

92-28817  
DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS AND CONDITIONS  
FOR  
VANDEVERT RANCH

275 - 0282

This Declaration of Covenants, Conditions, and Restrictions is made this 31 day of August 1992, by JAMES A. GARDNER and CAROL W. GARDNER, husband and wife, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of the real property described in Exhibit "A", attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of residential property within VANDEVERT RANCH, made subject to this Declaration and amendments thereto by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such Properties as are now or may hereafter be subjected to this Declaration;

NOW, THEREFORE, Declarant hereby declares that all the Properties described in Exhibit "A" and any additional property as may by subsequent amendment be added to and subjected to this Declaration 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 the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I: DEFINITIONS

Section 1. "Additional Land" shall mean and refer to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration.

Section 2. "Bylaws" shall refer to the Bylaws of VANDEVERT RANCH ASSOCIATION, INC.

Section 3. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners, including all private ways.

- 1 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

AFTER RECORDING, PLEASE RETURN

TO: HOLMES, HURLEY, et al ✓ Holmes Hurley Bryant Lovlien Lynch  
40 NW Greenwood ATTORNEYS AT LAW  
Bend, OR 40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

Section 4. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the Bylaws, and the Articles of Incorporation of the Association.

Section 5. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first mortgage on a unit who has requested notice of certain matters from the Association as hereinafter and in the Association's By-laws provided.

Section 6. "Eligible Votes" shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 7. "Lot" shall mean a portion of the Properties other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the plats of survey filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 8. "Majority" means those eligible votes, Owners, or other groups as the context may indicate totalling more than fifty (50%) percent of the total eligible number.

Section 9. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 10. "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 11. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

Section 12. "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor.

Section 13. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of any Lot which is part of the Properties, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant.

Section 14. "Person" means a natural person, a corporation, a partnership, trustee, or other legal entity.

- 2 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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Section 15. "Property or Properties" shall mean and refer to the real property described on page one of this Declaration and such additional real property as may be added in accordance with Article VI.

Section 16. "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Amendment to the provisions of this Declaration.

#### ARTICLE II: PROPERTY RIGHTS

Section 1. OWNER'S EASEMENT OF ENJOYMENT. Every Owner shall have a right and easement of ingress and egress, use and 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 facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities;

(b) The right of the Association to suspend an Owner's voting rights and the right to use any of the facilities for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's rules and regulations for the duration of the infraction and for an additional period thereafter not to exceed thirty (30) days;

(c) The right of the Declarant, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area contained within the respective Properties to any public agency, authority, or utility for such purposes as benefits only the Properties or portions thereof and Owners or Lots contained therein;

(d) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the common Area,

- 3 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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provided two-thirds (2/3) of the members present at a meeting called for such purpose shall approve; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within VANDEVERT RANCH; and

(e) The right of the Association to dedicate or transfer all or any portion 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 of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least two-thirds (2/3) of the votes of the members of the Association which are present or represented by proxy are entitled to cast at a meeting duly called for such purpose.

Article II, Section 1(c) may not be amended without the written consent of Declarant.

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-laws of the Association and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the occupants of any leased Lot.

Section. 3. OWNER'S RIGHT TO INGRESS, EGRESS, AND SUPPORT. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

Section 4. USE OF COMMON AREA. No planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Common Area or upon any Lot, except in accordance with the initial construction of the improvements located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the Owners of Lots may use the property outside their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's

- 4 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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Board of Directors or as is expressly provided herein. <sup>275</sup> It <sup>0286</sup> is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

Section 5. RULES AND REGULATIONS. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, and individual Lots. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rule's effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, cancelled, or modified by the Board or the Association in a regular or special meeting by the vote of the members holding a majority of the total votes in the Association. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure as provided in Article VIII.

Section 6. DECLARANT'S RESERVED EASEMENT. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to VANDEVERT RANCH for the benefit of Declarant, its successors, and assigns over, under, in, and/or on VANDEVERT RANCH, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with VANDEVERT RANCH and any other property now owned or which may in the future be owned by Declarant (such other property is hereinafter referred to as Additional Property). The reserved easement shall constitute a burden on the title to VANDEVERT RANCH and specifically includes, but is not limited to:

(a) The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on or in VANDEVERT RANCH; and the right to tie into any portion of VANDEVERT RANCH with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over VANDEVERT RANCH; and

(b) The right to construct, install, replace,

- 5 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction and sale by Declarant of residences in VANDEVERT RANCH or in any portion of the Additional Property.

(c) No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, VANDEVERT RANCH, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

This section may not be amended without the written consent of Declarant or Declarant's heirs.

Section 7. TITLE AND COMMON AREAS. Fee title to the common areas shall be conveyed by the Declarant to and must be accepted by the Association upon the conveyance of seventy-five percent (75%) of all the lots by Declarant in VANDEVERT RANCH.

