

23146

COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TUMALO WEST

THIS DECLARATION is made this 20 day of February, ~~1981~~ ¹⁹⁸² by the undersigned, hereinafter referred to as "Owners".

WHEREAS, the Owners are owners of certain real property in the County of Deschutes, State of Oregon, hereinafter referred to as "Property", more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein, and

WHEREAS, Owners desire to subject the property to certain Covenants, Conditions, Restrictions, Easements, Liens and Charges for the benefit of the property and its present and subsequent owners as hereinafter specified and will convey the property subject thereto,

NOW THEREFORE, Owners hereby declare that all of the property is and shall be held and conveyed upon and subject to the easements, conditions, covenants and restrictions hereinafter set forth. These easements, covenants, restrictions and conditions shall constitute covenants to run with the land and shall be binding upon all persons, having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to each present and future owner thereof.

GRAY, FANCHER, HOLMES & HURLEY

Attorneys at Law

40 N.W. Greenwood Ave. - P. O. Box 1151
Bend, Oregon

ARTICLE I
DEFINITIONS

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

1. "Association" shall mean the Tumalo West Water, Inc., a non-profit corporation organized under the laws of the State of Oregon, its successors and assigns.

2. "Owner" shall mean the record owner whether one or more persons or entities of fee simple title to the property described in Exhibit "A" or a contract purchaser if the record owner retains title merely to secure an obligation. Owner does not include those having any interest merely as security for performance of an obligation.

3. "Member" shall mean all those owners who are members of the association as provided in Article II, Section 1 herein.

4. "Property" shall mean and refer to the real property described in Exhibit "A".

5. "Water System" shall mean the water system owned and operated by Tumalo West Water, Inc.

ARTICLE II
MEMBERSHIP AND VOTING

Section 1. Membership:

Every owner which is subject by covenants of record to assessment by the Association shall be a member of the Association. Membership shall terminate upon the transfer of a

fee simple title to a lot or the contract purchaser's interest by a contract purchase.

Section 2. Voting Rights:

Each Owner shall have one vote in the association.

ARTICLE III

PROPERTY RIGHTS

Section 1. Member's Water System:

Every member of the Association shall have a right to the use of and delivery of water from the Tumalo West Water, Inc. water system provided they comply with all the terms and conditions of said water company and have paid any and all assessments imposed pursuant to this declaration or pursuant to the bylaws of said corporation.

Section 2. Easements:

The Owners hereby convey to the Association the following easements:

(a) An easement 100 feet in radius around the existing domestic water well located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 36, Township 16 South, Range 12 East W.M., Deschutes County, Oregon and which is part of the Tumalo West Water Inc. water system for sanitary purposes wherein no sanitary disposal system shall be located.

(b) An easement 20 feet in radius around said existing domestic water well for the operation, repair and maintenance of said well, and

(c) An easement 10 feet wide located 5 feet either side of all existing water lines, blow off valves, pumps and any and all other portions of the existing water system for the operation, repair and maintenance of said water system.

Section 3. Building and Use Restrictions:

(a) The Building and Use Restrictions recorded May 6, 1970 in Volume 169, Page 958, Deed Records, Deschutes County, Oregon are hereby incorporated as if fully set forth herein.

(b) Folmer N. Bodtker and Bernice M. Bodtker, hereby assign and convey to the Association the right of way reserved in the above referenced Building and Use Restrictions for laying, repairing, operating and renewing any pipeline or lines for water.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the lien and Personal

Obligation of Assessments:

Each Owner hereby covenants and agrees to pay the Association:

- (a) Semi-annual assessments or charges,
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The semi-annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a

charge upon the land and shall be a continuing lien upon the property upon which each such assessment is made until paid or foreclosed. Each such assessment, together with interest, costs, reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of such property at the assessment fell due. The personal obligation for delinquent assessment shall not pass to the successor in title unless expressly assumed by the successor. The secretary of the association may file liens against delinquent property by recording a notice of delinquency in the appropriate county records.

Section 2. Purpose and Amount of Semi-Annual

Assessments:

Assessments may be levied by the Directors of the Association for the following purposes:

- (a) Repair, maintenance and operation of the water system owned and operated by Tumalo West Water, Inc.
- (b) Insurance and fire protection.
- (c) Taxes.
- (d) Administrative expenses.
- (e) Collection costs.
- (f) Legal and accounting expenses.
- (g) Any other purpose declared appropriate by the Directors of the Association.

The amount of the semi-annual assessment shall be determined by the Directors of the Association.

