shall mean and refer to all real property, Common Property, and all improvements and additions located on the real property subject to this Declaration.
- 1.22 **Quorum of Members** shall mean the representation by presence or proxy of Members who hold twenty (20) percent of the outstanding votes.
- 1.23 **Rules and Regulations** shall mean and refer to the most current document containing the amended or restated rules, regulations and policies of the Association.
- 1.24 **Supplementary Declaration** shall mean and refer to any Declaration of Covenants, Conditions, and Restrictions which may be recorded by another Village, which extends the provisions of this Declaration to another plat or Village within the community of Mountain High.
- 1.25 **Unique Village Characteristics** shall mean those features, including but not limited to Architectural, Landscape and Roads that are unique to the specific Plat or Village and are not shared by the entire community of Mountain High.
- 1.26 **Village Common Area** shall mean and refer to portions of the Common Area which are designated as Village Common Area in the Governing Documents and in the recorded plats.
- 1.27 **Village** shall mean a group of Lots or units included in a single plat which may or may not have unique Village characteristics and that, initially, were subject to a Supplementary Declaration establishing such Village. The current Villages of Mountain High are Alpine Village I, Alpine Village II, Willow Creek, and Aspen Village. The Supplementary Declarations establishing such Villages have been superseded and replaced by this Declaration.
- 1.28 **Village Committee** shall mean a group elected by a Village or plat to coordinate the operation and maintenance of those "Unique Village Characteristics" within that Village in accordance with the overall community of Mountain High.
- 1.29 **Village Expenses** shall mean expenditures or financial liabilities incurred by a particular village and include any allocations to a reserve account established for that village
- 1.30 **Founding Documents** shall mean and refer to the Declaration, the Articles of Incorporation of the Association, the Association Bylaws and all as may be amended from time to time.
- 1.31 **The Oregon Planned Community Act (OPCA)** shall mean the OPCA Chapter 94.550 thru Chapter 94.783 as revised from time to time.

**ARTICLE 2**  
**ASSOCIATION MEMBERSHIP AND VOTING**

**2.1 Members:**

Each Lot Owner in Villages which are subjected to these Governing Documents shall be a member of the Association. Status as a Lot Owner is the sole qualification for membership. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot. Transfer of ownership of the Lot automatically transfers membership.

**2.2 Voting Rights:**

All members shall have one vote for each Lot owned with respect to all matters upon which Members are entitled to vote. When more than one person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractionalized or split votes shall be discarded, except for purposes of determining a quorum.

**ARTICLE 3.**  
**ASSOCIATION POWERS AND COMPOSITION**

**3.1 Association Powers:**

The Association shall have all the powers set forth in the Governing Documents, all the powers provided by the OPCA and all the powers provided by law, including but not limited to, the power to adopt and amend Bylaws, Rules and Regulations, adopt and amend budgets for revenue expenditures, reserves, collection of assessments, hire and terminate managing agents, employees and independent contractors, institute litigation or administrative proceedings, make contracts, incur liabilities, regulate the use, maintenance, repair, replacement and modification of Common Property, grant easements, leases, licenses, and impose charges for the late payments of assessments. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common property may be conveyed or subjected to a security interest only pursuant to the OPCA. Provide for indemnification of Officers, Board of Directors, Committee Members and employees, and exercise any other powers necessary and proper for the administration and operation of the Association.

**3.2 Notice of Litigation:**

The Association shall comply with all applicable notice and other requirements before commencing litigation. ORS 94.662

**3.3 Board of Directors:**

The Board of Directors shall run the business and affairs of the Association and may exercise all powers of the Association except for those powers which by law or the Governing Documents are specifically reserved to the Owners. In addition, the Board of Directors shall prepare Annual Budgets as required by Oregon Law, call and direct an Annual Meeting of the Lot Owners, retain documents, information and records as required by Oregon Law, and insure Common Property against loss or damage by fire or other hazards. The Board of Directors shall assess all Lots for common expenses and has all powers granted under law to collect assessments. The Board of Directors shall establish and maintain a reserve account for replacing Common Property and any other matters necessary for the operation of the Association.