Section 8. CONSOLIDATION OF LOTS. The Owner of two adjoining Lots, with the approval of the Design Review Committee, may elect to consolidate such Lots into one Lot. Subject to any applicable City of Bend or Deschutes County ordinances, the Design Review Committee may impose reasonable conditions or restrictions on the granting of its approval of a Lot consolidation, including, but not limited to, maintenance or landscaping requirements and limitations on use. The consolidation shall be effective upon the recording in the deed records in the county in which the Lot is located of a declaration of the Owner stating that the two Lots are consolidated. The declaration shall include a written consent to the consolidation executed on behalf of the Design Review Committee by at least one member thereof and a description of any restrictions and conditions imposed as a condition of such consent. Thereafter, and except if otherwise provided by the Design Review Committee as a condition of its consent, the consolidated Lots shall constitute one Lot for all purposes of this Declaration, including voting rights and assessments.

### ARTICLE III. RESTRICTIONS ON USE OF RESIDENTIAL LOTS

Section 1. AERIALS AND ANTENNAS. No radio or television or other aerial, antenna, dish, tower, or other transmitting or

- 6 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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receiving structure, or support thereof, shall be erected, installed, placed or maintained unless so erected, installed, placed or maintained entirely within the enclosed portion of the individual Residential Unit.

Section 2. EXTERIOR LIGHTING. No exterior lighting fixture (other than standard fixtures approved by the Design Review Committee or installed by Declarant) shall be installed within or upon any Lot without adequate and proper shielding of the fixture. No lighting fixture shall be installed that may become an annoyance or a nuisance to Owners or occupants of adjacent properties; provided, however, that Christmas holiday lighting may be permitted at a time and form to be determined by the Association. All modifications of exterior lighting must be approved in writing by the Design Review Committee, in advance, as provided herein.

Section 3. STORAGE AND PARKING OF VEHICLES. There shall be no outside storage or parking upon any Lot or the Common Area of any automobile, commercial vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other transportation device of any kind, except for Owner's personal automobile or visitors temporarily parking in spaces and in accordance with rules and regulations designated and promulgated by the Board. No Owners or tenants shall repair or restore any vehicle of any kind upon any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed. Owners will store boats and campers inside garages or within the "storage area" provided for this purpose.

Section 4. PETS. No animals, livestock, or poultry of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. No pit bulls shall be allowed on any Lot. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof. No dog shall be permitted to roam VANDEVERT RANCH unattended, and all dogs shall be kept on a leash. No dog shall be permitted to disturb deer, or other wildlife within VANDEVERT RANCH. Because of the unique environment, wildlife and acoustical properties within VANDEVERT RANCH, all dogs shall be kept within the individual residential unit of the Owner, or shall be kept at Owner's expense in kennels provided by the Association's Board of Directors. An Owner or

- 7 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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resident may be required to remove a pet upon receipt of the third notice in writing from the Association Board of Directors of violations of any rule, regulation or restriction governing pets within VANDEVERT RANCH.

Section 5. STRUCTURES PERMITTED. No improvements shall be erected or permitted to remain on any Lot except improvements containing living units and improvements normally accessory thereto. The foregoing provision shall not exclude construction of a garage, a private greenhouse, deck or decks, fences as specified in Section 23 below, picnic tables and outdoor furniture as specified in paragraph 26 below, and a private in-ground swimming pool, provided the location of such structure is in conformity with applicable Deschutes County ordinances, is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Design Review Committee.

Section 6. RESIDENTIAL USE. Lots shall only be used for residential purposes. Except with the consent of the Board of Directors of the Association, and as allowed by applicable Deschutes County ordinances, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Residential Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of living units, (b) the right of Declarant or any contractor or home builder to construct living units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any living unit as an office or model home for purposes of sales in VANDEVERT RANCH, and (c) the right of the Owner of a Lot to maintain his or her professional personal library, keep his or her personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her living unit. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the living unit and that the activities would not be in violation of applicable Deschutes County ordinance.

Section 7. OFFENSIVE OR UNLAWFUL ACTIVITIES. No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common area which interferes with or jeopardizes the enjoyment of other Lots or the common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of

- 8 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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all governmental bodies having jurisdiction thereof, shall be observed. Without limiting the generality of the foregoing, no heat pump or other heating, ventilating or air conditioning equipment, the operation of which produces noise at a level higher than 80 decibels, as measures at the lot line, shall be allowed on any Lot or living unit. 275 70290

Section 8. MAINTENANCE OF STRUCTURES AND GROUNDS. Each Owner shall maintain such Owner's Lot and improvements thereon in a clean and attractive condition, in good repair. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot properly cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be repaired within a reasonable period of time.

Section 9. PARKING. Parking of boats, trailers, motorcycles, trucks, truck campers, or other recreational vehicle or equipment and vehicles in excess of 8,000 pounds gross vehicle weight shall not be allowed on any part of VANDEVERT RANCH nor on public streets adjacent thereto, excepting only within areas designated for such purposes by the Board of Directors of the Association.

