

**AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

WHEREAS, a Declaration of Covenants, Conditions and Restrictions relating to TILlicum VILLAGE, SECOND ADDITION, Deschutes County, Oregon, was duly recorded in Volume 184, at Page 859, Deed Records, Deschutes County, Oregon on May 19, 1972, and,

WHEREAS, Article VI, Section 3 of said Declaration provides that said Declaration may be amended during the first twenty (20) years by an instrument signed by not less than ninety percent of the lot owners, and,

WHEREAS, more than ninety percent (90%) of the lot owners desire to amend said Declaration,

NOW, THEREFORE, the undersigned, representing in excess of ninety percent (90%) of the lot owners of TILlicum VILLAGE, SECOND ADDITION, hereby amend the original Declaration of Covenants, Conditions and Restrictions relating to TILlicum VILLAGE, SECOND ADDITION, Deschutes County, Oregon, as recorded in Volume 184, at page 859, Deed Records, Deschutes County, Oregon, as follows:

THIS DECLARATION, made on the date hereinafter set forth by WARD CORPORATION OF BEND, an Oregon Corporation, hereinafter referred to as "Declarant" with the consent of more than 90% of the lot owners of the Lots in Tillicum Village, Second Addition, Deschutes, Oregon:

W I T N E S S E T H :

WHEREAS, Declarant and the undersigned lot owners are the owners of more than 90% of the lots of Tillicum Village, Second Addition, Deschutes County, Oregon, and

WHEREAS, Declarant is the owner of that certain real property known as Tillicum Village, Third Addition, Deschutes County, Oregon.

NOW, THEREFORE, Declarant and the undersigned lot owners of lots located in Tillicum Village, Second Addition declare that all of the properties described above 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 and be binding on all parties having any right, title or interest in the described properties or in any part thereof, their heirs, successors and assigns, and shall inure into the benefit of each owner thereof.

Declarant and the undersigned lot owners further declare that additional parcels and lots of real property may be subjected to the terms of this Declaration by execution and recordation by the

parcel or lot owner of a "Supplemental Declaration" a copy of which is attached hereto, marked Exhibit A by this reference made a part thereof.

## **ARTICLE I DEFINITIONS**

**Section 1. "Association"** shall mean and refer to Homeowners of Tillicum Village, a non-profit corporation, organized under the laws of the State of Oregon, its successors and assigns.

**Section 2. "Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any parcel or lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performances of an obligation.

**Section 3. "Properties"** shall mean and refer to that certain property hereinafter described and such additional property as may be subjected to this Declaration by execution and recordation of a Supplemental Declaration by the owner of such parcel or lot.

**Section 4. "Common Area"** shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area shall include, but not limited to: All of those Common Areas as set out on the official plats of Tillicum Village, Second Addition, Deschutes County, Oregon and Tillicum Village, Third Addition, Deschutes County, Oregon together with all roads, streets, and walkways shown in said plats; reserving, however, in Ward Corporation of Bend the irrevocable right to designate streets, roads and walkways for joint use and maintenance with other classes of persons or subdivisions.

**Section 5. "Lot"** shall mean and refer to any plot of land or portion thereof shown upon any recorded subdivision map of the properties with the exception of the Common Area.

**Section 6. "Declarant"** shall mean and refer to WARD CORPORATION OF BEND, and Oregon corporation, its successors and if such successors should acquire more than one undeveloped lot from the Declarant for the purpose of development.

## **ARTICLE II PROPERTY RIGHTS**

**Section 1. Owners Easement of Enjoyment.** 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 lot, subject to the following provisions

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against

- his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part 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. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) or each class of members agreeing to such dedication or transfer has been recorded.

**Section 2. Delegation of Use.** Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

**Section 2.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all owners with the exception of Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

**Class B.** The Class B member shall be the Declarant and shall be entitled to six (6) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happenings of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (b) On January 1, 1976.

### **ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each lot owned within the properties hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be charged on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interests, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal

obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and perpetual maintenance of the common areas, including streets and roads, and of the homes situated upon the properties. The Association shall also have the right to contract for, pay and assess against each lot owner utilities or services such as garbage, water, television cable, and street maintenance.

