

89-24129

WILLOW CREEK
AT
MOUNTAIN HIGH

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration is made this 20th day of September 1989
by the J L Ward Company.

Declarant is the owner and developer of that property shown on attached Exhibit A and known as the community of Mountain High which will be platted and developed in several phases and may include a variety of housing types, including single family detached, single family attached, townhouses, condominiums and multi-family rental structures, as well as certain recreational facilities, roadways and other features developed for the benefit of all residents of the community of Mountain High.

Declarant is the owner of that certain real property, hereinafter referred to as "Property" and more particularly described as The Official Plat of "Willow Creek at Mountain High", Deschutes County, Oregon.

Declarant hereby declares that all of the said property is and shall be held and conveyed subject to the easements, conditions, covenants, restrictions, and reservations herein-after set forth; all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These easements, covenants, restrictions, conditions, and reservations shall constitute covenants, to run with the land and shall be binding upon all persons having any right, title, or interest in the described property or in any part thereof, their heirs, successors, and assigns, and shall inure to each present and future owner thereof.

Declarant hereby delegates and assigns to the Willow Creek Homeowners Association, Inc., the power of owning, maintaining, and administering the common area, and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the residents.

ARTICLE I

DEFINITIONS

1. "Association" shall mean WILLOW CREEK HOMEOWNERS ASSOCIATION, INC., a non-profit corporation organized under the laws of the State of Oregon, its successors and assign.

2. "Property" shall mean the official plat of "Willow Creek at Mountain High" and any additions made thereto.
3. "Common Area" shall mean all of the above described property except the numbered lots.
4. "Community Facility" shall mean those recreational facilities, roadways and other features developed for the benefit of all residents of the community of Mountain High.
5. "Lot" shall mean any numbered lot of land shown upon any recorded subdivision plat of said property.
6. "Members" shall mean and refer to members of the Association, which shall consist of all lot owners.
7. "Owner" shall mean the recorded owners, whether one or more persons or entities, of fee simple title to any lot situated upon said property, or a contract purchaser if his record owner retains such title merely to secure an obligation. Owner does not include those having the interest merely as security for the performance of an obligation.
8. "Declaration" shall mean and refer to the covenants, conditions, and restrictions and all other provisions herein set forth in this entire document, as they may from time to time be amended.
9. "By-laws" shall mean and refer to those by-laws of the Willow Creek Homeowners Association, Inc., an Oregon non-profit corporation, as approved by the initial Board of Directors and as they may from time to time be amended.
10. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, and the Association By-Laws, all as initially drawn by the Developer and filed and recorded as the case may be, and all as may be duly amended from time to time.
11. "Book of Resolutions" shall mean and refer to the document containing the rules, regulations, and policies of the Association as they may from time to time be amended.
12. "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.
13. "Quorum of Members" shall mean and refer to the representation by presence or proxy of Members who hold twenty-five percent of the outstanding votes.

14. "Developer-Declarant" shall mean and refer to the J L Ward Company, an Oregon corporation, 61045 Brosterhous Road, Bend, Oregon, 97702, and its successors and assigns.

ARTICLE II

ASSOCIATION - MEMBERSHIP AND VOTING

Section 1. Association

1. The Willow Creek Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of Oregon, is charged with the duties and vested with the powers prescribed by law and set forth in the governing documents.

2. The Articles of Incorporation of the Association contemplate a perpetual existence, but in the event the Association shall at any time be dissolved, whether inadvertently or deliberately, it shall immediately be succeeded by an unincorporated association of the same name. In that event, all of the powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association.

Section 2. Membership and Voting

1. Every lot owner shall be a member of the Association. Status as a lot owner is the sole qualification for membership.

2. Rights to a membership and status as a member terminate upon termination of status as a lot owner. Upon conveyance, sale or assignment of the lot owner's interest, the selling lot owner or owners shall be relieved of further membership responsibilities.

3. No lot owner may avoid the obligations of membership during the period when he is a lot owner by non-use of common areas, renunciation or abandonment of his lot.