Section 10. VEHICLES IN DISREPAIR. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Area or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends occupants of the neighborhood. Should any Owner fail to remove such vehicle within two (2) days following the date on which notice is mailed to him by the Association, the Association may have the vehicle removed from VANDEVERT RANCH and assess the expense of such removal to the Owner.

Section 11. SIGNS. No signs shall be erected or maintained on any Residential Lot except signs which are approved as to appearance and location by the Design Review Committee. The restrictions contained in this paragraph shall not apply to: The placement by the Declarant or Declarant's agent of one or more signs identifying the name of the Declarant and/or the location of "The Homestead" property or a model home.

Section 12. RUBBISH AND TRASH. No Lot or part of the common Area shall be used as a dumping ground for trash or rubbish of

- 9 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets or Common Areas or on any Lots. All unimproved Lots shall be kept in a neat and orderly condition, free of vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard. If any default under this Section exists for a period longer than ten days after written notice of such default is mailed to the responsible Owner by the Association, the Association shall have, in addition to any other rights under this Declaration, or at law or in equity, the remedies specified in this agreement.

Section 13. COMPLETION OF CONSTRUCTION. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within 18 months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Design Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period. The Association may enact restrictions and procedures to control access, parking and disruption of VANDEVERT RANCH and its environment during construction, including but not limited to restrictions on access, parking, pets, and noise and restriction of individuals working on construction from access to or use of other lots or common areas of VANDEVERT RANCH, except for purposes directly related to construction, as permitted in writing by the Association on that lot.

Section 14. LANDSCAPE COMPLETION. All landscaping must be completed within sixty (60) days from the date of occupancy of the living unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Design Review Committee.

Section 15. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently, except that nothing in this provision shall prohibit the Association from issuing a written "camping" permit for overnight camping of residents and guests, in the areas of VANDEVERT RANCH as designated by the Association. All recreational camping so permitted shall in no way disturb the natural environment and shall otherwise conform to measures of fire and waste disposal as determined by the Association. It is the intent of this provision to allow overnight camping, consistent with the historical use of

- 10 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
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VANDEVERT RANCH, in areas designated by the Association and subject to regulations promulgated by the Association.

Section 16. HEDGES AND PLANTINGS ALONG LOT LINES. No hedges or plantings along Lot lines shall be installed without prior approval of the Design Review Committee.

Section 17. SERVICE YARDS. Service yards (garbage, fuel tanks, clotheslines, etc.) shall be completely screened so that the elements screened are not visible at any time from the street or any adjoining property. No plastic cover shall be used, for example, to protect wood or structures, unless they are brown or forest green in color, and are not visible at any time from the street or any adjoining property.

Section 18. SETBACK, MAXIMUM HEIGHT AND MINIMUM YARD REQUIREMENTS. Each Lot shall be subject to the setback, maximum height, and minimum yard requirements shown on the recorded plat on which such Lot is included, or which are established by Deschutes County or other governmental entity with jurisdiction over each such Lot and to any land use review procedure established by Deschutes County or other government entity with jurisdiction over such Lot for review and approval of variance from such requirements. Setbacks may vary from one lot to the next, depending upon location, view and building envelopes, as shown in the recorded plat. In addition, all Lots are subject to any more restrictive view easement, setback, maximum height or minimum yard requirements as are established from time to time by the Design Review Committee. Deschutes County has established certain maximum height and minimum yard requirements as a condition of approval of the Initial Development. No improvement shall be constructed or maintained in violation of any setback, maximum height or minimum yard requirement, except as provided within the recorded plat on which such lot is included or as allowed with the written consent of the Design Review Committee and any applicable Deschutes County approval.

Section 19. TRANSIENT RENTAL USE. No Owner or Owners of any unit within VANDEVERT RANCH shall be permitted to rent their unit to any person or persons for transient occupancy which shall be for a period of 30 days or less. A rental shall be defined as the use or possession or the right to use or possess for lodging or sleeping purposes any unit in VANDEVERT RANCH and rent shall mean the consideration charged whether or not received by the Owner for the occupancy of the unit any money, goods, labor, credits, property or other consideration valued in money without any deduction. Transient use shall not include a rental of any unit for a period of in excess of 30 consecutive calendar days. Owner and transient occupants shall be responsible for compliance with all provisions of the Declarations, Restrictions, Protective Covenants and Conditions of this document, and any and all rules

- 11 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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and regulations promulgated by the Association to protect the natural environment, quiet enjoyment and quality of life of VANDEVERT RANCH.

Section 20. USE OF BARN AND STABLE AREA, AND EQUESTRIAN USE OF COMMON AREAS. The barn and stable area and the meadows and common areas of VANDEVERT RANCH may be used by Owners for equestrian purposes, provided, however, that:

(a) Facilities and space exist to accommodate horses owned by Owners;

(b) No Owner may keep more than two horses on VANDEVERT RANCH without written approval of the Association;

(c) Owners pay equestrian maintenance fees determined by the Association;

(d) Owners ride within common areas and on riding trails to be established by the Association.