**Section 3. Maximum Annual Assessment.** Until January 1, 1976, the maximum annual assessment shall be \$200 per lot (plus sewer charge where applicable),

- (a) From and after January 1, 1976, the maximum annual assessment may be increased each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1, 1976, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly call for this purpose.
- (c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the common area, including fixtures and personal property thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under sections 3 and 4 shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of members or of the proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all lots (except for sewer charge) and may be collected on a monthly basis.

**Section 7. Date of Commencement of Annual Assessment.** The date of the annual assessments provided for herein shall commence on January 1, 1974 as to all properties presently subject to this Declaration and on the first day of the month following subjection of additional properties to this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty days in advanced of each annual assessment period.

Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

**Section 8. Effect of Non-Payment of Assessments: Remedies of the Association.** Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of twelve percent (12%) pre annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due on or from the lien thereof.

## **ARTICLE V ARCHITECTURAL CONTROL**

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 alternation therein be made until the plans and specifications showing the nature, kind, shape, height, material and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, topography and plans for landscaping by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty days after said plans and specifications have been submitted to it, approval will be required and this Article will be deemed to have been fully complied with, it being the intention that the Board or said committee shall have full control not only of the structures but landscaping and maintenance of individual lots.

## **ARTICLE VI GENERAL PROVISIONS**

### **Section 1. Enforcement**

- (a) The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or an owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- (b) In the event that any owner shall fail to comply with any rule or regulation or shall fail to properly maintain and landscape his property, the Association shall have the right to

any annual assessment. If, however, the failure to comply with regulations shall be of such nature that the Association cannot cause the same to be done, the Association may levy a reasonable penalty against the non-complying owner, said penalty to be without regard to the maximum annual assessments referred to herein.

SECTION 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 3. Amendment. This Amended Declaration may be amended during the first twenty (20) years from the date of recording this Amended Declaration by an instrument signed by the Board of Directors of the Association. The Board of Directors will execute and record the required instrument if ninety percent (90%) of the members of the Association vote to amend; thereafter the required vote shall be reduced to seventy-five percent (75%).

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set its hand and seal this 14<sup>th</sup> day of August, 1974.

WARD CORPORATION OF BEND,  
an Oregon Corporation,

By s/ (Jan L. Ward)  
Jan Ward, President

STATE OF OREGON, County of Deschutes, 22:

Before me personally appeared Jan Ward, who, being sworn, stated that he is the President of WARD CORPORATION OF BEND and that this instrument was voluntarily signed on behalf of the corporation by authority of its Board of directors.

s/ (James V. Hurley)  
Notary Public for Oregon  
My Commission Expires: 10/26/74

J.L.WARD CONSTRUCTION CO.,  
an Oregon Corporation

By s/ (Jan Ward)  
Jan Ward, President

STATE OF OREGON, County of Deschutes, ss:

Before me personally appeared Jan Ward, who, being sworn, stated that he is the President of J..L. WARD CORPORATION OF BEND and that this instrument was voluntarily signed on behalf of the corporation by authority of its Board of directors.

s/ Carol Yvonne Drury  
Notary Public for Oregon  
My Commission Expires: 2/1/77

enforce said regulation or maintenance by causing the same to be done, and levy against the owner the reasonable cost thereof, notwithstanding the limitations herein contained of any annual assessment. If, however, the failure to comply with regulations shall be of such nature that the Association cannot cause the same to be done, the Associations may levy a reasonable penalty against the non-complying owner, said penalty to be without regard to the maximum annual assessments referred to herein.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** This Amended Declaration may be amended during the first twenty (20) years from the date of recording this Amended Declaration by an instrument signed by the Board of Directors of the Association. The Board of Directors will execute and record the required instrument if ninety percent (90%) of the members of the Association vote to amend; thereafter the required vote shall be reduced to seventy-five percent (75%).

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WARD CORPORATION OF BEND  
An Oregon Corporation

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Jan Ward, President

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