

9767

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SUNSTONE

THIS DECLARATION, made on the date hereinafter set forth by WISNER/PEDONE COMPANY, a partnership consisting of JEAN PEDONE, LOIS BRISTOW PRANTE and BERN WISNER, hereinafter referred to as "Declarant";

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the City of Bend, County of Deschutes, State of Oregon, which is more particularly described on the attached EXHIBIT "A", attached hereto and by this reference incorporated herein.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, title or interest in the described properties or any part thereof, their heirs successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Sunstone Home Owners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the

first lot is described as follows: All of the real property, not included as part of a Lot, contained within the subdivision which includes the open areas, roadways, driveways, parking lots, walkways, and recreational facilities, if any.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Wisner/Pedone Company, a partnership consisting of Jean Pedone, Loise Bristow Prante and Bern Wisner, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. 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 Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for an infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking. No parking shall be allowed on the common areas or roadways except in designated parking areas as determined by the Association.

Section 4. Dedication of Common Areas. Declarant, upon recordation of the plat of Sunstone, has designated certain areas of land as common areas, driveways, parking areas and walkways, which are hereby dedicated to the homeowners of Sunstone for their use for recreation and other related activities.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners, with the exception of the Declarant, 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 determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on December 31, 1985.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Associa-

tion: (1) annual assessments or charges, and (2) special assessments for capital improvements such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreations, health, safety and welfare of the residents in the Properties, for the improvement and maintenance of the Common Area and of homes situated upon the properties, and the payment of water, sewer and garbage collection fees for improvements located on the property.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$500.00 per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including

fixtures and personal property related thereto, provide that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessment. Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Non-payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer

of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement, and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or will full acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and mainenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty
If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act caused the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, ~~or by an architectural committee composed of three (3) or more representatives appointed by the Board.~~ In the event said Board, or its designated committee, fails to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot OWNERS. Any amendment must be recorded.

Section 4. Annexation. Additional land within Lots 2 and 3, Matson Park, City of Bend, Deschutes County, Oregon, may be annexed by the Declarant without the consent of members of the Sunstone Home Owners Association within ten (10) years of the date of this instrument, provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Encroachments. If any portion of the common area now encroaches upon any lot, or if any improvement located on any lot now encroaches upon any other lot or upon any portion of the common area, as a result of the construction of any improvement, or if any such encroachment shall occur hereafter as a result of settling or shifting of any improvements, a valid easement for the encroachment and for the maintenance of the same so long as the improvement stands shall exist. In the event any improvement, lot or adjoining common area shall be partially or totally destroyed as a result of fire or any casualty, or as a result of the condemnation or eminent domain proceedings and then rebuilt, encroachments of parts of the common area upon any other lot, or upon any portion of the common area due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the improvement shall stand.

Section 7. Matson Park Declaration. By instrument dated September 13, 1978, and recorded in Volume 284, at page 402, Deed Records, Deschutes County, Oregon, entitled Declarations, Restrictions, Protective Covenants and Conditions for Matson Park, M. E. Project, Inc., a corporation, subjected the real property described on the attached Exhibit "A" to certain restrictions, protective covenants and conditions. M. E. Project, Inc., subsequently amended said instrument by that certain instrument dated August 17, 1979 and recorded in Volume 308, at page 328, Deed Records, Deschutes County, Oregon. The

properties described herein and the Declaration of Covenants, Conditions and Restrictions for Sunstone are subject to the instruments referenced in this section.

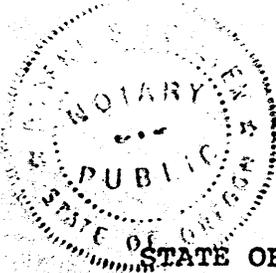
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 13 day of October, 1980.

WISNER/PEDONE COMPANY
A partnership

BY Jean Pedone
JEAN PEDONE

BY Lois Bristow Prante
LOIS BRISTOW PRANTE

BY Bern Wisner
BERN WISNER



STATE OF OREGON, County of Deschutes, ss:

The foregoing instrument was acknowledged before me this 13th day of October, 1980, by JEAN PEDONE, LOIS BRISTOW PRANTE and BERN WISNER, partners doing business under the name of WISNER/PEDONE COMPANY, on behalf of the partnership.

Robert A. Lookin
NOTARY PUBLIC FOR OREGON
My Commission expires: 2-9-83

BEGINNING AT THE "INITIAL POINT", BEING THE MOST NORTHEASTERLY CORNER LOT 3, BLOCK 4, MATSON PARK, CITY OF BEND, DESCHUTES COUNTY, OREGON; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 3, ALSO BEING THE WESTERLY RIGHT-OF-WAY LINE OF PURCELL BOULEVARD, ALONG A 472.66 FOOT RADIUS CURVE LEFT A DISTANCE OF 247.03 FEET (CHORD BEARS SOUTH 20 08 06 WEST A DISTANCE OF 244.22 FEET); THENCE LEAVING SAID EASTERLY LOT LINE AND SAID RIGHT-OF-WAY LINE SOUTH 73 42 21 WEST A DISTANCE OF 116.97 FEET; THENCE SOUTH 16 17 39 EAST A DISTANCE OF 24.50 FEET; THENCE SOUTH 73 42 21 WEST A DISTANCE OF 20.00 FEET; THENCE NORTH 16 17 39 WEST A DISTANCE OF 10.00 FEET; THENCE SOUTH 73 42 21 WEST A DISTANCE OF 16.00 FEET; THENCE NORTH 16 17 39 WEST A DISTANCE OF 47.31 FEET; THENCE SOUTH 51 54 16 WEST A DISTANCE OF 3.05 FEET; THENCE NORTH 38 05 44 WEST A DISTANCE OF 22.00 FEET; THENCE NORTH 16 17 39 WEST A DISTANCE OF 147.16 FEET TO THE NORTHWESTERLY LINE OF SAID LOT 3, ALSO BEING THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF LOTUS DRIVE; THENCE NORTHEASTERLY ALONG SAID LOT LINE AND SAID RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES AND DISTANCES AND ONE CURVE: NORTH 48 50 39 EAST A DISTANCE OF 120.19 FEET; ALONG A 160.05 FOOT RADIUS CURVE RIGHT A DISTANCE OF 203.23 FEET (CHORD BEARS NORTH 85 13 16 EAST A DISTANCE OF 189.85 FEET); SOUTH 58 24 08 EAST A DISTANCE OF 20.75 FEET TO THE POINT OF BEGINNING, BEING THE "INITIAL POINT". CONTAINING 1.33 ACRES, MORE OR LESS.

9767

STATE OF OREGON

County of Deschutes

I hereby certify that the within instrument of writing was received for Record the 15 day of Oct A.D. 1980 at 4:15 o'clock P M., and recorded in Book 330 on Page 395 Records of Deeds

ROSEMARY PATTERSON
County Clerk

By Rhonda Lang Deputy

EXHIBIT "A"

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