Doc # 2004152965
Page 1 of 12
Date: 05/14/2004 12:00P
Filed by: PLANNING DEPARTMENT
Filed & Recorded in Official Records
of SKAMANIA COUNTY
J. MICHAEL GARVISON
AUDITOR
Fee: $30.00

James Creagan
David Creagan
34109 NE Thompson Road
Yacolt, WA 98675

Document Title(s) or transactions contained herein:

Marble Creek Covenants, Conditions and Restrictions

GRANTOR(S) (Last name, first name, middle initial)

James Creagan and David Creagan

[ ] Additional names on page ____ of document.

GRANTEE(S) (Last name, first name, middle initial)

Marble Creek Short Plat

[ ] Additional names on page ____ of document.

LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter)

NE ¼ of the NE ¼ of Section 26, Township 7 North, Range 6 East, Willamette Meridian

[ ] Complete legal on page ____ of document.

REFERENCE NUMBER(S) of Documents assigned or released:

Marble Creek Short Plat, recorded in Auditor's File No. 2004152964

[ ] Additional numbers on page ____ of document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

07060000280100

[ ] Property Tax Parcel ID is not yet assigned
[ ] Additional parcel numbers on page ____ of document.

The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.

Unofficial Copy

MARBLE CREEK COVENANTS CONDITIONS AND RESTRICTIONS

SECTION 1 - GENERAL DEFINITIONS

1.1 **Description** - The following Covenants, Conditions and Restrictions (hereinafter "CC&R's) shall govern and apply to all lots or parcels of land anywhere within the land described in Section one of these CC&R's.

Section One. Legal Description: _Marble Creek Estates shall refer to the following described real property: The North East Quarter, North East Quarter and the North West Quarter, North East Quarter of section 26, T17N, r5E, W.M. in the County of Skamania, State of Washington.

]

1.2 **Duration**: These CC&R's shall govern and control the use of such lots or parcels, and be binding on the Owners of such lots and parcels, and anyone using or residing on any such lots or parcels, until January 1, 2024, at which time said CC&R's shall be automatically extended for successive periods of ten (10) years unless by vote of Owners representing a majority of such lots or parcels, it is agreed to change said CC&R's in whole or in part; EXCEPT, however, in the event that it appears to the advantage of the Owners that these restrictions should be modified, then in that event, any modification desired may be made by affirmative vote or written approval of Owners representing 75% of the lots, and evidenced by suitable instruments filed for public record.

1.3 **Owners Defined**: The terms "Owner" or "Owners" shall mean the fee title owner or contract vendee who is entitled to possession of any lot or parcel governed by these CC&R's. If there is a contract vendee entitled to possession, the contract vendee shall be the Owner, and the fee titleholder shall not be entitled to act pursuant to these CC&R's as the Owner unless the fee titleholder is given that right by the contract. If any lot or parcel is rented, the Owner shall be the fee title owner or contract vendee who is the landlord. Each fee title owner or contract vendee who is entitled to possession, or who is a landlord, shall be an "Owner". However, there shall be only one person for each lot or parcel who is entitled to act as an "Owner" in exercising any vote or approval right granted by these CC&R's, or any other right granted by these CC&R's. The person who is entitled to vote or exercise any of such rights for a lot or parcel shall be selected by all of the Owners of such lot or parcel.

Unofficial Copy

1.4 **Lot Defined:** The terms "lot" or "parcel" shall mean the same thing, and the two terms may be used in these CC&R's interchangeably. A lot or parcel shall refer to a piece of land in an undivided ownership on which a residential structure is or can be constructed.

SECTION 2 GENERAL RULES AND REGULATIONS

2.1 **Nuisances and Maintenance:**

(a) No noxious or offensive activity shall be carried out upon any lot or other area within the Development, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the residents of lots in the Development. Yards, grounds, and buildings shall be kept and maintained in a neat, sightly and fire safe fashion at all times. No parking or dismantling of inoperative vehicles shall be permitted on any lot except entirely within the confines of an enclosed garage. During construction, building materials and equipment shall be neatly stored when not in use.

(b) No dog or other animal shall be allowed to become a nuisance.

(c) Generators may be operated anywhere within the development. Generators shall be no more than 74 decibels and shall be restricted to a fully enclosed structure with double-wall siding that is fully insulated to an R-19 value, in order to contain noise from the generator. During the construction period, generators may be operated as needed, with consideration for neighbors.

(d) The use of stoves for the burning of wood and similar materials is permitted within dwelling units for heat.

