

BWRMA

Bywater Way Road Maintenance Association

Road CC&R #2 - File number 319389 Dated January 1989

319389

DECLARATION OF ROAD MAINTENANCE
COVENANTS, CONDITIONS AND RESTRICTIONS

VOL. 271 PAGE 600-605
OF DEED RECORDS
JAN 18 1989

THIS DECLARATION OF ROAD MAINTENANCE COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is executed by POPE RESOURCES, A DELAWARE LIMITED PARTNERSHIP ("Pope"), and is intended to expand on the maintenance provisions in that certain prior recording on December 12, 1988 under Auditors file #318666.

RECITALS: A. Pope is the owner of the property in Jefferson County, Washington, as more fully described on Exhibit A attached hereto and incorporated by reference (the "Property").

B. In connection with developing the Property into a number of individual lots (the "Lots"), Pope will be establishing a number of easements for private roads (the "Roads") on the Property for ingress and egress to, and access within, the Property.

C. Pope intends to sell some or all of the Lots to third parties. The owners of the Lots shall be referred to herein individually as a "Lot Owner" and collectively as the "Lot Owners."

D. Pope hereby declares that all of the Property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions which deal with maintenance of the Roads. These covenants are intended to and shall run with the land and shall bind Pope and its heirs, successors and assigns and shall inure to the benefit of and bind each subsequent owner of each Lot.

Now, therefore, Pope hereby declares and certifies the following covenants, conditions and restrictions upon the Property as follows:

1. Maintenance Standards for Roads. Maintenance of the Roads shall be limited to the following ("Road Maintenance"): filling of pot holes and regrading of roadways, ditches and gravel as reasonably necessary to enable the Lot Owners to use the Roads for ingress and egress to the Lots. Such maintenance shall be performed by the Contractor (as that term is defined below) once a year at the Contractor's convenience between May 1 and September 1 of each year.

2. Maintenance of Roads Until Pope Has Sold More Than Fifty Percent of the Property. Until such time as Pope sells

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more than fifty percent of the total acreage of the Property to third parties, then Pope shall hire a private road maintenance company (the "Contractor") to perform the Road Maintenance. Pope shall be entitled to replace the existing Contractor with a new Contractor as Pope deems reasonable. Once Pope has sold more than fifty percent of the total acreage of the Property to third parties, then Pope shall no longer be responsible for contracting and paying for the Road Maintenance and the responsibility therefor shall be transferred to and shared by the Lot Owners as described more fully in Section 3. Pope shall notify the Lot Owners in writing when Pope ceases to be responsible for contracting and paying for the Road Maintenance.

3. Responsibility for Road Maintenance After Pope Has Sold at Least Fifty Percent of the Property. Once Pope has sold more than fifty percent of the Property to the third parties, then the Lot Owners shall be responsible for obtaining and paying for the Road Maintenance. The Contractor hired by Pope shall continue to be the Contractor until such Contractor is either replaced in accordance with Section 3.1 or becomes incapable of performing the Road Maintenance as set forth in Section 3.2. Every Lot Owner shall be liable for an equal prorata portion of the Contractor's annual charges for providing the Road Maintenance (the "Maintenance Fee"). If any Lot Owner does not pay his portion of the Maintenance Fee when due, then the Contractor shall have the full right and authority to place a lien against that Lot Owner's Lot for nonpayment of such portion of the Maintenance Fee.

3.1 Replacement of Contractor. If a majority of the Lot Owners wish at any time to replace the Contractor with a new Contractor, then they shall have the right to terminate the contract with the existing Contractor and to hire a new Contractor on behalf of all of the Lot Owners on terms consistent with Section 1 hereof. Such Lot Owners promptly shall notify the other Lot Owners of the name of the new Contractor and the estimated Maintenance Fee for the upcoming year.

3.2 Resignation, Death or Unavailability of Contractor. If the then existing Contractor resigns, dies or becomes incapable for any reason of performing the Road Maintenance, and a new Contractor must be hired, then a majority of the Lot Owners shall have 180 days from the date the existing Contractor became incapable of performing the Road Maintenance to hire a new Contractor to perform the Road Maintenance on behalf of all lot owners. If a majority of the Lot Owners are unable to agree on a new Contractor within the 180 day period, then any group of Lot Owners owning at least ten percent of the Lots shall be entitled to hire a new Contractor to perform the Road Maintenance on behalf of all of

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the Lot Owners, on terms consistent with Section 1, and shall promptly notify the other Lot Owners of the new Contractor and the estimated Maintenance Fees for the upcoming year. If more than one group of Lot Owners wishes to designate a new Contractor, then the first group of Lot Owners holding at least ten percent of the Lots that accomplishes the following shall be entitled to hire a new Contractor to perform the Road Maintenance: (a) enter into a contract with a new Contractor, and (b) so notify the other Lot Owners of the new Contractor and the estimated Maintenance Fees for the upcoming year.

3.3 Percentage of Lot Owners. As Pope may be developing and selling the Lots in phases, the number of Lot Owners may vary from time to time. The number of Lot Owners required to accomplish the matters set forth in Section 3 shall be based on the appropriate percentage of Lot Owners then in existence.

4. Covenants Running with the Land. These covenants, conditions and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof.

5. Enforcement of Covenants. These covenants, conditions and restrictions are for the mutual benefit of Pope and its heirs, successors and assigns, and any Lot Owner is given the right to enforce the covenants, conditions and restrictions by injunction or other lawful procedure and to recover any damages resulting from such violation.

