

20078  
DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS AND CONDITIONS  
FOR  
TUMALO RIM  
DESCHUTES COUNTY, OREGON

VOL 247 PAGE 354

THIS DECLARATION made on the date hereinafter set forth by the undersigned, hereinafter referred to as "Declarant":

WHEREAS, Declarant is the owner of certain real property in the county of Deschutes, state of Oregon, hereinafter referred to as "Said Property," more particularly described on the attached Exhibit A by this reference hereby incorporated herein.

WHEREAS, Declarant desires to subject said property to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of said property, and its present and subsequent owners as hereinafter specified, and will convey said property subject thereto,

NOW, THEREFORE, Declarant hereby declares that all of the said property is and shall be held and conveyed upon and subject to the easements, conditions, covenants, restrictions, and reservations hereinafter set forth; all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of said property. These easements, covenants, restrictions, conditions, and reservations shall constitute covenants to run with the land and shall be binding upon all persons claiming under them and also that these conditions, covenants, restrictions, easements, and reservations shall inure to the benefit of and be limitations upon all future owners of said property, or any interest therein.

ARTICLE I

DEFINITIONS

Whenever used in this Declaration, the following terms shall have the following meanings:

(1) "Association" shall mean THE TUMALO RIM PROPERTY OWNERS ASSOCIATION, a nonprofit corporation organized under the laws of the state of Oregon, its successors and assigns.

(2) "Said Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may be hereafter brought within the jurisdiction of the Association by recorded declarations in the manner hereinafter set forth.

(3) "Common Area" shall mean all of the land and appurtenances thereto, now or hereafter owned by the Association and intended to be devoted for the common use and enjoyment of the members of the Association.

(4) "Lot" shall mean any numbered plot of land shown upon any recorded subdivision plat of said property.

(5) "Member" shall mean every person or entity who holds membership in the Association.

(6) "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any lot situated upon said property, or a contract purchaser if his record owner retains such title merely to secure an obligation and is registered as a purchaser in the Association records.

(7) "Roadway" means any street, highway or other thorough-fare as shown on the recorded plat of said property.

## ARTICLE II

### SUBJECTING ADDITIONAL PROPERTY TO THIS DECLARATION

Section 1. At any time before January 31, 1999, Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of development if such additions are in accord with a general plan of development prepared prior to the sale of any lot and made known to every purchaser prior to a sale to such purchaser.

Such general plan of development shall show the proposed additions to said property and contain:

(a) The general indication of size and location of each additional development stage and proposed land uses in each;

(b) The approximate size and location of the common area proposed for each stage;

(c) A statement that proposed additions if made will become subject to assessment for their just share of Association expenses.

Unless otherwise stated therein such general plan shall not bind Declarant, its successors and assigns, to make the proposed additions or to adhere to the plan in any subsequent development of the land shown therein.

Section 2. Method of Making Additions. Additions authorized under this Article shall be made by filing of record

a supplemental declaration of covenants and restrictions with respect to the additional property. Such supplemental declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property. In no event, however, shall such supplemental declaration revoke, modify, or add to the covenants established by this Declaration with respect to Said Property.

Section 3. Additions Not in Accordance With the General Plan of Development. Additions which are not in accord with the general plan of development may be made by the Declarant or any other owner of property, who with Declarant's consent desires to add such property to the scheme of this declaration and to subject it to the jurisdiction of the Association, upon approval of the Association pursuant to a vote of its members.

### ARTICLE III

#### MEMBERSHIP

Members of the Association shall be every Owner and shall be subject by covenants of record to assessment by the Association. There shall be no other qualification for membership except as set forth above. Membership shall terminate on transfer of fee simple title by an owner or the contract purchaser's interest by a contract purchaser who qualifies as a member. If an owner sells the Lot by contract of sale, upon written notification to the Association the owner's membership shall terminate and the contract purchaser's membership shall commence.

### ARTICLE IV

#### VOTING RIGHTS

All members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as they among themselves determine, or if unable to agree, they may cast fractional votes proportionate to their ownership interests, but in no event shall more than one vote be cast with respect to any one Lot.

### ARTICLE V

#### PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member of the Association shall have a right and easement of enjoyment in

and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot; subject, however, to the following provisions:

(a) The right of the Association to limit the number of members permitted to use the Common Area.

(b) The right of the Association to charge reasonable admission fees for the use of any recreational facility situated upon the Common Area.

(c) The right of the Association to suspend any member's voting rights and/or right to use of any of the recreational facilities owned by the Association, for any period during which any assessment against said member's property remains unpaid, and for a period not to exceed thirty (30) days for each infraction of its published rules and regulations.