Section 3. Special Assessments for Capital Improvements:

In addition to the annual assessments specified 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 property relating to the water system, provided that except for repairs or replacements, any such assessment which exceeds \$500 in cost shall require the affirmative vote of a two-thirds majority of the votes entitled to be cast voting in person or by proxy at a meeting duly called for this purpose after 30 days' written notice. At the meeting the presence of members or of proxies entitled to cast sixty percent of all the votes shall constitute a quorum. If a quorum is not present in person or proxy, a new meeting may be called by the Directors.

Section 4. Uniform Rate of Assessment:

Both annual and special assessments shall be charged at a uniform rate for all Owners and such assessments may be collected on an annual, quarterly or monthly basis at the discretion of the Directors.

Section 5. Effect of Non-Payment of Assessments and Remedies of Association:

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after

the due date, the assessment shall bear interest from the date of delinquency at the rate of nine percent per annum. The Secretary of the 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 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 Owner's 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 attorneys' fee for the filing and enforcement thereof, shall constitute a lien on the Owner's property, with interest to be 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 attorneys' fees of the Association of processing and, if necessary, enforcing such liens, all of which expenses, costs, and disbursements and attorneys' 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 water system.

Section 6. 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 property shall not affect the assessment lien. However, the sale or transfer of any property which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under this 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 or other prior liens and charges have been satisfied. No sale or transfer shall relieve such property from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

GENERAL PROVISIONS

Section 1. Enforcement:

The Association, or any Owner, 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.

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. Termination:

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 property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of 20 years from the date this Declaration is recorded, after which time they will be automatically extended for successive periods of five years unless three-quarters of the Members of the Association affirmatively vote to terminate this Declaration. Such termination will be perfected by the Secretary of the Association filing a certification of the vote in the appropriate records of Deschutes County, Oregon.

Section 4. Amendments:

Any of the covenants, conditions or restrictions of this Declaration except the easements herein granted may be

amended by a vote amounting to seventy-five percent of the total votes entitled to be cast. The Amendment will be perfected by the Secretary of the Association filing a certification of the vote in the appropriate records of Deschutes County, Oregon.

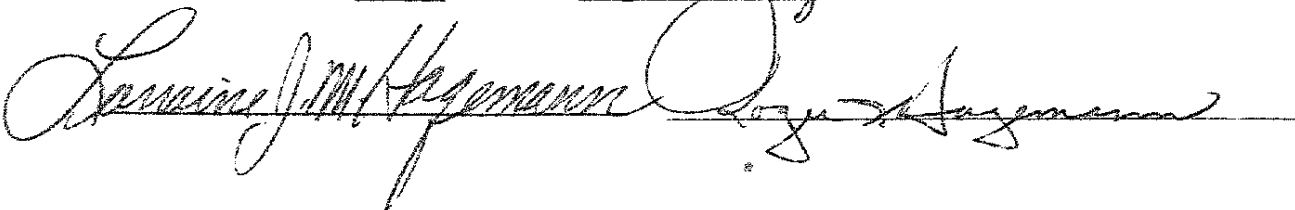
Section 5. Books and Records:

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 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 Owners of all said Property, has hereunto caused these presents to be executed this 20 day of February, ¹⁹⁸²~~1981~~.



GRAY, FANCHER, HOLMES & HURLEY
Attorneys at Law
40 N.W. Greenwood Ave. - P. O. Box 1151
Bend, Oregon

Thelma M. Nuttall

Stanley M. Nuttall

Janet K. Lueck

Charles E. Lueck

Richard A. Myers

Rae Nell Alger

Mary E. Osborn
with children

James R. Pang
Robert Cullman

Carol Yvonne Drury

Dennis E. Drury

Elaine Herman

Robert M. Ferner

David E. Sommer

Therese K. Sommer

Donna M. Kramer

✓ John W. Bodtker

✓ Bernice M. Bodtker

✓ Charlotte A. Marshall

✓ Allen R. Marshall

Lloyd C. Marrow
Daniel F. Marlow

✓ Roberta H. Marrow

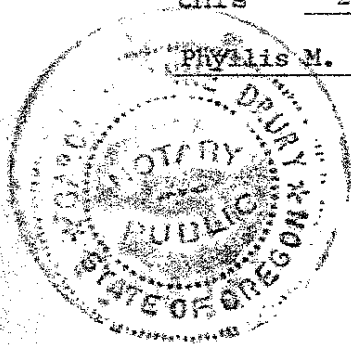
Sallee G. Marlow

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me

this 23 day of June, 1981, by

Phyllis M. Nuttall and Stanley M. Nuttall.



