

97-10743

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TUMALO HEIGHTS P.U.D.**

These Covenants, Conditions, and Restrictions are made this 21st day of December 1996 by Benchmark Northwest, Inc., an Oregon corporation, hereinafter referred to as "Declarant", as owner of the real property in the City of Bend, Deschutes County, State of Oregon, described in Exhibit "A", attached hereto and incorporated by reference herein.

The property described in Exhibit "A" is hereby subject to these Covenants, Conditions, and Restrictions and will be known as Tumalo Heights P.U.D., hereinafter referred to as Tumalo Heights.

Tumalo Heights is being developed as a residential community except where this Declaration for Tumalo Heights conflicts with any applicable government municipal regulations, this Declaration shall be binding upon all subject to this Declaration and their successors in interest as set forth herein. In any event any of the development standards or use restrictions of this Declaration should conflict with a more restrictive standard or requirement set by an applicable zoning ordinance of the City of Bend, the more restrictive standard or requirement of the applicable City of Bend ordinance shall apply.

Section 1. DEFINITIONS

1.1 Tumalo Heights: The term "Tumalo Heights" shall mean all of the real property now or hereafter made subject to this Declaration.

1.2 Declarant: The term "Declarant" shall mean Benchmark Northwest, Inc. and Oregon corporation, or its successors in interest.

1.3 Block: The term "block" shall mean those areas designated as blocks on subdivision or partition maps according to the records of Deschutes County.

1.4 Lot: The term "lot" shall mean each lot described on a subdivision plat or partition maps to any alteration thereof as may be made by a valid lot line adjustment.

1.5 Declaration: The term "Declaration" shall mean this Declaration of covenants, Conditions, and Restrictions for Tumalo Heights P.U.D.

1.6 Homesite: "Homesite" shall mean lot as defined herein.

1.7 Owner: Owner shall mean and refer to either all holders of fee title to any lot, or any other person or persons entitled to possession of the lot pursuant to a contract or lease.

1.8 Improvements: The term "Improvements" shall include but not be limited to any buildings, outbuildings, private roads, driveways, parking areas, fences and barriers, retaining walls, and stairs, decks, hedges, windbreaks, planting, planted trees and shrubs, signs, storage areas and all other structures or exterior landscaping, drainage control systems, vegetation or ground cover of every type and every kind above the land surface.

No improvements shall be placed outside the building envelope as outlined on the recorded plat. Removal of existing live native vegetation outside the building envelope is prohibited without consent of the Tumalo Heights Architectural Review Committee and the City of Bend.

1.9 Streets: The term "streets" shall mean any street, highway or other thoroughfare within or adjacent to Tumalo Heights and shown on any recorded subdivision or partition map, or survey map of record, whether designated thereon as street, boulevard, place, drive, road, terrace, way, lane, circle, or otherwise.

Section 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TUMALO HEIGHTS P.U.D.

2.1 General Declaration Creating Tumalo Heights P.U.D.: Declarant hereby declares that all of the real property located in Deschutes County, Oregon described in Exhibit "A" is and shall be hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part subject to this Declaration. All of said Restrictions are declared and agreed to be established with purpose of protecting the desirability and attractiveness of said real property and every part thereof. All of the Covenants, Conditions, and Restrictions of Tumalo Heights P.U.D. run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant and all owners and their successors in interest as set forth in this Declaration.

SECTION 3. ARCHITECTURAL CONTROLS

3.1 Approval Required: No improvement, as defined in Section 1.8 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by Declarant. All approvals shall be in conformance with the building site established on each lot by the Declarant.

3.2 Procedure: Any owner proposing to construct any improvements within Tumalo Heights P.U.D. (Including any exterior alteration, a change in exterior paint color beyond that authorized by Tumalo Heights Architectural Committee), addition, destructions, or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by paragraphs 3.3 through 3.7 below. Failure to follow such procedures or obtain such approvals as required by paragraphs 3.3 through 3.7 below shall be deemed a breach of this Declaration.

3.3 Required Documents: Any owner proposing to utilize, improve or develop real property within Tumalo Heights P.U.D. shall submit the following items for review:

(a) A professionally prepared site plan showing the location, size, configuration and layout of any building, structure, or improvement within the established building envelope for the Declarant's consideration (or, where applicable, any alteration, addition, modification, or destruction thereto) including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian circulation.