4. All members shall have one vote for each lot owned.

ARTICLE III

POWERS AND RESPONSIBILITIES OF THE ASSOCIATION

Section 1. Association Responsibilities

1. The Association shall designate a representative to participate with representatives of the other Villages that constitute the community of Mountain High in operating and maintaining the community facilities. Each Association shall have a vote and financial responsibility in the proportion that

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their lots bear to the total lots of the community of Mountain High. Non-use of any facilities shall not relieve a proportionate share of financial responsibility.

2. The Association is responsible for the maintenance of the common areas and maintenance of the landscaping on the individual lots that is outside the private courtyards on each lot.

3. The Association is responsible for the exterior painting of the homes constructed on all the lots in Willow Creek.

4. The Association is responsible for the enforcement of all covenants, conditions and restrictions contained in this Declaration.

5. After the initial construction of the improvements on the property by the Developer, the Association is responsible for the establishment of a Design Committee to develop standards for maintenance for the properties and to approve any alterations proposed by the lot owners. It is the intent of this Declaration that the Association have full control of the standards of maintenance of the structure as well as the landscaping of the lots and common areas.

6. The Association is responsible for payment of all taxes and assessments imposed on the common areas.

7. The Association is responsible for procurement and maintenance of public liability and casualty insurance on any insurable improvement constructed on the common areas.

8. The Association is responsible for collection of such assessments as may be levied within this Declaration.

9. The Association has the power to contract with a purveyor of utility services on behalf of the owners and to charge the affected owners, in addition to other assessments.

ARTICLE IV

EASEMENTS AND RESTRICTIONS

Section 1. Easements

1. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every unit, subject to the governing documents of the Association. Any member may delegate, subject to the governing documents of the Association, his right of enjoyment to the Common Area to the members of his family, his guests or his tenants.

2. The Association shall have an easement on each lot for landscape maintenance and exterior painting.

3. The Developer shall have an easement for operation of the adjacent golf course; including an easement of a maintenance road/cart path crossing the northern portion of Willow Creek Court.

It is recognized that certain activities relating to the use and maintenance of the golf course may impose some inconvenience on the adjacent property and residents.

4. Juniper Utility Company shall have an easement for utilities on the lots and common areas, excepting those portions occupied by the structure.

Section 2. Restrictions

1. Each lot shall be used for residential purposes only.

2. No noxious, or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

3. No living tree may be cut down without the written consent of the Association.

4. Animals other than domestic household pets shall not be kept on any part of said property.

5. Material such as firewood, building materials, ladders, refuse or garbage containers shall not be stored outside the structure. No outside clotheslines will be permitted.

6. Each lot and its improvements shall be maintained in a clean and attractive condition in good repair and in such fashion as not to create a fire hazard, and in compliance with the regulations of the Association.

7. No motorized vehicles other than automobiles, pickup trucks or golf carts may be operated on the property without prior approval of the Association.

8. Mobile homes, travel trailers, utility trailers, boats, boat trailers, pickup campers, or other recreational vehicles shall not be stored on any lot, or used even temporarily for overnight accommodations. The presence of such vehicles or recreational equipment is limited to eight hours for cleaning, loading or unloading.

9. After initial construction by the Developer, no building, fence, wall or other structure shall be commenced, erected or maintained upon the properties nor shall any exterior addition to

or change or alteration therein be made until the plans and specifications have been approved by the Design Committee.

10. It is the intent of this Declaration that parking of vehicles outside the garages provided each home be kept to a minimum. The garages shall be maintained in a manner that allows parking within the garage for as many vehicles as are used by the occupant, up to the capacity of the two-car garage. Inoperable or infrequently used vehicles shall not be stored in the garage if that results in parking other vehicles outside.

11. Use of the homes for transient rental use is prohibited. Rental of the home is limited to occupancy intended to be at least four months. The rental of the property to more than three families in a twelve month period shall be a positive indication of transient rental use.

12. Timeshare or interval ownership is prohibited. It is intended that ownership be held by no more than two individuals or families unless specifically approved by the Association.

13. All window coverings must be of a neutral or wood tone color on the exterior.

ARTICLE V

ASSESSMENTS

Section 1. CREATION OF LIEN: The Declarant for each lot which it owns, hereby covenants, and each owner of any lot by acceptance of a deed therefore, is deemed to covenant and agree to pay to the Association the following: a. Annual maintenance assessments and reserves, b. Utility assessments and c. Special assessments. The assessments and reserves, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. In addition, such charges shall be personal obligations of the lot owners.