(d) 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 considerations as may be agreed to by the members. No such condition or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds of the votes of the membership has been recorded in the appropriate records of Deschutes County, Oregon, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than ninety (90) days prior to such dedication or transfer.

(e) The right of the directors of the Association to promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe usage of such Common Area by the members of the Association without unduly infringing upon the privacy or enjoyment of the owner or occupant of any part of said property.

Section 2. Delegation of Use. Any member may delegate, in accordance with the rules and regulations adopted from time to time by the Directors, his right of enjoyment to the Common Area and facilities to the members of his family, his guests or his tenants, provided they reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants that it will convey to the Association title to the Common Area, subject to any necessary reservations of an easement or easements for utilities including but not limited to water, electricity, gas, sewage, telephone, and television.

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for all of said property, each Owner of any Lot by acceptance of a deed or contract of purchase therefor, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association: (1) Regular annual or other regular periodic assessments or charges, and (2) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as herein-after provided. The regular and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, 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 such 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 such assessment was levied. The obligation shall remain a lien on the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Area and the payment of taxes and insurance on all or any part of the Common Area.

Section 3. Annual Assessments. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix a regular flat assessment upon a monthly, quarterly, or annual basis. Any annual assessment paid within 30 days of the date billed shall be entitled to a three percent discount.

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 or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that, except for repairs or replacements, any such assessment for structural alterations, capital additions or capital improvements reflecting an expenditure of in excess of \$500 shall require the assent of a two-thirds (2/3) majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both regular periodic flat charges and any special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual, quarterly, or monthly basis in the discretion of the Directors.

Section 6. Quorum For Any Action Authorized Under Sections 3 and 4. At the meeting called, as provided in Section 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the requirement of notice set forth in Sections 3 and 4, and the required quorum at such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date of the meeting at which no quorum was forthcoming.

Section 7. Date of Commencement of Annual Assessments.  
Due Dates. All Lots shall be subject to the annual or monthly assessments provided for herein on the date specified by the Board of Directors. The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. When Declarant has sold ninety percent (90%) of the Lots it shall advise the Association in writing.

Section 8. Effect of Nonpayment of Assessments:  
Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum. The Secretary of the said Association shall file in the office of the Director of Records, County Clerk, or appropriate recorder of conveyances of Deschutes County, state of Oregon, within thirty (30) days after delinquency, a statement of the amount of any such charges or assessments, together with interest as aforesaid, which have become delinquent with respect to any Lot on said property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs, and expenses and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the Lot, with respect to which it is fixed from the date the note of delinquency thereof is filed in the office of said Director of Records or County Clerk, or other appropriate recording office, until the same has been paid or released as herein provided. Such lien may be enforced by said Association in the manner provided by law with respect to liens upon real property. The

owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs, and disbursements, including reasonable attorney's fees of the Declarant or of the Association, as the case may be, of processing and, if necessary, enforcing such liens, all of which expense, costs, disbursements, and attorney's fees shall be secured by said lien, including fees on appeal, and such Owner at the time such assessment is levied, shall also be liable for any deficiency remaining unpaid after any foreclosure sale. 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 dwelling unit, Lot, or building site.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be inferior, junior, and subordinate to the lien of all mortgages and trust deeds now or hereafter placed upon said property or any part thereof. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which became due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VII

### RESTRICTION ON USE OF PROPERTY

Section 1. Use and Occupancy of Private Areas. Each owner shall be entitled to the exclusive use and benefit of each lot owned by him, except as otherwise expressly provided herein. Each lot shall be used for residential purposes only, nor shall more than one detached single family dwelling not to exceed two (2) stories in height and not more than one triple garage or carport and one accessory building such as a workshop be constructed or placed upon each Lot in the subdivision.

Section 2. Driveways. All driveways must be composed of asphalt.

Section 3. Floor Area. The floor area of constructed residences shall be not less than 1100 square feet exclusive of one story porches and garages.

Section 4. Type of Buildings. Roofs must be of wood shingle or shake, vitreous clay tile or I.C.B.O. approval equal tile. All buildings, fences, and improvements must be constructed in workmanlike manner and kept in a condition of good repair. Exposed portion of foundation must be painted or

sided if more than 12" above the ground. Pumice or concrete block foundations shall not be allowed.

Section 5. Setbacks. Setback lines shall be at least twenty-five (25) feet back from all Lot lines to any structure upon the Lot with the exception of a fence, not to exceed 72 inches in height. Fences must be constructed of properly finished material and shall harmonize with the surroundings.

Section 6. No Subdividing. No lot shall be subdivided.

Section 7. Maintenance of Lots. Each lot and its improvements shall be maintained in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard.