(b) Professionally prepared architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier or deck (or, where applicable, any alteration, addition, modification or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be one inch = 20 feet or larger.

(c) A landscape plan professional in appearance showing the nature, type, size, location and layout of all landscaping, vegetation, ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

3.4 Review: All plans and drawings identified in paragraph 3.3 above, shall be submitted to Declarant for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied with a check payable to Declarant in an amount to be determined by Declarant from time to time. No plans shall be reviewed until the architectural fee is paid in full and all items specified in this section are submitted. Within 30 days following receipt of such plans and drawings, and the full amount of the architectural review fee, Declarant shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for Tumalo Heights P.U.D. In the event the owner is not notified as to the conformity of the plans within the 30 day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the Tumalo Heights P.U.D. development concept, the owner shall resubmit those non-conforming portions of the plans for review in accordance with procedures outlined in paragraph 3.3 above, and this paragraph. No work may be performed relating to any improvement unless and until all aspects of the plans required under paragraph 3.3 above have been approved by Declarant. Any site plans, construction plans or similar plans and drawings submitted to the City of Bend in connection with construction of any improvements in Tumalo Heights P.U.D. must bear the prior written approval of Declarant.

3.5 Architectural Guidelines: The development concept for Tumalo Heights P.U.D. shall be determined by Declarant in accordance with applicable statutes, ordinance, regulations, zoning and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any party; provided however, that once approval has been given pursuant to paragraph 3.4 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

3.6 Inspection: All work related to any building, structure or improvement or any landscaping, drainage systems, vegetation, ground cover or other improvements within Tumalo Heights P.U.D. shall be performed in strict conformity with plans and drawings approved under paragraph 3.4 above. Declarant shall have the right to inspect any such work to determine its conformity with the approved plans and drawings, and reserves the right to order a stop work, if, in good faith, it believes that such work is non-conforming. In the event that it is determined in good faith by Declarant that certain work is non-conforming, a stop work notice may be issued, without necessity of court order, which shall require the owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of this Declaration. The Declarant or officer, director, employee, agent, or servant of Declarant shall not be responsible for any damages, loss, delay, cost, or legal expense occasioned through a stop work notice given in good faith even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

The City of Bend will have the right to enter onto any lot or common area to monitor and enforce the erosion control methods below and shall have the same enforcement rights as Tumalo Heights Architectural Review Committee including:

- a. Inspect the installation, maintenance and effectiveness of the required erosion control methods;
- b. Reconstruct any erosion control facilities if and when the city determines that such action is necessary; and
- c. Remove erosion/and or construction debris and/or restore and revegetate the site and/or perform other similar types of remediation if and when the city determines that such action is necessary.
- d. Inspect and maintain the sanitary pump station and sewer facilities within the P.U.D.

3.7 Erosion Control: Each lot shall include catch basins to provide collection of storm drainage. The location, capacity, and architectural/engineering detail(s) shall be noted on the architectural drawings submitted to the Tumalo Heights Architectural Review Committee and to the City of Bend. Design of storm collection system shall be sufficient to contain drainage upon

the subject lot.

During construction of the single family residence, the owner shall employ the use of straw-bale berms on the downslope of the designated building envelope on the lots located on the east side of N.W. 1st Street. This technique of erosion control may be required for specific lots located on the west side of N.W. 1st Street if the THARC or City of Bend feels the lot slope or architectural design warrant the use of straw-bales.

3.8 Driveway Design Detail: Each lot owner shall provide the THARC and the City of Bend with a detailed drawing and cross-section showing the location of driveway access for the proposed house design upon the lot. The drawing shall include an additional architectural detail with engineering calculations in the instances where driveway access shall cross fill material.

3.9 Street Tree Planting Requirement: Prior to receiving final signature(s) from the City of Bend for the building permit to construct a single family residence, the owner of the lot shall be responsible to plant a **Hedge Maple** (*Acer campestre*) and provide irrigation to the tree along N.W. 1st Street. The owner shall maintain the tree, and replace it if necessary at any time during the enforcement period of this Declaration.