Owners of horses shall carry liability insurance on their personal horses as determined by the Association, and shall assume full responsibility for personal horses at VANDEVERT RANCH.

Horses and horse-drawn sleighs may use the bridge and meadows of VANDEVERT RANCH subject to reasonable regulation of the Association.

The barn and stable area may also be used for recreational purposes of Owners and guests within the rules and regulations provided for this purpose by the Association. For example, the barn loft may be used for recreational, dance, or social purposes within the rules and regulations of the Association.

Section 21. SNOWMOBILES AND RECREATIONAL VEHICLES. No snowmobiles, recreational vehicles or mechanized vehicles shall be used in the common areas and meadows of VANDEVERT RANCH, except that the Association may permit the use of mechanized vehicles solely for the purposes of protecting and maintaining the security, natural environment, fire prevention and peaceful enjoyment of VANDEVERT RANCH.

Section 22. HISTORICAL STRUCTURES AND ARTIFACTS. The Association and all Owners shall maintain and protect historical structures and artifacts on VANDEVERT RANCH, including but not limited to:

(a) The historic Vandever School;

- 12 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien  Lynch

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- (b) The gravesite of Kathryn Grace Vandever;
  - (c) The stagecoach tracks across the meadows on the north portion of the VANDEVERT RANCH;
  - (d) The William Vandever Homestead Cabins, on the west side of VANDEVERT RANCH;
  - (e) The "Old Homestead" and Jeanie Vandever Guest House at the center of Vandever Ranch;
  - (f) The Homestead Bridge abutment at the center of VANDEVERT RANCH.

Section 23. FENCES. All fences on VANDEVERT RANCH shall be made of natural wood and of traditional "triangulated" design and structure as currently used on VANDEVERT RANCH, except that:

- (a) Dimensional lumber may be used on fences and corrals in the barn and stable area as permitted by the Association;
- (b) Wire or wood, post and pole fencing may be used for fencing on the perimeter property lines of VANDEVERT RANCH in accordance with agreements between Declarant and the Oregon Department of Fish and Wildlife with regard to the type of wire and construction of said perimeter fencing.

Section 24. LAKES AND PONDS. Lakes and pond waters on VANDEVERT RANCH are the common property of VANDEVERT RANCH and the Association. All lakes and ponds are to be managed by the Association (provided, however, that nothing in this paragraph is intended to give common title or access to the east side of the Lake on the north meadow of VANDEVERT RANCH, where the shoreline is in close proximity to individuals lots in that area; common access to the eastern shoreline of this lake could disturb the private and quiet enjoyment of these lots (3-7), and is not permitted except as permitted in writing by the Owner of said lots.

Section 25. HUNTING, TRAPPING, FIRE ARMS AND FISHING. There shall be no hunting and trapping on VANDEVERT RANCH, except as authorized in writing by the Association or as required by the appropriate State or Federal agencies, exclusively for purposes of health and safety. There shall be no shooting on VANDEVERT RANCH.

Fishing is permitted on VANDEVERT RANCH, with fly fishing and "catch and release" fishing encouraged within the rules and

- 13 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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regulations promulgated by the Association to protect the wetlands habitat and enhance the fishery of the Little Deschutes River and the recreational and quiet enjoyment of VANDEVERT RANCH.

Section 26. SWING SETS AND LAWN FURNITURE. Metal and plastic swing sets and lawn figures are prohibited on VANDEVERT RANCH. Children's swing sets or recreational facilities, including picnic tables and benches, of a wood construction may be built within rules and regulations as determined by the Association, provided, however, that the Association may decline to authorize such construction if, in the sole judgment of the Association, such swing sets or recreational facilities would be of a size, color and location that would diminish neighboring lots and the natural environment of VANDEVERT RANCH.

Section 27. NOISE. Owners of units in VANDEVERT RANCH shall follow rules and regulations promulgated by the Association to limit and prohibit loud music or noise that would disrupt the quiet enjoyment of neighboring lots and the natural environment and wildlife of VANDEVERT RANCH, provided, however, that nothing in this paragraph shall be interpreted to prohibit Owners and the Association from the peaceful and reasonable enjoyment of music within their homes that does not intrude upon others, and outdoor performance of music as authorized by the Association.

Section 28. RECREATIONAL ENJOYMENT; ASSUMPTION OF RISK. Owners shall be entitled to recreational enjoyment of common areas of VANDEVERT RANCH, including, but not limited to, horseback riding, sleigh riding, nature walks and observation, cross country skiing, ice skating, fishing, picnicking, camping within designated areas, canoeing, swimming and floating on the Little Deschutes River, and other recreational activities as authorized by the Association, providing, however, that the risk of such use rests fully and completely with the Owner and with the user. The Association may promulgate rules and regulations pertaining to such appropriate recreational use of VANDEVERT RANCH.