**3.4 Village Committees:**

The Association may establish the following Village Committees, and such other committees deemed necessary from time to time or if additional Villages are created and become subject to the CC&R's.

Alpine Village I Committee,  
Alpine Village II Committee,  
Willow Creek Village Committee,  
Aspen Village Committee.

Village Committees derive all authority from the Mountain High Board of Directors and possess no authority other than that assigned by the Mountain High Board of Directors. Committees shall consist of members elected by each village. Each village will appoint one village committee representative to each Mountain High HOA Operating Committee. Term of office shall be three years and vacancies occurring between elections shall be filled by appointment by the existing Village Committee. The elected Village Committees shall advise the Association on coordination and maintaining the unique Village characteristics of each village including, but not limited to, Architectural Control, Roads, Landscape Maintenance, Finance, and Common Facilities.

The Village Committees serve in advisory capacity only. Each village may recommend its own budget, disposition of reserves and issuance of checks for unique village expenditures, but may not levy assessments.

In addition, each Village may propose Rules and Regulations designed to preserve unique Village characteristics, but the Mountain High HOA Board of Directors shall have sole authority to adopt such Rules and Regulations as well as to enforce such Rules and Regulations, including, without limitation, the authority to impose fines for violations of the same.

**3.5 Roads Committee:**

The Association shall establish a Roads Committee that shall advise the Board of Directors on road maintenance for all roads within Mountain High, including Common Roads. Each Village Committee shall appoint one member from its committee to the Roads Committee.

**3.6 Common Facilities Committee:**

The Association shall establish a Common Facilities Committee to advise the Board of Directors on operation and maintenance of the Common Facilities. Each Village Committee shall appoint one member from its committee to the Common Facilities Committee.

**3.7 Finance Committee:**

The Association shall establish a Finance Committee to advise the Board of Directors on all financial and budgetary matters. Each Village Committee shall appoint one member from its committee to the Finance Committee.

**3.8 Architectural Control and Landscape Committee.**

The Association shall establish an Architectural Control and Landscape Committee (ACLC). Each Village Committee shall appoint one member from its committee to the ACLC. A description of the duties of the ACLC is contained in Article 6.

**ARTICLE 4.**  
**EASEMENTS AND COMMON PROPERTY**

**4.1 Association Obligations Regarding Common Property:**

Subject to the rights of the Owners as set forth in this Declaration, the Association shall be responsible for the management and control of the Common Property and improvements thereon. The Association shall keep the Common Property in good, clean, attractive and sanitary condition, order and repair, including, but not limited to, the removal of snow, trash, debris, the maintenance, cleaning and repair of the streets and parking areas, landscape and un-landscaped areas located upon the Common Property.

**4.2 Members Easement of Enjoyment:**

Subject to the provisions of the Governing Documents, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot.

**4.3 Extent of Members Easements:**

The Members' easements of enjoyment shall be subject to the following:

4.3.1. Subject to Rules and Fees: The right of the Association to establish reasonable rules and to charge reasonable assessments and fees for capital expenditures on the Common Property and the maintenance and upkeep of the Common Property and payment of all Association expenses.

4.3.2. Suspension of Member's Right: The right of the Association to suspend the right of an Owner or any occupant of a Lot to use the Common Property and facilities and to vote for any period during which any assessment against such Owner or occupant's Lot remains unpaid for more than thirty (30) days after notice of such nonpayment; the right of the Association to suspend the right of a member to use any Common Property for a period not to exceed sixty (60) days for any other infraction of the Declarations, Bylaws or the Rules and Regulations of the Association. Provided, however, that no such suspension pursuant to this subsection shall deprive an Owner of access to his or her Lot

**4.4 Owner's Easements:**

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every unit, subject to the Governing Documents of the Association. Any member may delegate, subject to the Governing Documents of the Association, his/her right of enjoyment to the Common Area to the members of his/her family, his/her guest or his/her tenants.