3.10 Waiver: Any condition or provision of paragraphs 3.2 through 3.6 above, may be waived by Declarant in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for Tumalo Heights P.U.D. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or required procedures and approvals specified under paragraphs 3.2 through 3.6. The granting of a waiver as to one owner shall not automatically entitle any other owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of Declarant and delivered by certified mail to the party claiming benefit of such waiver.

Section 4. RESTRICTION ON USE OF PROPERTY

4.1 Occupancy: No owner shall occupy, use or permit his lot or any part thereof to be used for any purpose other than a private residence. For the owner, his family, or his guests, except that each owner shall be permitted to rent the unit when he is not in occupancy.

4.2 Improvement: Each lot within Tumalo Heights P.U.D. shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.

4.3 Appearance: All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus, and other service facilities located on the lot shall be screened from view in a manner approved by Declarant.

4.4 Construction and Alteration: Nothing shall be altered or constructed in or removed from or placed on a lot except with the prior written consent of Declarant.

4.5 Offensive or Commercial Activity: No offensive or commercial activity shall be carried on nor shall anything be done which may be or become an annoyance or nuisance to other owners.

4.6 Signs: No sign of any kind shall be displayed to public view on or from any lot without the Declarant's prior written consent, provided, however, that an owner may display not more than one(1) "for sale" sign per lot which has a maximum area not to exceed 750 square inches, the longest dimension being no greater than 30 inches placed not closer than five feet from the front property line.

4.7 Exterior Lighting or Noise Making Device: All architectural drawings submitted to the THARC shall show the location and provide an architectural detail of a lamp post that compliments the home design. The lamp bulb location shall not exceed four (4) feet in height. No other exterior lighting or noise making device shall be placed on a lot or any portion thereof without prior written consent from the THARC.

All exterior lighting shall be selected and oriented in such a manner that the bulbs are (1) less than 60 watts each and concealed behind opaque or opalescent material, or (2) concealed from view of the occupants of any other Lot or any street.

4.8 Antennas: No television antenna, radio antenna, satellite antenna, or other receiving device shall be placed on a lot or any portion thereof without the Declarant's prior written consent.

4.9 Limitation of Transfer: No owner shall transfer either by conveyance, contract of sale or lease any interest in his lot which would result in ownership of such lot being held more than ten persons.

4.10 Mobile Homes: No house trailer, mobile home tent, shack, barn, or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any lot.

4.11 Animals and Pets: Dogs, cats or other domestic household pets may be kept on any lot, provided they are not kept, bred or maintained for any commercial purpose and do not endanger the health of, unreasonably disturb or become a nuisance to the occupants of any other lot. If Declarant determines that such pets are a nuisance, they shall be promptly and permanently removed. No other animals, livestock or poultry of any kind shall be raised, bred or kept on any part of a lot.

4.12 Single Family Residences: No more than one single family residence shall be erected or placed on any lot.

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

4.14 View: The height improvements or vegetation and trees on a lot shall not materially restrict the view of other lot owners. The Declarant shall be the sole judge of the suitability of such heights. If Declarant determines there is such restriction in the view of the other lot owner(s), written notice shall be delivered to the offending lot owner. If after 30 days the improvement, vegetation or trees are not removed or reduced in height as directed by the Declarant, the Declarant shall enter the offending lot, complete the removal or reduction, charging the owner of the lot the reasonable costs for the work done, or may exercise any other available remedy. This section is not to be read as justification to create views not present when the lot was originally purchased. Nothing in this subsection 4.14 shall require an owner to remove or trim any tree which was on the lot at the time of its purchase from Declarant.

4.15 Parking: A minimum of two enclosed garage parking places and one exterior open parking place must be provided for each lot and must meet the standards set by the Declarant. No extended parking on any street shall be allowed by any house trailer, travel trailer, boat or boat trailer, trucks, motor home, camper or incapacitated motor vehicle. Camping trailers, trucks, motor homes, campers, boats, cars under repair and boat trailers may not be parked or placed on any lot for any extended period over 24 hours outside of an enclosed garage. Garage doors shall remain closed except when the garage is in use, but in no event shall any vehicle or equipment be repaired except within the garage with garage doors closed. On-site storage of recreational vehicles of any type is prohibited. Each owner specifically agrees, for himself and for his guests, tenants and invitees, that the provisions of this Section 4.15 represent a personal, fully enforceable agreement and commitment, enforceable by Declarant, any other owner or the Home Owners Association, if one is formed, not to park any vehicle or equipment in violation of the Section 4.15. No on street parking shall be permitted other than in designated parking areas.

