

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WATERSHIP DOWN**

THIS DECLARATION made this 21 day of December, 1995, by KENT BALLARD and TERESA BALLARD, husband and wife ("Declarant"), is as follows:

RECITALS

A. Declarant is the owner of certain real property ("Subdivision") located in Deschutes County, State of Oregon, more particularly described as follows:

Lots 1, 2, and 3, WATERSHIP DOWN, Deschutes County, Oregon

which shall be the Subdivision encumbered pursuant to the provisions of this Declaration.

B. Declarant is obligated to construct a road upon a portion of the Subdivision.

C. Declarant intends to and does hereby establish for its own benefit and for the mutual benefit of all future owners or occupants of the Subdivision, and each part thereof, certain easements, and rights in, over, and upon the Subdivision, and certain mutually beneficial covenants, conditions, restrictions, and obligations with respect to the proper use, conduct and maintenance thereof.

D. Declarant intends that the owners, mortgagees, occupants, and all other persons hereafter acquiring any interest in the Subdivision, or any part thereof, shall at all times enjoy the benefits of, and shall hold, sell and convey their interests, subject to the rights, easements, covenants, conditions, restrictions, and obligations hereinafter set forth and contained in the final replat filed in the office of the Deschutes County Clerk, all of which are hereby declared to be in furtherance of a general plan to promote and protect the cooperative aspect of such development and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Subdivision.

DECLARATIONS

NOW THEREFORE, Declarant, as owner of the Subdivision, declares that the Subdivision shall be held, sold and conveyed subject to the following easements, covenants, conditions, and restrictions which are for the purpose of protecting the value and desirability of, and which shall constitute equitable servitudes on the Subdivision, and which shall run with said Subdivision, and be binding on and inure to the benefit of all parties having any rights, title, or interest therein, or in any part thereof, their heirs, successors and assigns.

ARTICLE I

ROAD EASEMENT, ROAD MAINTENANCE ASSESSMENT AND EXPENSE

1.1 CREATION OF EASEMENT. Declarant, owner of Lot 1, hereby conveys to the Owners of Lots 2 and 3, Grantees, their heirs, successors and assigns, a perpetual non-exclusive

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easement to use a strip of land for ingress and egress described as follows:

From the Southeast corner of Lot 1 located on Tumalo Road, a 50' strip of land immediately to the West of S 06°27'38" E 225.87' then N 48°00'00" E 155.04'

A. Easement Terms. Grantee shall indemnify and defend Declarant from any loss, claim or liability to Declarant arising in any manner out of Grantee's use of the easement strip. This easement is appurtenant to the real property owned by Grantee. This easement shall be perpetual. It is Declarant's intent that the easement shall be for the existing road location together with such reasonable ingress and egress as necessary to maintain it.

1.2 CREATION OF THE LIEN AND PERSON OBLIGATION FOR ASSESSMENTS.

Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each such Lot owned, to pay for the maintenance and repair of the road located on Lot 1 of which shall be collected as hereinafter provided. The cost for maintenance and repair for the road, together with interest, costs, and reasonable attorney fees, shall also be a personal obligation of the Owners of each Lot at the time when the expense becomes due and payable. The personal obligation for delinquent expense shall not pass to a successor in title unless expressly assumed by such person; however, all Liens perfected by a judgment shall be Liens on the interest of successive Owners of the Lot subject thereto. No Owner may waive or otherwise escape liability for the expense provided in this Declaration by nonuse of the Lot, or any part thereof, or abandonment of the Lot.

A. Covenant to Pay Road Maintenance/Repair Expense. Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, does and is deemed to covenant and agree to pay to expenses for the road maintenance and repair of the road located on Lot 1. Such expenses shall be collected as provided in this Declaration and shall be a charge on the land and a continuing Lien upon the Lot as provided herein. The Owner of Lot 1 shall bill and collect from the Owners of the Lots the expenses made as provided herein.

1.3 EXPENSES AND EXPENSE ALLOCATION.

A. Record Keeping. Expenses shall be accurately maintained and available by the Owner of Lot 1, for inspection at all reasonable times by any Owner or a duly authorized representative. Said expenses shall indicate for each Lot, the name and address of the Owner thereof, all expenses levied against each Owner and a Lot, and the amount of said expenses paid and unpaid.