**4.5 Developer Easements:**

The Developer shall have an easement for operation and maintenance of the golf course, including the driving range, cart paths and maintenance road accessed along and across Mountain High Drive, also an easement of a maintenance road/cart path crossing the northern portion of Willow Creek Court. It is recognized that certain activities relating to the use and maintenance of the golf course may impose some inconvenience on the adjacent property and residents. The Developer shall be granted an exclusive easement to operate and control the entry ways on Knott Road, China Hat Road, and Country Club Drive, including the flag islands, entry signs and gate houses, traffic control devices and all other features of the Knott Road, China Hat Road, and Country Club Drive entry facilities.

**ARTICLE 5.**  
**RULES AND REGULATIONS**

The Board of Directors is empowered to adopt, amend, or repeal rules and regulations to be known as Mountain High Rules and Regulations, establish a fine schedule, impose fines for the violation thereof, and enforce collection of such fines. The Board of Directors' authority shall include, without limitation, the authority to adopt, amend, repeal, and enforce Rules and Regulations designed to preserve unique Village characteristics in connection with architectural and landscaping matters.

**ARTICLE 6.**  
**ARCHITECTURAL CONTROL AND LANDSCAPE COMMITTEE**

**6.1 Committee:**

The Association shall establish an Architectural and Landscape Control Committee (ALCLC). The ALCLC shall develop standards for maintenance of the properties and shall review any alterations proposed by the Lot Owners, with the exception of initial construction, which shall be under the authority of the Developer. It is the intent of this Declaration that the Association shall have full control of the standards of maintenance of the structures as well as the landscaping of Lots and common areas.

**6.2 Composition:**

Each Village Committee shall appoint a representative from its committee to the ALCLC. A quorum for any ALCLC action shall be a majority of its members.

**6.3 Duties:**

It shall be the duty of the ALCLC to maintain the external design, appearance, location and maintenance of all the property and of improvements thereon, whether on a Lot or Common Property, and to regulate use of such property as described in this Amended and Restated Declaration of Covenants, Conditions and Restrictions. The ALCLC under the Board of Directors is granted jurisdiction to interpret and apply the use restrictions, architectural controls and standards of maintenance of the CC&R's. The ALCLC may recommend rules to implement the purposes and interpret the CC&R's including, but not limited to, rules consistent with (but not less restrictive) than those contained in this Amended and Restated Declaration of Covenants, Conditions and Restrictions, to regulate exterior remodeling and roofing, approval of paint color and landscaping,

storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, planting, maintenance and removal of vegetation from the property.

Regulations covering architecture and landscape to protect unique Village characteristics of Willow Creek and Aspen Villages formerly detailed in their village Books of Resolutions are now detailed in Addendums A and B to the Amended Rules and Regulations of the Mountain High HOA formerly known as Mountain High Homeowners Association. Village Books of Resolutions are no longer applicable. See Article 3, 3.4.

**6.4 Accessory Dwelling Units:**

No Owner may construct any accessory dwelling unit on any Lot within Mountain High, regardless of whether governmental zoning codes may permit the same.

**6.5 No Further Subdivision:**

No Lot(s) within Mountain High may be subdivided or partitioned so as to create, whether by itself, or in combination with Lot(s) or portion thereof, any additional buildable lot.

**6.6 Approval Required:**

No outbuilding, fence, wall or other structure of any type shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, change in, painting or staining of, or alteration to any living unit, outbuilding, fence, wall, or other structure on the Property of any type be made until the plans and specifications showing the nature, kind, shape, dimensions, height, materials, color and location of the same shall have been submitted to and approved in writing by the ACLC as to the harmony of external design materials, color and location in relation to surrounding structures and topography.

**6.7 Procedure:**

An Owner wishing to take any action requiring approval under this Article 6 shall give notice of such proposed action to the ACLC representative from the Owner's Village Committee, together with complete plans and specifications. The Owner's Village Committee shall meet and render a written recommendation after reviewing the request no later than the earlier of the Village Committee's next regularly scheduled meeting or twenty (20) days from the date that complete materials are submitted to the ACLC representative. If the Owner's Village Committee does not render a decision within the time required, the Village Committee shall be deemed to have recommended approval of the Owner's request. The ACLC Committee shall render a written decision on such Owner's request by the vote of a majority of ACLC members present within thirty (30) days from receipt of the Village Committee's recommendation or, if applicable, thirty (30) days from the expiration of the period for the Village Committee's decision to have been rendered. The ACLC Committee shall not overturn the Village Committee's recommendation in whole or in part unless the ACLC Committee makes written findings explaining its reason for deviating from the Village Committee's recommendation, but the absence of such findings shall not affect the validity or finality of the ACLC Committee's decision. If the ACLC Committee fails to render a written decision within the time allowed, the request shall conclusively be deemed to be approved.