4.16 Transient Rental Use: No owner or owners of any unit within Tumalo Heights P.U.D. 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 Tumalo Heights and rent shall mean the consideration charges 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 in excess of 30 consecutive calendar days.

4.17 Square Footage Minimum: Any single-family residence to be located on any lot shall be a minimum of 1,700 square feet in size, not including any garage.

4.18 Open Burning: No open burning of any type shall be allowed.

4.19 Garage Doors: Garage doors shall not exceed nine (9) feet in height.

4.20 Tree Cutting and Landscape Maintenance: All trees, hedges, flowers and grasses growing on a lot shall be maintained reasonably free of diseases and pests so that they will not be a menace to, or detrimental to the values and aesthetics of surrounding lots.

No removal of vegetation shall be allowed on any lot outside of the prescribed building envelope as depicted in Exhibit "A" of the recorded Condition, Covenants and Restrictions of the Tumalo Heights Planned Unit Development. The intent is to maintain and enhance the native vegetation outside of the building envelopes.

4.21 Restrictions on Further Divisions: No lot shall be further subdivided or partitioned, nor shall any portion of any lot, nor any easement or license, be conveyed separately from the whole lot.

4.22 Waiving of Restriction: Declarant shall have the right, in its absolute discretion, to waive any of the foregoing conditions or restrictions upon being shown that the same is unreasonable, unfeasible, unnecessary or unfair, as applied to any particular lot or lots, or that good reason exists for its waiver without materially and adversely affecting Tumalo Heights P.U.D. generally. Any waiver shall not be deemed a general waiver of any aspect of the development concept or the enforceability of these restrictions. The granting of a waiver to one owner shall not entitle any other owner to a waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of Declarant.

4.23 Inapplicability to Declarant: The foregoing restrictions shall not apply to the lots owned by Declarant or to the business activities of Declarant, or to its successors or assigns.

Section 5. DETERMINATION OF DECLARANT'S ROLE:

5.1 Declarant's Control: At such time as the Declarant shall no longer desire to exercise the architectural, landscaping, drainage, signing and lighting controls over any lots within Tumalo Heights P.U.D., Declarant shall cause to be recorded in the official records of Deschutes County, Oregon a declaration stating that Declarant no longer desires to exercise any further controls over development in Tumalo Heights P.U.D. Recordation of such a declaration shall formally terminate Declarant's interest and all rights of architectural landscaping, drainage, signing and lighting controls, as well as any other duties of Declarant under this declaration.

5.2 Formation of THARC:

(a) Upon formal termination of Declarant's control, Declarant shall form an Oregon non-profit organization called Tumalo Heights Architectural Review Committee (THARC). The THARC shall be governed by a five (5) person board of directors. THARC shall succeed to all powers, responsibilities, and rights of Declarant under this declaration with respect to the exercise of architectural, Landscaping, drainage, signing and lighting controls.

(b) Within 30 days of commencement date of THARC, the initial board of directors shall be elected. Persons eligible for the initial THARC shall be limited to any owners of lots within Tumalo Heights P.U.D. Declarant shall solicit from and circulate to all lot owners a list of nominees for the initial board of directors positions within the 30 day THARC organizational

period. Declarant shall then conduct an election of the initial board of directors. The five nominees obtaining the five highest vote shall constitute the initial board of directors.

(c) The total number of votes entitled to be cast for each director's position shall be based upon the total number of lots in Tumalo Heights P.U.D. Each lot owner shall have the right to cast one vote for each lot owned. The initial board of directors shall meet within ten days after their election and may at that time adopt any governing documents including by-laws, guidelines, procedures, rules and regulations, relating to the architectural, landscaping, drainage, signing and lighting controls within Tumalo Heights P.U.D.

5.3 Failure to Organize: In the event the Declarant is unsuccessful in organizing the board of directors of THARC within the 30 day organizational period specified above, Declarant shall have no further responsibilities relating to THARC and the THARC board or directors shall be organized exclusively by the owners of lots within Tumalo Heights P.U.D. Such failure of organization of the THARC board of directors shall not affect the existence of THARC or the effectiveness of this Declaration.