Section 29. TREES. Except as otherwise provided, Owners are responsible for the maintenance of trees on individual lots. The Association may require the pruning or cutting of trees for the health and safety of VANDEVERT RANCH or for purposes of reducing fire risk or to protect explicit view easements. The Association is responsible for the promulgation and enforcement of strict burning procedures and safety standards. The Association is responsible for the maintenance of trees in common areas, except that nothing in this paragraph shall be construed as inconsistent with Section 34.

Section 30. GUESTS. To protect the quiet enjoyment and

- 14 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien  Lynch  
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40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

natural environment of VANDEVERT RANCH, the Association can enact and implement reasonable resolutions on the number of guests, on repetitive guests, and on disruptive guests, and may otherwise limit guest use of VANDEVERT RANCH consistent with the rights of other Owners and the quiet enjoyment and natural environment of VANDEVERT RANCH.

Section 31. GUEST HOUSE. Guest Houses are not permitted on individual lots of VANDEVERT RANCH, except for historical buildings existing at the date of this document.

Section 32. ACQUISITION OF ADJACENT LAND AND CONSTRUCTION OF STAFF FACILITIES. The Association may acquire property adjacent to VANDEVERT RANCH exclusively for purposes of providing housing for staff working on VANDEVERT RANCH and for fire prevention, for security measures and for maintenance and protection of the environment of VANDEVERT RANCH, provided, however, that any and all such adjacent property shall not be used as guest facilities nor have guest or other recreational access to or use of VANDEVERT RANCH.

Section 33. LANDSCAPING. Landscaping of individual lots and of common areas shall be consistent with the natural environment of the area and shall consist predominantly of lodge pole, aspen and ponderosa pine trees, natural grasses (such as fescue), irrigated or non-irrigated, and native wildflower and other flowers as authorized by the Design Review Committee. Owners may, with the written concurrence of the Design Review Committee, create lawns immediately surrounding residential units mounds and rock out-croppings, with natural landscaping, to enhance the privacy, quiet enjoyment and natural beauty of VANDEVERT RANCH and individual lots thereon.

The Association may take appropriate landscaping measures to protect and enhance the river and meadows, fishery and wildlife and the natural environment and quiet enjoyment of VANDEVERT RANCH, including, but not limited to, measures to protect and enhance stream quality and fishery habitat, meadow grasses, woodlands, maintenance of fuel and fire breaks, landscaping, roadway, bridge, barn area, recreation area and common areas. All such landscaping shall be consistent with the natural environment of VANDEVERT RANCH.

Section 34. VIEW EASEMENTS. Owners may, working through and with the written approval of the Association, take landscaping measures to protect explicit view easements as recorded in the Official Records of Deschutes County, Oregon, provided, however, that such measures shall be taken in consultation with the Owner of neighboring and affected lots and shall not, in the exclusive judgment of the Association, significantly diminish the natural forest environment of the affected property.

- 15 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien  Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

Willow management measures in common areas shall be undertaken by the Association in consultation with the individual Owners of neighboring lots and shall be conducted consistent with and in accordance with willow management agreements between Declarant and the Oregon Department of Fish and Wildlife.

Section 35. BUILDING ENVELOPE. All building sites shall be located within an established and documented building area as determined on each site by the Declarant. This area is a circle 100 feet in diameter with the center of the circle being determined by a building site stake. This is a primary criteria for approval, however, depending upon design and other features, the Design Review Committee may consider a variance if a substantial part or parts of any structures are intended to be located outside of the approved building envelope area, adjacent property Owners will be notified.

Section 36. BUILDING DESIGN. Homes built on VANDEVERT RANCH shall be of log, wood or other natural materials, and shall be in the exclusive determination of the Design Review Committee consistent with the ranch character and natural environment of VANDEVERT RANCH.

#### ARTICLE IV. MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP. Every person or entity who is the record Owner of a fee in any Lot or a contract vender thereof that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote cast for each Lot.

Section 2. VOTING. Each member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership under Section 1 hereof.

Section 3. INTERIM BOARD; TURNOVER MEETING. Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarant or their successors have

- 16 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

been elected by the Owners at the turnover meeting described in this Section. Declarant shall call a meeting by giving notice to each Owner as provided in the Bylaws of the Association for the purpose of turning over administrative responsibility for VANDEVERT RANCH to the Association not later than one hundred twenty (120) days after Lots representing seventy-five percent (75%) of the votes in VANDEVERT RANCH have been sold and conveyed to Owners other than Declarant. If the Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 4 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting, the interim directors shall resign and their successors shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

Section 4. TRANSITIONAL ADVISORY COMMITTEE. The Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by the Declarant of VANDEVERT RANCH to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the Declarant has conveyed to Owners other than Declarant Lots representing fifty percent (50%) of the votes in VANDEVERT RANCH, the Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than the Declarant, shall select two or more members. The Declarant may select no more than one member. The Transitional Advisory Committee shall have reasonable access to all information and documents which the Declarant is required to turn over to the Association under ORS 94.616.