**6.8 Appeal:**

The decision of the ACLC under this Article (including any failure to approve or disapprove within the time allowed) may be appealed by any interested Owner as set forth in this Article. Upon the payment of a reasonable fee, should one be established by the ACLC to cover administrative costs, any interested Owner may appeal the decision to the Association Board of Directors. The appeal shall be made in writing and shall be filed with the Secretary of the Association within thirty (30) days following the decision. The Board of Directors shall, at a regular or special meeting within thirty (30) days after an appeal has been filed, determine the appeal. The decision of the Board shall be final.

**6.9 Exemptions:**

The following actions by the following persons shall be exempt from the provisions of this Article:

6.7.1 The planting of any shrubs, flowers or other plants (including trees less than 2 ½ inches diameter breast height) by any Owner on such Owner's Lot.

6.7.2 Any act of the Declarant in implementing his or her General Plan of Development with respect to any Lot or any portion of the Common Property in the development, whether or not annexed to Mountain High or a part of the Association.

**6.10 Rules:**

The ACLC may, at its option, produce a manual to be known as Architectural and Landscaping Rules setting forth Rules and Regulations as adopted by the Board of Directors pertaining, but not limited to, remodeling, additions, alterations, painting, landscaping, and any other functions not related to initial construction, which remains under the authority of the Developer. Any such manual must take into consideration the unique Village characteristics of Willow Creek and Aspen Villages as detailed in Addendums A and B of the Mountain High HOA Rules and Regulations. All lots other than those designated as Common Property or Common Facilities located within the Mountain High community shall be restricted to residential use.

**6.11 Failure to Act:**

Should a Village Committee or the ACLC fail to act within a reasonable period of time, the Board shall have the right to act in place of either. The lot Owner has one year from the date of written approval of the plans and specifications to commence work. Failure to commence work prior to this date automatically nullifies any and all approvals that may have been granted.

**6.12 Estoppel Certificate:**

Within thirty (30) days after written demand by an Owner, the ACLC shall execute and deliver to the Owner requesting the same, an estoppel certificate certifying with respect to the lot/unit of the Owner that as of the date of the certificate either (a) all the improvements or other work in or upon said lot/unit are in compliance with all applicable requirements or (b) that such improvements and work do not comply for reasons specified in the certificate. Any purchaser or mortgagee of the lot/unit may rely upon such certificate with respect to the matters set forth herein, such matters being conclusive against the Developer and all Owners.

**6.13 Liability:**

Neither the Association, Village Committees, nor the ACLC or any Members thereof shall be liable to any lot/unit Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act on behalf of either committee or member thereof, provided only that the committee member, in accordance with knowledge possessed by him/her, has acted in good faith.

**ARTICLE 7.**  
**ASSESSMENTS**

**7.1 General Assessment Purpose:**

The annual general assessment shall be used to promote the recreation, health, safety and welfare of the Members and for the improvement, perpetual maintenance of the property and to support its value including the homes situated thereon and Common Facilities. It is understood that the annual assessment may include charges for maintenance of the property such as, but not limited to, road maintenance, landscape maintenance, exterior painting, insurance, and real property taxes, as well as the maintenance of Common Facilities such as tennis courts, swimming pool, gazebo, entry gates and parks.

The annual assessment may be applied to the maintenance of property not owned by the Association. As part of the annual assessment the Board will establish one or more reserve accounts as required. An annual reserve study specifying expenditures from this account shall be contained in the Annual Budget Report.

**7.2 Creation of Lien and Personal Obligation of Assessments:**

The Association hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, agrees to pay to the Association the following:

- 7.2.1. General Assessments,
- 7.2.2 Board approved village assessments, if any,
- 7.2.3 Special Assessments, if any,
- 7.2.4 Common facilities assessments,
- 7.2.5 Reserve Account assessments.