Section 2. PURPOSE: The annual assessment shall be used exclusively to promote the recreation, health, safety and welfare of the members and for the improvements and perpetual maintenance of the described property and the homes situated thereon. Without limiting the generality of the foregoing, it is understood that the annual assessment will include charges for maintenance of the property such as road maintenance, landscape maintenance, exterior painting, insurance and real property taxes, as well as individual utility assessments such as sewer and water and the maintenance of community facilities such as tennis courts, swimming pools, roadways, entry gates and parks.

Section 3: MAXIMUM ANNUAL ASSESSMENT: Prior to January 1, 1991, the maximum annual maintenance shall not exceed \$1500. Thereafter, it may be increased by five percent per year by the Board of Directors of the Association. Any increase in excess of 5% of the previous year's maximum allowable assessment must be approved by 60% of the votes entitled to be cast.

Section 4. SPECIAL ASSESSMENT: All special assessments proposed by the Association must be approved by two-thirds of the votes entitled to be cast.

Section 5. UNIFORMITY: After all lots have been sold to individual homeowners, all assessments must be fixed at a uniform rate for all lots.

Section 6. COMMENCEMENT OF ASSESSMENT: The annual assessments provided for herein shall commence on the first day of the month following the conveyance of the Common Area to the Association by Declarant. The first annual assessment shall be adjusted according to the number or months remaining in the calendar year. The Board of Directors of the Association shall fix the amount and payment dates for each annual assessment prior to the commencement of the assessment period.

Section 7. COLLECTION: The Association shall use any legal means available to it for collection of delinquent assessments.

Section 8. SUBORDINATION: The lien of the assessments provided for herein shall be inferior, junior and subordinate to the lien of any first mortgage or any first trust deed now or hereafter placed upon said property or any part thereof. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which become due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

DEVELOPER'S RIGHTS

Section 1. For such a time that the Developer or assigns has an interest in the property or in adjacent property intended to become part of the community of Mountain High, its rights and interests shall not be prejudiced by any of the following actions

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unless it shall, in writing, join in such actions. There shall be no amendments to the Founding Documents which:

- a. Discriminate or tend to discriminate against its rights as an Owner or Developer
- b. Change Article I, Definitions, in a manner which alters its rights or status
- c. Alter its rights as set forth in Article III relating to design controls
- d. Alter the Developer's easement as set forth in Article IV
- e. Alter the Developer's rights as they may appear under this Article

Section 2. SUBSTITUTION OF COMMON AREAS: At any time prior to January 1, 1995, Declarant shall have the right to make minor modifications of lot lines between the numbered lots and adjacent common areas, provided Declarant has first obtained the approval of the Association and provided further that on January 1, 1995, the total common area shall be no less than the total common area shown on the official plat of Willow Creek. Any area or areas adjusted in accordance with the terms of this paragraph shall be treated as if they had been originally platted in the manner as adjusted.

ARTICLE VII

GENERAL

Section 1. ENFORCEMENT: The Association, any Owner, or any first mortgage holder shall have the right to enforce, by an 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 judgement or court order shall not affect any other provisions which shall remain in full force and effect.

Section 3. AMENDMENT: The covenants, conditions and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the members and thereafter by an instrument signed by not less than sixty-five percent (65%) of the members. Any amendment must be recorded.

Section 4. INTERPRETATION: This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Properties by providing a common plan for the development thereof.

IN WITNESS WHEREOF the parties hereto have signed this Declaration this 20th day of September, 1989.

J L Ward Company

By *Jan L. Ward*

JAN L. WARD, President

STATE OF OREGON, County of Deschutes: ss

The foregoing instrument was acknowledged before me this 20th day of September, 1989, by JAN L. WARD, President of the J L Ward Company, an Oregon corporation, on behalf of the corporation.