(a) Declarant's Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.

(b) Owners' Failure to Select Members. Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.

(c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 3 above has been held.

Section 5. DECLARANT CONTROL AFTER TURNOVER. After the

- 17 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien  Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

turnover meeting described in Section 3 above, Declarant shall continue to have the voting rights described in Section 2 above.

#### ARTICLE V. MAINTENANCE

Section 1. ASSOCIATION'S RESPONSIBILITY: The Association shall maintain and keep in good repair the Common Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, equipment and improvements situated upon the Area of Common Responsibility.

Section 2. OWNER'S RESPONSIBILITY: Except as provided in Section 1 of this Article, all maintenance of the Lot and all part of the residence thereon shall be the responsibility of the Owner, and each Owner shall maintain and keep in good repair such property and improvements.

#### ARTICLE VI. INSURANCE

Section 1. INSURANCE: The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

The Board shall also obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. Premiums for all insurance on the Common Area shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three 3 months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially

- 18 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

modified without at least ten (10) days' prior written notice to the Association.

Section 2. INDIVIDUAL INSURANCE. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees to carry blanket all-risk casualty insurance on the Lots and structures constructed thereon. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

#### ARTICLE VII. ANNEXATION OF ADDITIONAL PROPERTY

Section 1. ANNEXATION WITHOUT MEMBERSHIP. As the Owner thereof or, if not the Owner, with the consent of the Owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until January 1, 1997, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of any contiguous real property to that described in Exhibit "A" attached hereto and by reference made a part hereof by filing in the Deschutes County, Oregon, records, an amendment annexing such property. Such amendment to this Declaration shall not require the vote of the members. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein.

Declarant shall have the unilateral right to transfer to any other person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A", attached hereto, which, at the time of such transfer and assignment (or contemporaneously therewith), is subjected to the provisions of this Declaration.

Section 2. The rights reserved unto Declarant to subject additional land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional and to this Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build housing of the same type, design, or materials. If such additional land is not subjected to this Declaration, Declarant's

- 19 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional and, nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent Owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

#### ARTICLE VIII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. COMMON AREA. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements therein (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the By-laws.

Section 2. SERVICES. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Properties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, and other common services to each Lot.

Section 3. PERSONAL PROPERTY AND REAL PROPERTY FOR COMMON USE. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests located within the properties described in Exhibit "A" conveyed to it by the Declarant.

Section 4. IMPLIED RIGHTS. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

- 20 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien  Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

Section 5. SELF-HELP. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common property to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 6. RIGHT OF ENTRY. The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into units for emergency, security, or safety purposes, which right may be exercised by the association's Board of Directors, officers, agents, employees, managers and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or occupant of the unit.

#### ARTICLE IX. ASSESSMENTS

Section 1. PURPOSE OF ASSESSMENT. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Units, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. CREATION OF ASSESSMENTS. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association; (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

- 21 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

Section 3. COMPUTATION OF ASSESSMENT. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the members. Notwithstanding the foregoing, however, in the event the membership disapproved the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. SPECIAL ASSESSMENTS. In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed Five Hundred Dollars (\$500) in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a Majority of the members. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. LIEN FOR ASSESSMENTS. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Deschutes County, Oregon, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 6. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessments which are not paid when due

- 22 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien  Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the unit. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Section 7. CAPITAL BUDGET AND CONTRIBUTION. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessments, as provided in Section 3 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

- 23 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

Section 8. SUBORDINATION OF THE LIEN TO FIRST DEEDS OF TRUST AND FIRST MORTGAGES. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage 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 lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

Section 9. CAPITALIZATION OF ASSOCIATION. Upon acquisition of record title to a Lot from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6) of the amount of the annual general assessment for that Lot as determined by the Board. This amount shall be deposited by the buyer into the Purchase and Sales Escrow and disbursed therefrom to the Association.

Section 10. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to all Lots then existing and subject to assessment under the Declaration on the first day of the month following the conveyance of the first Lot by the Declarant and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot become subject to assessment hereunder shall be the date on which the Lot becomes subject to the Declaration.

Section 11. ASSESSMENTS BY DECLARANT.

(a) After the commencement of assessment payments as to any Lot, Declarant, if any, covenants and agrees to pay the full amount of the annual assessment for each occupied Lot it owns; notwithstanding anything contained herein to the contrary, the Declarant shall not be required to pay the annual assessment for unoccupied Lots that it owns.