Carol Yvonne Drury
NOTARY PUBLIC FOR OREGON

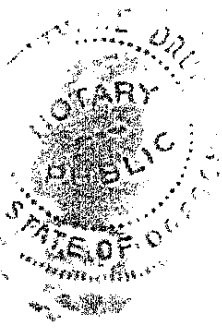
My Commission Expires: Feb. 1, 1985

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me

this 18 day of May, 1981, by

Ruth Cullman and Robert Cullman.



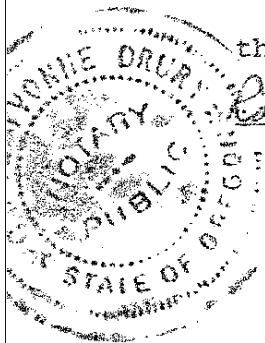
Carol Fancher Gray
NOTARY PUBLIC FOR OREGON

My Commission Expires: Feb. 1, 1985

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me

this 9 day of July, 1981, by
Roger J. Hagemann and Lorraine J. M. Hagemann.



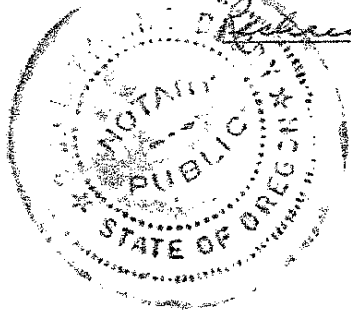
Carol Fancher Gray
NOTARY PUBLIC FOR OREGON

My Commission Expires: 2-1-85

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me

this 24 day of June, 1981, by
Richard B. Alger and Rae Nell Alger.



Carol Fancher Gray
NOTARY PUBLIC FOR OREGON

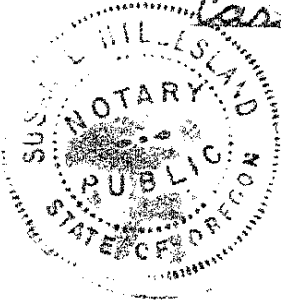
My Commission Expires: 2-1-85

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me

this 15 day of July, 1981, by

Carol Yvonne Drury and Dennis L. Drury



Susan L. Hillesland

NOTARY PUBLIC FOR OREGON

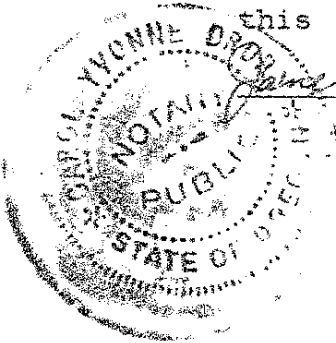
My Commission Expires: 2/27/84

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me

this 15 day of July, 1981, by

Janet K. Lueck and Charles E. Lueck



Carol Yvonne Drury

NOTARY PUBLIC FOR OREGON

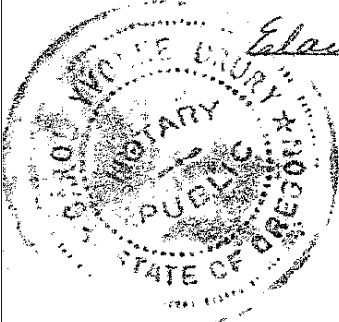
My Commission Expires: 2-1-85

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me

this 15 day of July, 1981, by

Elaine Humin & Herbert M. Humin



Carol Yvonne Drury

GRAY, FANCHER, HOLMES & HURLEY

Attorneys at Law

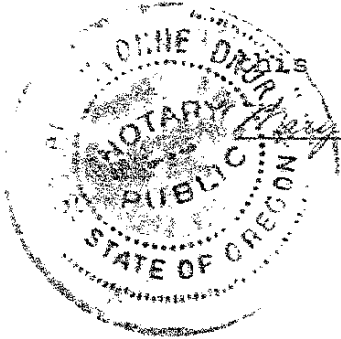
40 N.W. Greenwood Ave. - P. O. Box 1151
Bend, Oregon

NOTARY PUBLIC FOR OREGON

My Commission Expires: 2-1-85

STATE OF OREGON, County of Deschutes: ss. }

The foregoing instrument was acknowledged before me



this 30 day of August, 1981, by

Mary K. Barry & James K. Barry

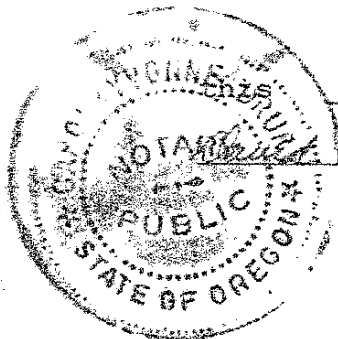
Cecil G. Gorman, Jr.