Whenever the Association levies any assessment against a lot, the Association shall have a lien upon the individual lot for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts imposed under the declaration, bylaws, OPCA or other recorded governing document. The lien is prior to all other liens or encumbrances upon the lot except:

- (a) Tax and assessment liens; and
- (b) A first mortgage or trust deed of record.

Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law.

**7.3 Offset of Assessment:** Owner may not claim to offset an assessment for failure of the Association to perform the Association's obligations.

**7.4 General Assessments:**

Assessments relating to the community of Mountain High as a whole are allocated equally among all lot owners. (See 7.1 General Assessment Purposes defining general assessment use).

**7.5 Board-Approved Village Assessments:**

Shall be in addition to the General Assessment and relate to the operation and maintenance of those unique Village characteristics within that Village as requested by the Village Committee of that plat or Village.

**7.6 Common Property Reserve Account Assessments:**

In compliance with ORS 94.595 of the OPCA, the board of directors shall annually conduct a reserve study or review and update an existing study to determine the reserve account requirements. The assessment against each lot, regardless of whether it has been improved with a substantially complete living unit, shall include an amount allocated to a reserve account established for the purpose of funding major replacement or repair of those elements of the Common Property or other reserve items the board of directors, in its discretion, deem appropriate. The board of directors shall prepare a maintenance plan for all property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or the OPCA.

The board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses.

**7.7 Reserve Account Repayment:**

Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

**7.8 Special Assessments:**

The Board of Directors shall have the power to levy a special assessment against all owners for the following purposes:

7.8.1 To correct a deficit in the operating budget.

7.8.2 To perform any tasks, duties or obligations required by law to maintain the safety and security of the shared interest of the Owners, or by the terms of this Declaration for which an amount has not otherwise been budgeted in the General Assessment.

7.8.3 To make necessary repairs or renovations to the Common Property if sufficient funds are not available from the operating Budget or replacement reserve accounts.

7.8.4 A special assessment cannot exceed two hundred fifty dollars (\$250) per lot during one calendar year. The Board of Directors, by majority vote and subject to the presence of a quorum, is empowered to impose such an assessment.

7.8.5 In the case of a special assessment in excess of two hundred fifty dollars (\$250) per lot during one calendar year, such assessment must be approved by not less than sixty percent (60%) of the votes cast by written ballot directed to all Owners.

- 7.8.6 In the event that such assessment is approved by the Owners, the monies derived therefrom shall be maintained in a separate accounting and shall be used only for the purpose approved.

7.9 **Maximum General Assessment:**

The Board of Directors shall fix the amount and payment dates for each annual assessment. An annual increase of up to five percent (5%) of the previous year's assessment may be made by the Board of Directors. Additional increases will require a majority vote by those members present, subject to a quorum, at a meeting called to evaluate the annual assessment.

7.10 **Effect of Non-Payments of Assessments:**

In addition to any other remedies provided by law, the Association may bring an action at law against an Owner personally obligated to pay the same or foreclose a lien upon the property. No such action or a judgment entered therein shall be a waiver of the lien of the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his/her Lot.

## **ARTICLE 8.** **DEVELOPER'S RIGHTS**

- 8.1 For such a time that the Developer or his assigns has an interest in the Property or in adjacent property intended to become part of the community of Mountain High, their rights and interests shall not be prejudiced by any of the following actions unless they shall, in writing, join in such actions.
- 8.2 There shall be no amendments to the Founding Documents which:
- 8.2.1 Discriminate or tend to discriminate against their rights as an Owner or Developer.
  - 8.2.2 Change Article 1, Definitions, in a manner which alters the Developer's rights or status.
  - 8.2.3 Alter the Developer's rights as set forth in Articles 5 and 6 relating to architectural or design controls.
  - 8.2.4 Alter the Developer's or other's easements as set forth in Article 4
  - 8.2.5 Alter the Developer's rights as they may appear under this article.