B. Apportionment of Expenses. The total expenses for the road maintenance and repair, including new gravel, grading, chemicals for weed removal and snow removal shall be proportioned equally against the Lots on a per Lot basis.

1.4 SPECIAL ASSESSMENT. In addition, there may be levied during any year a special assessment, for the purpose of defraying in whole or in part the cost of any construction, reconstruction

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or unexpected repair or replacement of the road. Special assessments may be levied only upon affirmative vote or written consent of a Majority of Owners.

1.5 EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. In the event of a default in payment of any assessment or expense when due, such assessment or expense shall be deemed to be delinquent. Each Owner has the right and power to bring actions at law and in equity, to collect delinquent assessments or expenses as provided herein from the delinquent Owner. In the event an attorney or attorneys are employed for the collection of any assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorney fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. The obligation of the Owners to pay the assessments or expense provided herein may be enforced in any manner provided by law or in equity and without any limitation of the foregoing by any or all of the following procedures:

A. **Enforcement by Suit.** By commencement and maintenance of a suit at law against an Owner or prior Owner to enforce said assessment or expense obligation. Any judgment rendered in any such action shall include the amount of delinquency, interest thereon, at the maximum legal rate per annum from the date of the delinquency, and court costs and reasonable attorney fees in such amount as the court may adjudge against the delinquent Owner. Such judgment may be docketed as to become a lien on any real or personal property of Owner as provided by law.

1.6 CONSERVATION EASEMENT. Lots 2 and 3 shall have a fifteen foot wide easement across the road now existing on Lot 1's West boundary line designated as S 06°27'38" E 593.21' and S 07°41'14" E 152.95' for purposes of accessing the fifteen foot easement across Parcel 2 and Parcel 1, as shown on the Minor Land Partition MP-90-29, Partition Plan no. 1991-6 as recorded in Deschutes County, Oregon, to the Deschutes River Conservation Easement.

ARTICLE II **COVENANTS AND USE RESTRICTIONS**

In addition to other covenants contained herein, the following covenants and restrictions shall govern the use and occupancy of the Subdivision.

2.1 RESIDENTIAL USE LIMITATIONS.

A. **Dwelling Purposes Only.** No part of any Lot shall be used for other than private dwelling purposes and reasonably related uses. The foregoing restrictions as to use shall not, however, be construed in such manner as to prohibit an Owner from (1) maintaining a personal professional library, (2) keeping personal business or professional records or accounts, (3) handling personal business or professional calls or correspondence, or (4) undertaking any other activity thereon not otherwise prohibited by this Declaration when such activity has been expressly approved in advance by the Association.

B. **Time-Sharing or Interest Ownership Prohibited.** No purchaser of a Lot, or interest therein, or use thereof, shall receive a right in perpetuity, for life, or for a term of years, to the

recurrent, exclusive use or occupancy of such property annually or on some other periodic basis, and any such attempted conveyance shall be void; provided, however, this restriction shall not be interpreted to prevent joint ownership of a Lot not including such exclusive use periods.

2.2 MAINTENANCE BY OWNER. Each Owner shall be responsible for the maintenance of that Owner's Lot in a clean, sanitary and attractive condition and shall keep the same free from rubbish and litter and shall maintain in good condition and repair and adequately stain or otherwise finish all improvements located thereon.

2.3 SIGNS. No sign or billboard of any kind shall be made visible to the public from any Lot; any assignee of Declarant may display from the Lot owned by them any lawful sign which advertises a sale of Lots and/or completed dwelling units.

2.4 NO OBNOXIOUS AND OFFENSIVE ACTIVITIES. No obnoxious or offensive activities shall be carried on, in or upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may in any way interfere with the quiet enjoyment of each of the Owner's respective Lot or which shall in any way increase the premium rate of insurance.

2.5 TEMPORARY AND CERTAIN PERMANENT STRUCTURES PROHIBITED. No structure of a temporary character, trailer, tent, shack, manufactured home, modular, or barn shall be used in any Lot at any time except that any of the above may be used for a temporary residence during a period not to exceed 12 consecutive months while constructing a permanent residence. Detached garages and/or storage buildings are permitted.