- 24 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien  Lynch  
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40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

## ARTICLE X. DESIGN REVIEW COMMITTEE

Section 1. ARCHITECTURAL REVIEW. No Improvement shall be commenced, erected, placed, altered or maintained on any Lot until the design plans and specifications showing the nature, shape, height, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Design Review Committee. It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials, and to assure harmony of external design with existing Improvements and location of the Improvements with respect to topography and finished grade elevations.

Section 2. PROCEDURE. In all cases which the Design Review Committee approval or consent is required by this Declaration, the provisions of this Article shall apply. The procedure and specific requirements for application for Design Review Committee approval or consent may be set forth in Design Guidelines or other rules adopted from time to time by the Design Review Committee. The Design Review Committee may charge a reasonable fee to cover the cost of processing the application.

Section 3. COMMITTEE DECISION. The Design Review Committee shall render its decision on an application for approval of the design of an Improvement or any other proposal submitted to it for approval or consent or seek additional information within thirty (30) working days after it has received a complete written application therefor. A complete application shall specify the approval or consent requested and be accompanied by all material reasonably required or desired by it to make an informed decision on such application. If the Design Review Committee fails to render approval or disapproval of such application within thirty (30) working days after the Design Review Committee has received a complete application or if no suit to enforce this Declaration has been commenced within one year after completion of construction of the Improvement, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

Section 4. COMMITTEE DISCRETION. The Design Review Committee may, in its sole discretion, withhold or condition its approval of any proposed Improvement if the Design Review Committee finds the proposed Improvement would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for VANDEVERT RANCH. Consideration of siting, shape, size, color, design, height, solar access, impairment of the view from other Lots within VANDEVERT RANCH, or other effect on the enjoyment of other Lots or the Common Areas, disturbance of existing terrain and vegetation and any other factors which the Design Review Committee reasonably believes to

- 25 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
ATTORNEYS AT LAW

40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

be relevant, may be taken into account by the Design Review Committee in determining whether or not to approve or condition its approval of any proposed Improvement.

Section 5. MEMBERSHIP; APPOINTMENT AND REMOVAL. The Design Review Committee shall consist of as many persons, but not less than three, as the Declarant may from time to time appoint. The Declarant may remove any member of the Design Review Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Design Review Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Design Review Committee. If Declarant delegates to the Board of Directors the right to appoint or remove members of the Design Review Committee or if Declarant fails to appoint a Design Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Design Review Committee. If the Board of Directors has assumed the responsibility for appointment of the members of the Design Review Committee and fails to make such appointments, the Board of Directors shall itself serve as the Design Review Committee.

Section 6. MAJORITY ACTION. Except as otherwise provided herein, a majority of the members of the Design Review Committee shall have the power to act on behalf of the Design Review Committee, without the necessity of a meeting and without the necessity of consulting or notifying the remaining members of the Design Review Committee. The Design Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

Section 7. LIABILITY. The scope of the Design Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering or other similar considerations. Neither the Design Review Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Design Review Committee or a member thereof, provided only that the Design Review Committee has, or the member has, in accordance with the actual knowledge possessed by the Design Review Committee or by such member, acted in good faith.

Section 8. NONWAIVER. Consent by the Design Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

- 26 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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Section 9. APPEAL. After Declarant has delegated appointment of the members of the Design Review Committee to the Board of Directors of the Association, any Owner adversely affected by action of the Design Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Design Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such appeal.

Section 10. EFFECTIVE PERIOD OF CONSENT. The Design Review Committee's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received an extension of time from the Committee.

Section 11. ESTOPPEL CERTIFICATE. Within fifteen (15) working days after written request therefor is delivered to the Design Review Committee by any Owner, and upon payment to the Design Review Committee of a reasonable fee, if any, fixed by the Design Review Committee to cover costs, the Design Review Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so comply. If the estoppel certificate states that the Improvements do not comply, such certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to reply on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Design Review Committee, the Association and all Owners, and such purchaser or mortgagee.

Section 12. CONSTRUCTION BY DECLARANT. Improvements constructed by Declarant on any property owned by Declarant, are not subject to the requirements of this Article IX.

#### ARTICLE XI. MORTGAGEE RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in VANDEVERT RANCH. To the extent applicable, necessary, or proper, the provisions of this Article X apply to both this Declaration and to the By-laws of VANDEVERT RANCH. Where indicated, these

- 27 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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provisions apply only to eligible holders, as hereinafter defined.

Section 1. NOTICES OF ACTION. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the unit number), (therefore becoming an eligible holder), will be entitled to timely written notice of:

- (a) Any proposed termination of the Association;
- (b) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (c) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;
- (d) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) Any proposed action which would require the consent of eligible holders, as required in Section 2 and 3 of this Article.

Section 3.2 AMENDMENTS TO DOCUMENTS.