5.4 Right to Assess: The board shall possess the right to assess owners from time to time on a nondiscriminatory basis, equally as to all lot owners on the basis of the number of lots owned, for all costs associated with the repair, upkeep, maintenance, removal and replacement of the entryway monument, landscaping and irrigation, mail box structure, and as to all other matters of common interest to all or substantially all of the owners. In no event, however, may an owner be assessed more than One Hundred Dollars (\$100.00) per year, unless an increase in this annual maximum or any individual assessment in excess of it has been first approved by the affirmative vote or written agreement of the owners of 51% of the lots.

5.5 Lien for Assessment: All sums assessed against any lot pursuant to this declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on such lot in favor of THARC. Such lien shall be superior all other liens and encumbrances on such lot, except for (a) liens for real estate property taxes, (b) liens for all sums unpaid on first mortgage, or (c) liens for any mortgage to Declarant duly recorded in the land records of Deschutes County, Oregon, and all amounts advanced pursuant to such mortgages and secured thereby in accordance with the terms of such instrument.

5.6 Effect of Nonpayment of Assessments: Any assessments which are not paid when due 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 board 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 the lien remains unpaid for a period of sixty (60) days, THARC 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

conveyance, vests in THARC, the board, or its or their 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 improvement of real property, or both such remedies. The lien provided for in this Section shall be in favor of THARC and shall be for the benefit of all other owners. THARC, acting on behalf of the owners, shall have the power to bid on the lot at any foreclosure sale and to acquire, hold, lease, mortgage, or convey the lot. No owner may waive or otherwise avoid 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 attorney's 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 6. FENCING

6.1 General: No fencing of any type shall be allowed upon any lot.

6.2 Screening: Declarant or THARC may, at their sole discretion, approve a screening assembly of and with materials consistent with the exterior of the home upon a lot.

Section 7. DURATION AND AMENDMENT OF THIS DECLARATION

7.1 Duration: The Covenants, Conditions and Restrictions of Tumalo Heights P.U.D. shall continue to remain in full force and effect at all times with respect to all property, and each property, and each part thereof, now or hereafter made subject thereto (subject however, to the right to amend and repeal as provided for herein) for a period of thirty (30) years from the date this Declaration is recorded. However, unless within one year from the date of said termination, there shall be recorded an instrument directing the termination of this Declaration signed by owners of not less than two thirds of the lots then subject to this Declaration, this Declaration, as in effect immediately prior to the expiration date, shall be continued automatically without further notice for an additional period of ten years and thereafter for successive periods of ten years unless within one year prior to the expiration of such period the Covenants, Conditions and Restrictions for Tumalo Heights P.U.D. are terminated as set forth above in this section.

7.2 Amendment: This Declaration or any provision thereof, or any Covenant, Condition, or Restriction contained herein, may be terminated, extended, modified, or amended, as to the whole of said property or any part thereof with a written consent of the owners of fifty one percent (51%) of the lots subject to these restrictions, provided, that the provisions of Article 4 hereof shall inure to the benefit of and be enforceable solely by Declarant, shall be capable of being amended by Declarant without the consent of any owner, person or entity and shall not give any third party any right or cause of action on account the terms of this Declaration, and further provided that no amendment which enlarges or diminishes the powers

and responsibilities of the Declarant shall be effective without the written consent of the Declarant.

7.3 Recording: Any amendment, deletion or repeal of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

Section 8. ENFORCEMENT

8.1 This Declaration shall be specifically enforceable by Declarant or by any owner of any lot in Tumalo Heights P.U.D., or by the City of Bend. Any breach of this Declaration shall subject the breaching party to any and all remedies, including damages or destruction, removal or enjoining of any offending improvement or condition.

8.2 In the event that legal suit or legal action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney's fees incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.