2.6 VEHICLES AND PARKING. No motor vehicle of any type may be constructed, reconstructed, or repaired in such a manner as will be visible from the neighboring property. No stripped down, partially wrecked, inoperative or junk motor vehicle or sizable part thereof shall be permitted to be parked on any portion of the Subdivision.

A. **Parking and Street Obstructions.** There shall be no parking of vehicles of any type whatsoever on any portion of the easement road within the Subdivision. No Owner shall do anything which will in any manner prevent the streets within the Subdivision from at all times being free and clear of all obstructions and in a safe condition for vehicular use.

2.7 OUTSIDE STORAGE. Wood piles, storage areas, machinery and equipment shall be prohibited upon any Lot, unless obscured from the view of neighboring property and streets by a fence or appropriate screen; trash cans and other movable rubbish containers shall all be allowed to be visible from any street or adjacent Lot within the Subdivision only during the days on which rubbish is collected and after 9 p.m. of the preceding evening.

2.8 LIMITATION ON OPEN FIRES. Incineration or other open fires shall be permitted only during the period of time allowed by Deschutes County for open or barrel burning.

2.9 PEST CONTROL. No Owner shall permit any thing or condition to exist upon any portion of the Subdivision which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin.

2.10 ANTENNAE AND EXTERIOR APPLIANCES.

A. Radio and Television. No towers, antenna, aerial, dishes, reflectors or other facilities for the reception or transmission of radio or television broadcasts or any other means of communication shall be erected and maintained or permitted to be erected and maintained in the Subdivision.

B. Exterior Wiring. No wiring for electrical or telephone installations, television antenna, security systems, machine or air conditioning units or appliances shall be permitted on the exterior of any building or that protrude through the walls or roof of any building.

2.11. COMPLIANCE WITH LAWS. Each Owner shall promptly comply with all laws, statutes, ordinances, and regulations of federal, state or municipal governments or authorities applicable to the property.

2.12. USE OF IMPROVEMENTS DURING CONSTRUCTION; DILIGENCE IN CONSTRUCTION. No improvement upon any Lot shall be occupied until the same is completed and made to comply with the restriction, covenants and conditions contained in this Declaration. Any improvement which is partially or totally destroyed or damaged by fire, earthquake, or otherwise shall be removed, repaired or replaced with a reasonable time after such destruction or damage occurs and subject to the requirements of this Declaration, by then Owner or Owners of that portion of the Lot or Lots upon which the destroyed or damaged improvement was or is located. All work of construction, removal or repair of any improvement upon any Lot shall be prosecuted diligently and continuously from the time of commencement thereof until the same shall be fully completed, which completion shall occur not later than twelve (12) months after the commencement of such work, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of nature, or similar causes.

2.13 MINIMUM DWELLING SIZE. No dwelling intended or used as a primary dwelling on a Lot may be constructed or maintained unless the interior floor area of such dwelling (excluding garage) contains at least One thousand seven hundred fifty (1,750) square feet. The maximum permissible interior floor area shall be limited only by constraints of the building site area.

2.14 GRADE, SLOPES AND DRAINAGE. Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the establishment of a drainage pattern and grades, slopes and courses related thereto over any Lot without the express written permission of all the lot owners. No structure plantings or other materials shall be placed or permitted to remain on or within any grade, slopes or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

2.15 EXTERIOR LIGHTING. No unshielded exterior lighting of 150 watts or more, or exterior halide lighting by any Lot is allowed.

2.16 VIEW EASEMENT. Lot 2 shall have a view easement across Lot 3. The easement shall be as follows: Lot 3 may not build any structure or develop any landscaping which exceeds twenty-two feet (22') above the natural surface level of the land however, no structure or developed landscaping may exceed eighteen feet (18') above the natural surface level of the land on the Northerly 100 feet of Lot 3, which is defined as the area North of that line, one of whose points is located along the S 44°00'00" E line 100 feet from the Northernmost corner of the lot and whose other point is located directly across the lot at a point which is on the S 06°27'38" E line which point is 100 feet from the intersection of the S 06°27'38" E line and the N 48°00'00" E line.