## **ARTICLE 9.** **NAME AND CLASSIFICATION OF THE PLANNED COMMUNITY**

The name of the planned community shall be Mountain High. Mountain High shall be a Class I Planned Community as defined by the OPCA, and each lot is intended for residential use.

## **ARTICLE 10** **NAME OF THE ASSOCIATION: TYPE OF ENTITY**

The Association is called Mountain High HOA, formerly known as Mountain High Homeowners Association. The Association, shall be a non-profit corporation organized under ORS Chapter 65. The corporation shall adopt Bylaws as required by the Oregon non-profit Corporation Act. After adoption, Bylaws shall be recorded as required by the Oregon Planned Community Act.

**ARTICLE 11.**  
**GENERAL**

- 11.1 **Records:** The Board of Directors shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual assessment accounts of owners, the balance sheet and income and expense statements. Individual assessment account shall designate the name and address of the Owner or owners of the Lot, the amount of each assessment that becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.
- 11.2 **Indemnification of Directors, Officers, Employees, and Agents.**  
The Association shall indemnify any Director, officer, employee, agent, or committee member who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he or she is or was a Director, officer, employee, committee member or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee, agent, or committee member, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and with respect to any criminal action or proceedings, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of no contest or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his or her conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit, or proceeding as and when incurred, subject only to the right of the Association should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee, committee member or agent shall have a right of contribution over and against all other Directors, officers, employees, committee members or agents and members of the Association who participated with or benefited from the acts which created said liability.
- 11.3. **Enforcement:**  
The Association and the owners within the property or any mortgagee on any Lot shall have the right to enforce all of the covenants, Conditions, Restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the

provisions of this Declaration as may appertain specifically in such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed

- 11.4 **Severability:** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.
- 11.5 **Duration:**  
The covenants, conditions and restrictions of this Declaration shall run with and bind the land perpetually.
- 11.6 **Amendment:**  
The CC&R's and this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes of the Owners eligible to vote, except as provided by ORS 94.590. Any amendment must be executed, recorded, and certified as provided by law. Provided, however, that no amendment of this Declaration shall affect an Amendment of the Bylaws of the corporation without compliance with the provisions of such documents with the Oregon Non Profit Corporation Act.
- 11.7 **Interpretation:**  
The interpretation of this Declaration shall be the responsibility of the Association. It is the intent that the Association, acting through the Board of Directors, shall have the sole power to interpret these CC&R's.
- 11.8 **Resolution of Document Conflict:**  
In the event of a conflict between the Declaration and the Bylaws of a planned community or between the Declaration and the Articles of Incorporation, the Declaration shall prevail except to the extent the Declaration is inconsistent with the OPCA. The order of prevailing authority: The Declaration, the Articles of Incorporation, Bylaws, Rules & Regulations.

**ARTICLE 12.**  
**PROPERTY SUBJECT TO THESE CC&Rs and**  
**THE OREGON PLANNED COMMUNITY ACT**

The Property shall, upon recordation of the Declaration, be held, transferred, sold, conveyed and occupied subject to this Declaration and the OPCA. The Property is located in Bend, Deschutes County, Oregon as described on Exhibit 'A'.


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DATED this 15<sup>th</sup> day of NOVEMBER 2007.

By Samuel  
President

President  
By *James D. Hale*  
Secretary

 OFFICIAL SEAL  
**BETHANY R MOYES**  
NOTARY PUBLIC-OREGON  
COMMISSION NO. 397602  
MY COMMISSION EXPIRES DEC. 4, 2009

  
Notary Public for Oregon

On this 15 day of November, 2007, personally appeared before me, Dennis Halm, who being duly sworn, states he/she is the Secretary of MOUNTAIN HIGH HOA, formerly known as Mountain High Homeowners Association, an Oregon non-profit corporation, and that the foregoing instrument was signed and sealed on behalf of said corporation and he/she acknowledge said instrument to be the voluntary act and deed of said corporation.

 OFFICIAL SEAL  
MARY E AICHELE  
NOTARY PUBLIC-OREGON  
COMMISSION NO. 382103  
MY COMMISSION EXPIRES JUNE 23, 2008

Mary E Auchale  
Notary Public for Oregon