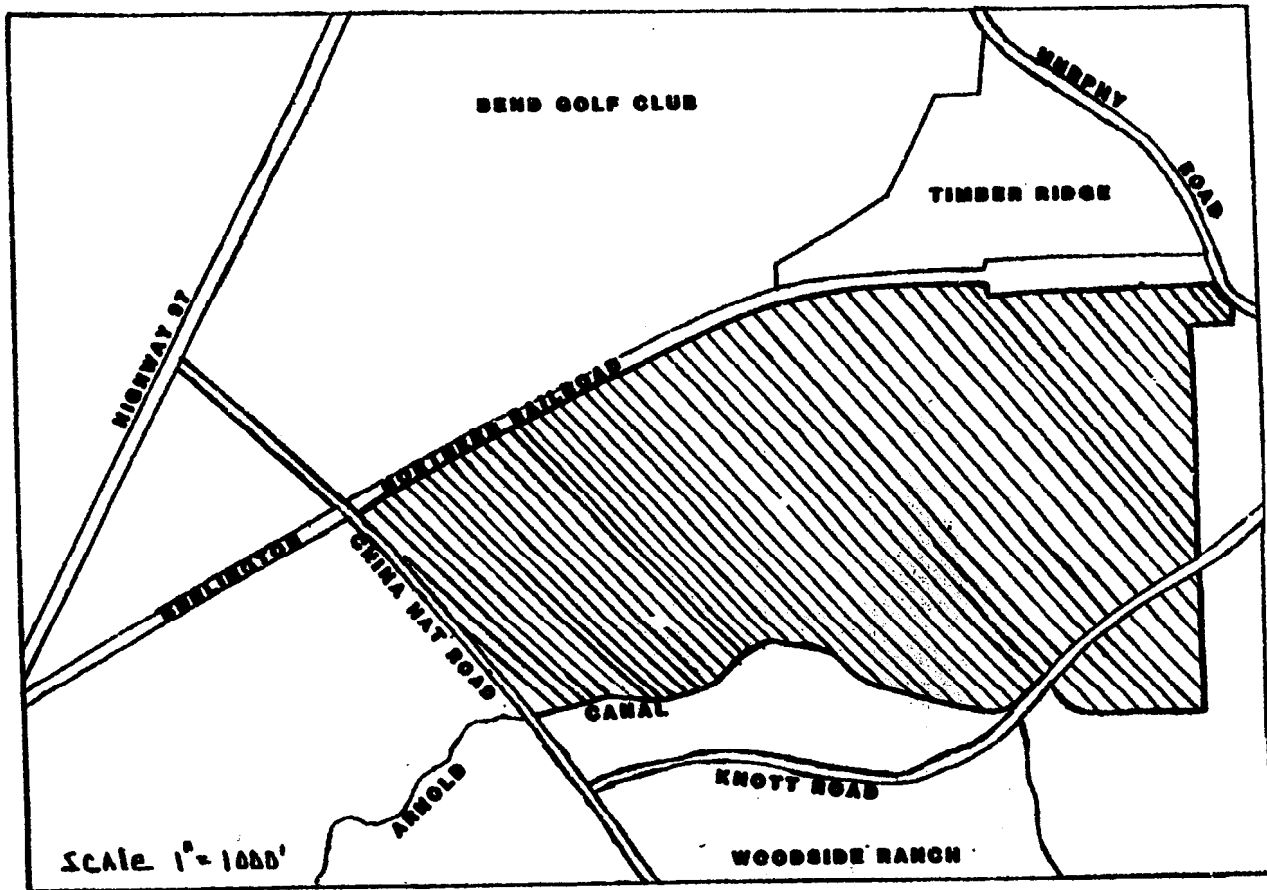
Barbara A. Reilly

NOTARY PUBLIC FOR OREGON

My Comm. Expires: 3-31-91



EXHIBIT "A" TO WILLOW CREEK DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS



DENOTES PROPERTY WHICH MAY BE INCLUDED IN THE COMMUNITY OF MOUNTAIN HIGH

J.L. Ward Co
61015 Brusterhous Rd
Bend, Or 97702

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STATE OF OREGON) ss.
COUNTY OF DECATUR)

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

89 SEP 20 PM 3:52

MARY SUE PENHOLLOW
COUNTY CLERK

BY: *L.B. Beck* DEPUTY
NO. 89-24129 RE 55-
DECATUR COUNTY OFFICIAL RECORDS