2.17 FENCE. The owners of all the lots shall unanimously agree upon the design and cost of a fence along the entire portion of the subdivision adjacent to Tumalo Road. All the lots shall equally share the cost for installation, maintenance and repair of the fence.

2.18 ENFORCEMENT; RIGHT TO NOTICE; HEARING. In the event an Owner shall fail to comply with the provisions of this Article II, any other Owner shall notify such Owner in writing of such specific lack of compliance. In the event the Owner has not complied, the other Owner(s) shall establish a time period within which the Owner shall so comply. If the Owner fails so to comply within the designated time period, the other Owner(s) or their authorized agent shall then take whatever action permitted by law to compel compliance.

ARTICLE III **EASEMENTS - COVENANTS RUNNING WITH THE LAND**

Each of the easements provided for in this Declaration shall be determined to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of all the property encumbered thereby and superior to all encumbrances applied against or in favor of any portion of the Subdivision. In furtherance of the easements provided for in this Declaration the individual grant deeds to the Lots may, but shall be not required to, set forth said easements.

ARTICLE IV **ENFORCEMENT**

In the event of any default by any Owner under the provisions of this Declaration, and/or upon any failure of any Owner to comply with any provision set forth in this Declaration, any Owner, their successors and assigns or any of them shall have all the rights and remedies which may be provided for in this Declaration, or which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or other person for enforcement of any Lien and the appointment of a receiver for the Lot and the ownership interest of such Owner, or for damages or injunction or specific performance, or for the judgment of payment of money and collection thereof, or the right to take possession of the Lot and to sell same as herein provided, or for any combination of remedies, or for any other relief. All expenses in connection with such actions or proceedings,

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including court costs and attorney fees, and all damages, together with interest thereon at the maximum legal rate until paid, shall be charged to such defaulting or non-complying Owner, and shall be a Lien on such Owner's Lot, and upon all of such Owner's additions and improvements to the Lot, which the Lien shall be enforceable in the manner set forth herein. Any and all such remedies shall be exercised at any time and from time to time, cumulatively or otherwise.

ARTICLE V
GENERAL PROVISIONS

5.1 SEVERABILITY. If any provision of this Declaration, the Articles, or any section, sentence, clause, phrase, word or the application thereof in any circumstance is held invalid, the validity of the remainder of the Declaration, the Articles and of the application of such sentence, clause, phrase or word in any other circumstance shall not be affected thereby.

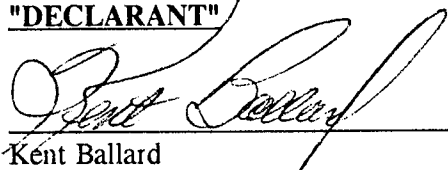
5.2 SUCCESSORS OF DECLARANT. Each and every right and obligation of Declarant under this Declaration shall inure to the benefit of and be binding on the successors of Declarant which are designated as a successor Declarant by an instrument duly recorded in the office of the recording officer of Deschutes County.

5.3 VIOLATION AND NUISANCE. Every act of omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, or any Owner or Owners.

5.4 VIOLATION OF LAW. Any violation of any state, municipal or local law, ordinance, or regulations pertaining to the ownership, occupancy, or use of any of the Subdivision is hereby declared to be a violation of this Declaration and subject to any and all enforcement procedures as set forth herein.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first hereinabove written.

"DECLARANT"


Kent Ballard


Teresa Ballard

STATE OF OREGON, County of Deschutes) ss:

Personally appeared the above-named Kent Ballard and Teresa Ballard and acknowledged the foregoing instrument to be their voluntary act before me this 24 day of December, 1995.



spfire\ballard\declara.003

Sharon Kunkel
Notary Public for Oregon
My Commission Expires: 2/28/98



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:

95 DEC 14 AM 11:39

MARY SUE PENHOLLOW
COUNTY CLERK

BY: [Signature] DEPUTY
NO. 95-43218 FEE 10
DESCHUTES COUNTY OFFICIAL RECORDS

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