Section 9. EFFECT OF DECLARATION

The Covenants, Conditions, and Restrictions of this Declaration shall run with the land included in Tumalo Heights P.U.D., and shall bind, benefit and burden each lot in Tumalo Heights P.U.D., including any additions thereto. The terms of the Declaration shall inure to the benefit and shall bind Declarant, all successors and assigns of Declarant and all owners of any lot in Tumalo Heights P.U.D. their successors, assigns, heirs, administrators, mortgagees, lessees, invitees or any party claiming or deriving any right, title or interest, or use in to any real property in Tumalo Heights P.U.D. The use restrictions and regulations setforth in Section 4 and Section 5 of this Declaration shall be binding upon all owners, lessees, licensees, occupants and users of the property known as Tumalo Heights P.U.D. and their successors in interest as set forth in this Declaration, including any person who holds such interests as security for the payment of an obligation including any mortgages or other security holder in actual possession of any lot by foreclosure or otherwise and any other person taking title from such security holder.

TUMALO HEIGHTS L.L.C.



by: Bart Bardwell

STATE OF OREGON,

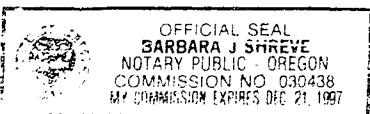
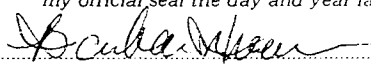
County of Lane

ss.

FORM No. 23—ACKNOWLEDGMENT.
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BE IT REMEMBERED, That on this 17th day of March, 1997,
before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within
named Bart Bardwell, member of Tumalo Heights
L.L.C.
known to me to be the identical individual described in and who executed the within instrument and
acknowledged to me that executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year last above written.

Notary Public for Oregon

My commission expires 12-21-97

After recording, return to:
AmeriTitle

15 OREGON AVENUE, BEND

The owners of Lots 13, 14, 15, and 16 of TUMALO HEIGHTS PUD, City of Bend, Deschutes County, Oregon, do hereby agree to jointly assume custodial duties for the repair, maintenance and cost of maintaining the Common Driveway shown as a Common Driveway over lots 13, 14, 15, and 16 in TUMALO HEIGHTS, City of Bend, Deschutes County, Oregon. A majority vote of the owners of using the Common Driveway stated hereinafter shall control decisions concerning the repair, maintenance and cost of such for this Common Driveway.

The owners agree to share equally in all aspects in the performance of these custodial duties and pay their pro rata share of any costs incurred within 20 days. The owners do not assume responsibility for any personal injury or property damage resulting for the condition of this Common Driveway.

The cost for any extension of driveway and utilities shall be born by the owner extending the driveway and utilities to his home and shall be responsible for repairing the land, including any landscaping as approved by the Tumalo Heights Architectural Review Committee, to as good or better condition than existed prior to the driveway and utilities being installed.

Upon completion of a home on the above described lots, the undersigned agrees to pay within 30 days, their pro rata share of any costs incurred in the repair and maintenance of this Common Driveway. The undersigned shall not be responsible for the repair or maintenance of the Common Driveway until a home has been completed on the owners' lot.

The undersigned further agree to pay all costs to repair any damage to the Common Driveway caused by the construction of the home. Those repairs are to be made within 30 days of completion of a home.

This Agreement shall be binding upon the heirs, successors and assigns of the parties hereto and is appurtenant to and shall run with said lots.

Lot 16 is excluded from this agreement if Lot 16 does not take vehicle access from the common drive. If any owner institutes any suit or action to collect the amounts due hereunder or to enforce any covenant or agreement hereof, or to obtain any of the remedies herein provided, the prevailing party shall be entitled to recover such sum of money as the court may adjudge reasonable as attorneys' fees in such suit or action, including any appeal taken by any owner in such suit or action.

TUMALO HEIGHTS L.L.C.


by: Bart Bardwell

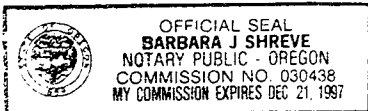
STATE OF OREGON,

County of LANE } ss.

FORM No. 23—ACKNOWLEDGMENT.
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BE IT REMEMBERED, That on this 12th day of March, 1997, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within named Bart Bardwell member of Tumalo Heights L.L.C. known to me to be the identical individual..... described in and who executed the within instrument and acknowledged to me that he..... executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.




Notary Public for Oregon
My commission expires 12/21/97

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:

97 APR -1 PM 1:16

MARY SUE PENHOLLOW
COUNTY CLERK

BY: T. Warren DEPUTY
NO. 97-10743 FEE 65
DESCHUTES COUNTY OFFICIAL RECORDS