Section 8. Appearance. All garbage, trash, cuttings, refuse, refuse or garbage containers, fuel tanks, clothes drying apparatus or lines, and other service facilities shall be screened from view from neighboring lots and common areas.

Section 9. Utilities. No above-ground utilities, pipes, or wires shall be used to connect improvements with supplying facilities.

Section 10. Offensive or Commercial Activities. No offensive or commercial activity shall be carried on in any lot nor shall anything be placed or constructed on any lot or anything done on a lot which interferes with or jeopardizes the enjoyment of other lots or common areas.

Section 11. View. The height of improvements or vegetation and trees on a lot shall not materially restrict the view of other lot owners. This section is not to be read as justification to create views not present when the lot was originally purchased.

Section 12. Independent Water System Prohibited. Independent water wells and systems are prohibited without the consent of the Association.

Section 13. Parking. A minimum of two parking places must be provided for each lot.

Section 14. Rules and Regulations. All land owners must comply with the laws and regulations of the state of Oregon, county of Deschutes, and any municipality applicable to fire protection, building construction, water, sanitation, and public health.

Section 15. Mobile Homes. Mobile homes are not to be permitted for use as a residential or accessory building on any lot in the subdivision.

Section 16. Trees. The cutting or removal of living trees will only be permitted where necessary for the construction of buildings or thinning for the beautification of the property. Such cutting or removal must be approved by the Association, or by a committee designated by the Association, before it is actually begun. A plan showing the lot, location, and identification of the tree or trees to be cut or removed must be submitted to the Association or its designated committee at least 30 days in advance of the intended cutting or removal date. Failure of the Association or its designated committee to respond within 25 days after the receipt of such plan shall be deemed approval.

Section 17. Household Pets. No animals other than domestic household pets shall be kept on any part of said property, and household pets shall be under the control of their owners at all times.

Section 18. Septic Tanks. Septic tanks and drain-fields must meet County Health Department, and Oregon Department of Environmental Quality standards.

Section 19. Use of Vehicles. No motorized vehicles other than automobiles may be operated on property without prior approval of the Board of Directors of the Association.

Section 20. Use of Firearms. No firearms shall be discharged on the property.

#### ARTICLE VIII

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owners, or the owner of any recorded mortgage upon any part of Said Property, 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. If any owner constructs or permits to be constructed on his property any improvement or allows the condition of his property to violate any provision of this Declaration, the Association may, no sooner than 60 days after delivery to such owner of written notice of the violation, enter upon the offending property and remove the cause of such violation, or alter, repair, or change the item which is in violation of such Declaration in such manner as to make it conform thereto with the reasonable cost of such action to be a charge against the owner's land.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise 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, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Any of the covenants and restrictions of this Declaration except the easements herein granted may be amended during the first twenty-five (25) year period by an instrument signed by not less than 75 percent of the Lot Owners. All such amendments must be recorded in the appropriate Deed Records of Deschutes County, Oregon, to be effective.

**Section 4. No Right of Reversion.** Nothing herein contained in this Declaration, or in any form of deed which may be used by Declarant, or its successors or assigns, in selling said property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or re-entry for breach of violation of any one or more of the provisions hereof.

**Section 5. Books and Records.** The books and records of the Association, upon demand in writing, stating the purpose thereof, may be inspected by any member, or his attorney or agent, for any proper purpose, at any reasonable time.

**Section 6. Benefit of Provisions; Waiver.** The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant, the Association, and the Owner or owners of any portion of said property, and their heirs and assigns, and each of their legal representatives, and failure by Declarant or by the Association or by any of the property owners or their legal representatives, heirs, successors, or assigns, to enforce any of such conditions, restrictions or charges herein contained shall in no event be deemed a waiver of the right to do so.

IN WITNESS WHEREOF, the undersigned, the owner of all Said Property, has hereunto caused these presents to be

executed this 25<sup>th</sup> day of January, 1977.

LANDIS AND WICK DEVELOPMENT COMPANY

BY Charles E. Landis  
CHARLES E. LANDIS

BY Jan M. Wick  
JAN M. WICK

STATE OF OREGON, County of Deschutes, ss: January 25, 1977

Personally appeared the above named CHARLES E. LANDIS and JAN M. WICK, partners doing business under the assumed business name of LANDIS AND WICK DEVELOPMENT COMPANY, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

NOTARY PUBLIC

Marie P. de Mercado  
NOTARY PUBLIC FOR OREGON  
My Commission expires: 12-19-80

20078

STATE OF OREGON

County of Deschutes

I hereby certify that the within instrument of writing was received for Record the 23 day of Mar A.D. 1977 at 9:47 o'clock P.M., and recorded in Book 247 on Page 364 Records of Land

ROSEMARY PATTERSON  
County Clerk

By [Signature] Deputy