6. Notices. All notices, requests, demands, or other communications required or permitted to be given pursuant to this Declaration shall be given in writing by personal delivery or by first class mail, postage prepaid, addressed to the other Lot Owners at the Lots or their last known address, and signed by Pope or the requisite percentage of Lot Owners, as appropriate. The notices need not all be originals and may be photocopies of the original signed notice.

7. Termination. The Lot Owners' responsibility and liability for the Road Maintenance shall cease when all the Roads are dedicated or conveyed for public use.

8. Attorneys' Fees. In any suit, action or appeal therefrom to enforce or interpret this Declaration, the prevailing party or parties shall be entitled to recover its or

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EXHIBIT A

LEGAL DESCRIPTION

That portion of Sections 26 and 35 in Township 28 North, Range 1 East of the Willamette Meridian in Jefferson County, Washington, and more particularly described as follows:

Commencing at the Northwest Corner of said Section 26; thence South 00°03'58" West along the west line of the Northwest Quarter of said Section 26 a distance of 1328.14 feet, to a D.N.R. monument at the Northwest Corner of the Southwest Quarter of the Northwest Quarter of said Section 26 and the Point of Beginning; thence South 00°05'35" West along the west line of the Northwest Quarter of said Section 26 a distance of 1328.23 feet, to a D.N.R. monument at the West Quarter Corner of said Section 26; thence South 01°16'05" West 2675.39 feet, to a D.N.R. monument at the Southwest Corner of said Section 26; thence South 01°28'55" West 2611.92 feet, to a D.N.R. monument at the West Quarter Corner of said Section 35; thence South 01°30'04" West along the west line of the Southwest Quarter of said Section 35 a distance of 1306.12 feet to a D.N.R. monument at the Southwest Corner of the Northwest Quarter of the Southwest Quarter of said Section 35; thence South 89°05'23" East 2633.19 feet to the Northeast Corner of the South Half of the Southwest Quarter of said Section 35; thence South 01°16'31" West along the east line of the South Half of the Southwest Quarter of said Section 35 a distance of 1048.94 feet to the northeasterly margin of State Highway 104; thence southeasterly along said margin on a curve concave southwesterly having a radius of 1827.10 feet which bears South 12°34'12" West, for an arc distance of 612.57 feet and a central angle of 19°12'34", to the south line of the Southeast Quarter of said Section 35; thence North 83°56'06" East along the south line of the Southeast Quarter of said Section 35 a distance of 178.50 feet; thence North 25°35'00" East 85.66 feet; thence North 37°57'00" East 92.67 feet; thence North 35°55'00" East 264.54 feet; thence North 40°50'30" East 383.52" to the Government Meander Line; thence along the Government Meander Line North 14°04'01" East 706.23 feet; thence North 05°38'38" East 853.05 feet, to the north line of the Southeast Quarter of said Section 35; thence North 89°49'31" West along the north line of the Southeast Quarter of said Section 35 a distance 780.93 feet to the easterly margin of Paradise Road; thence North 01°01'24" East along said easterly margin 688.65 feet, to the intersection of the easterly margin of Paradise Road with the northwesterly margin of Seven Sisters Road; thence northeasterly along said northwesterly margin being a curve concave southeasterly having a radius of 602.96 feet which bears South 63°37'16" East, for an arc distance of 90.86 feet and a central angle of 8°38'03"; thence North 35°00'47" East along said northwesterly margin

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516.25 feet, to the south line of a parcel of land conveyed to Ray O. Wood recorded April 15, 1950 and under Auditor's File No. 121771; thence along said south line North 89°28'07" feet, to the west line of the Northeast Quarter of said Section 35; thence North 01°16'31" East 95.50 feet, to the Southeast corner of the Northwest Quarter of the Northeast Quarter of said Section 35; thence South 89°28'07" East along the south line of the Northwest Quarter of the Northeast Quarter of said Section 35 a distance of 1299.42 feet to the northwesterly margin of Seven Sisters Road and being 10.01 feet westerly of the Southeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 35; thence North 35°00'47" East along said northwesterly margin 18.02 feet, to the east Line of the Northwest Quarter of the Northeast Quarter of said Section 35; thence North 01°16'31" East along the east line of the Northwest Quarter of the Northeast Quarter of said Section 35 a distance of 1270.90 feet, to the Northeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 35; thence North 89°06'43" West 1309.35 feet to the North Quarter Corner of said Section 35; thence North 89°18'08" West 654.67 feet, to the Southwest Corner of the East Half of the Southeast Quarter of the Southwest Quarter of said Section 26; thence North 01°16'05" 1342.59 feet, to the Northwest Corner of the East Half of the Southeast Quarter of the Southwest Quarter of said Section 26; thence South 89°26'42" East 654.69 feet, to the Northeast Corner of the Southeast Quarter of the Southwest Quarter of said Section 26; thence North 01°16'05" East parallel with the west line of the Southwest Quarter of said Section 26 a distance of 1344.22 feet, to the center of said Section 26; thence North 00°04'46" East parallel with the west line of the Northwest Quarter of said Section 26 a distance of 572.60 feet, to the Government Meander Line; thence North 57°07'16" West along the Government Meander Line 889.72 feet; thence North 26°41'17" West 470.37 feet; thence North 50°37'37" West 451.86 feet, to the east line of the Northwest Quarter of the Northwest Quarter of said Section 26; thence South 00°04'46" West 420.59 feet, to the Southeast Corner of the Northwest Quarter of the Northwest Quarter of said Section 26; thence North 89°46'26" West 1309.06 feet, to the Point of Beginning;

EXCEPT Paradise Road.

Also, except that part lying east of Paradise Road in Section 26 & 35 Township 28 North, Range 1 EWM.

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vs. 271 vs. 605