NOTARY PUBLIC FOR OREGON

My Commission Expires: 2-1-85

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me



this 30 day of August, 1981, by

Robert E. Sommer & Cheryl K. Sommer

Cecil G. Gorman, Jr.

NOTARY PUBLIC FOR OREGON

My Commission Expires: 2-1-85

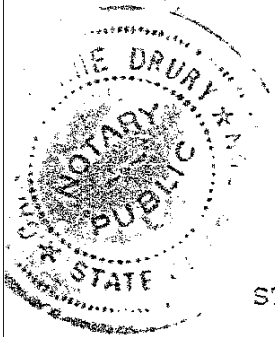
STATE OF OREGON, County of Deschutes: ss.

GRAY, FANCHER, HOLMES & HURLEY

Attorneys at Law

40 N.W. Greenwood Ave. - P. O. Box 1151
Bend, Oregon

The foregoing instrument was acknowledged before me
 this 1 day of September 1981, by
Nanette M. Farnen

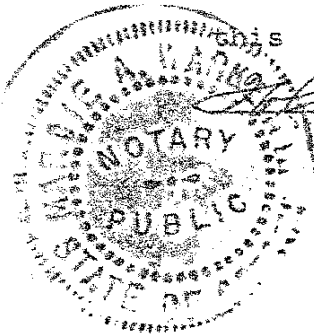


Marie Farnen
 NOTARY PUBLIC FOR OREGON

My Commission Expires: 2-1-85

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me
 this 3rd day of September, 1981, by



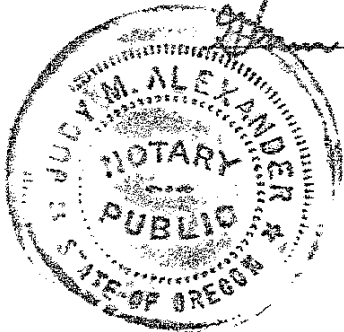
Bernice M. Bodtke

Margie G. Warkentin
 NOTARY PUBLIC FOR OREGON

My Commission Expires: 5/17/82

STATE OF OREGON, County of Deschutes: ss.

The foregoing instrument was acknowledged before me
 this 16th day of September 1981, by



Charlotte A. Minshall

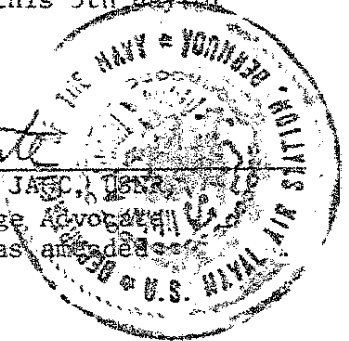
Judy M. Alexander
5/20/83

~~NOTARY PUBLIC FOR OREGON~~~~My Commission Expires: _____~~

U. S. NAVAL AIR STATION)
) SS
 BERMUDA)

The foregoing instrument was acknowledged before me this 5th day of
 November 1981 by Loyd C. Morrow and Roberta G. Morrow.

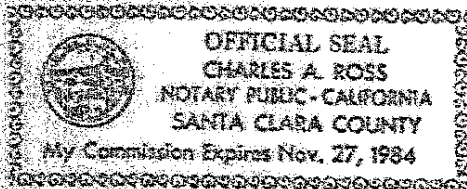
R. S. Ferrante
 R. S. FERRANTE, LT, JAGC, USN
 Assistant Staff Judge Advocate
 Auth: 10 USC 936, as amended



The foregoing instrument was acknowledged before me

this 20th day of Feb 1982, by

Daniel F. Murtha
 Daniel F. Murtha



Sallee Y. Murtha
 Sallee Y. Murtha

Charles A. Ross

NOTARY PUBLIC FOR CALIFORNIA

My Commission Expires: Nov. 27, 1984

EXHIBIT "A"

That certain unrecorded subdivision known as Bodtker Subdivision located on the following described real property:

The South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Thirty-six (36), Township Sixteen (16) South, Range Eleven (11), East of the Willamette Meridian, Deschutes County, Oregon.

23146

STATE OF OREGON

County of Deschutes

I hereby certify that the within instrument of writing was received for Record

the 8 day of June A.D. 1982

at 8 47 o'clock A. M. and recorded

in Book 357 on Page 956 Records

of Udick

ROSEMARY PATTERSON

County Clerk

By Amie P. Sullivan Deputy