- (a) The consent of at least sixty-seven percent (67%) of members and of the Declarant so long as it owns any land subject to this Declaration and the approval of the eligible holders of first mortgages on Lots to which at least sixty-seven percent (67%) of the votes of units subject to a mortgage appertain, shall be required to terminate the Association.
- (b) The consent of at least sixty-seven percent (67%) of the members and of the Declarant so long as it owns any land subject to this Declaration and the approval of eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-laws, or Articles of Incorporation of the Association, or to add any material provisions

- 28 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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thereto, which establish, provide for, govern, or regulate any of the following:

- (i) Voting;
- (ii) Assessments, assessment liens, or subordination of such liens;
- (iii) Reserves for maintenance, repair, and replacement of the Common Area;
- (iv) Insurance or fidelity bonds;
- (v) Rights to use of the Common Area;
- (vi) Responsibility for maintenance and repair of the Properties;
- (vii) Expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
- (viii) Boundaries of any Lot;
- (ix) Leasing of Lots;
- (x) Imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
- (xi) Establishment of self-management by the Association where professional management has been required by an eligible holder; or
- (xii) Any provisions included in the Declaration, By-laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first mortgages on Lots.

Section 3. SPECIAL FHLMC PROVISION: So long as required by the mortgage corporation, the following provisions apply in addition to and not in lieu of the foregoing two Sections of this Article. Unless two-thirds (2/3) of the first mortgagees or Owners give their consent, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area which the Association owns, directly or indirectly (the

- 29 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
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granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties shall not be deemed a transfer);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area;

(d) Fail to maintain fire and extended coverage insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such Properties.

The provisions of this Section 3 shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Area, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

It is Declarant's intention that the development qualify for the possible sale of mortgages encumbering Lots to the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation. The requirements contained in this Section are to effectuate that purpose. Should either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association subsequently delete any of their respective requirements which necessitate the provisions of this Section or make any such requirements less stringent, this Section shall automatically be amended to reflect such changes.

#### ARTICLE XII. GENERAL PROVISIONS

Section 1. DURATION. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall insure to the benefit of and shall be enforceable by the

- 30 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien & Lynch  
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40 N.W. Greenwood P.O. Box 1151 Bend, Oregon 97709-1151 (503) 382-4331 Fax (503) 389-3386

Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. AMENDMENT. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's lot, Owner shall consent thereto in writing.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the members and the consent of the Declarant, so long as declarant has an unexpired option to subject property to this Declaration. Amendments to this Declaration shall become effective upon recordation in the Deschutes County, Oregon records, unless a later effective date is specified therein.

Section 3. INDEMNIFICATION. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal

- 31 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

Holmes Hurley Bryant Lovlien  Lynch  
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liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. EASEMENTS FOR UTILITIES. There is hereby reserved to the Association blanket easements upon, across, above, and under all property within VANDEVERT RANCH for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving VANDEVERT RANCH or any portion thereof, including, but not limited to, gas, water sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve VANDEVERT RANCH. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wire, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 5. CONSTRUCTION AND SALE. Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sale offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant as models and sales offices. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Section 7 shall terminate upon the earlier of (a) twenty-five (25) years from

- 32 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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the date this Declaration is recorded or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

Section 6. SEVERABILITY. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

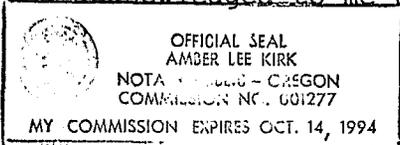
Section 7. CAPTIONS. The captions of each Article and Section hereof, as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF, the undersigned Declarants have executed this Declaration this 31 day of August, 1992.

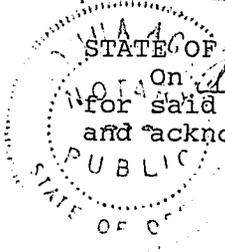
*James A. Gardner*  
JAMES A. GARDNER  
*Carol W. Gardner*  
CAROL W. GARDNER

STATE OF OREGON, County of Deschutes, ss:

On Aug. 31, the undersigned, a Notary Public in and for said County and State, personally appeared JAMES A. GARDNER and acknowledged to me that he executed the within instrument.



*Amber Lee Kirk*  
Notary Public for Oregon  
My Commission Expires 10/14/94



STATE OF OREGON, County of Deschutes, ss:

On August 31, 1992, the undersigned, a Notary Public in and for said County and State, personally appeared CAROL W. GARDNER and acknowledged to me that she executed the within instrument.

*Donna L. Gunn*  
Notary Public for Oregon  
My Commission Expires 5-28-94

- 33 - DECLARATIONS, RESTRICTIONS,  
PROTECTIVE COVENANTS & CONDITIONS

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EXHIBIT "A"

Vandevert Ranch Phase I Subdivision, Deschutes County, Oregon

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

92 AUG 31 PM 2:59

MARY SUE PENHOLLOW  
COUNTY CLERK

BY.  DEPUTY  
92-28817  
NO. \_\_\_\_\_ FEE 170-  
DESCHUTES COUNTY OFFICIAL RECORDS

- 1 - EXHIBIT "A"

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