(e) Open fire or open flame are allowed anywhere within the development as long as they are consistent with local and state regulations. All fireworks of any kind are prohibited.

(f) No Owner of a lot or parcel shall allow any condition to arise or continue that causes soil erosion. If a condition of soil erosion caused by a condition on a lot, or occurring on a lot, it shall be the responsibility of the Owner of the lot to correct the condition and stop the erosion.

(g) No Owner of a lot shall maintain a tree that is determined to be a hazard. All trees, which are determined to be a hazard by a qualified forester or arborist, shall be removed by or at the expense of the owner.

(h) Firearm discharge within the Development shall be in accordance with state and local regulation.

(i) Speed limit is 10 mph maximum on all Marble Creek Roads.

(j) For purposes of enforcing these restrictions, to the extent to which the same is a violation of law, by the act of becoming an owner of a lot, each owner authorizing the Skamania County Sheriff and the Chief of the local fire district to enter the Development on its roads and access easement for any purpose, including for the purpose of detecting violations.

Unofficial Document

2.2 **Motorcycles:** Motorcycle, motorbike, all-terrain vehicle, motorized scooter, three-wheeler, four-wheeler, or any similar vehicle, not licensed as an automobile or truck for street use (except for tractors and agricultural or yard maintenance machinery or vehicles), or snow mobile, snow cat, or similar vehicle, may be operated on any lot or common area with common sense and with the consideration of others. Use should generally be for the purpose of access and egress to a public road, or to go to the dwelling of another resident in the area. When operated, speed and noise limits shall be in effect.

2.3 **Livestock and Poultry:** No animal, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other ordinary household pets and riding and/or pack animals; provided that they are not kept, bred or maintained for any commercial purpose; and further provided that they are properly housed and cared for and not permitted to run at large about the Development or any adjacent properties; and provided further that nothing shall be permitted in connection with the provisions of this paragraph which may be offensive or detrimental to the health or enjoyment of reasonable privacy of the other residents of the lots in Development.

SECTION 3 - ASSOCIATION ACTIVITIES AND FEES

3.01 **Organization of Association:**

(a) Owners representing a majority of the lots in the Development shall create a nonprofit corporation and adopt Bylaws to create Marble Creek Homeowner's Association (Association) to administer the provisions of these CC&R's. The Articles of Incorporation and/or Bylaws shall provide for directors, officers and at least one annual meeting and such other meetings as for which prior notice is required. There shall be a board of directors of between three and five persons whose terms shall run two years, and a President, two Vice-Presidents, Secretary and Treasurer, each of which has a two year term and whom may also be a board member. Board members and officers shall be elected at each annual meeting of the Association, or any special meeting called for that purpose.

(b) The Board shall serve as the Architectural Review Committee. The functions of the Architectural Review Committee shall be the responsibility of the Association so created.

(c) The Association shall have the authority to adopt rules and regulations for the use of the lots in the Development, and shall have the power to levy annual and special assessments against all lots for the construction, maintenance and repair of Common Areas, including road and Road surfaces; to control noxious weeds, blackberries and other vegetation in access easements; to enforce these CC&R's and any rules and regulations adopted by the Association; and for the operation and administration of the Association. All assessment procedures shall be in drafted in accordance with and to conform to the assessment and collection

Unofficial Copy

procedures set forth in the Uniform Documents for Planned Unit Developments of the Federal Housing Administration (FHA), except that the procedures may appear in Bylaws of the Association.

(d) The Association shall have the authority to impose a system of administratively imposed monetary penalties or fines for the violation of these CC&R's, or the rules of the Association relating to the use of lots or common areas. Any penalty or fine shall be owed by the Owner of the lot to whom the penalty or fine was issued, unless the Owner files an appeal of the penalty or fine with the Board of the Association within ten calendar days. The Board shall hear the appeal unless an independent hearing examiner retained by the Association to hear the appeal. The appellant of a fine or penalty shall be responsible to pay all of the Association's costs, including but not limited to the fees of a hearing examiner, in the event the appellant fails to obtain a more favorable disposition than the fine or penalty. Fines and penalties shall be collectible in the same manner as delinquent assessments.

3.02 <u>Common Area Ownership and Maintenance</u>:

(a) All common areas, including roads or easements, shall be governed by the Association for the benefit of the Owners. The Association shall be responsible for the maintenance and repair of common areas and roads, including such easements as are not within the boundaries of the Development, but which provide access and egress to the Development from a public road. Notwithstanding the foregoing, any party causing damage to any common area or road shall be liable for and shall be responsible to pay for the repair costs.

(b) Road surfaces shall be maintained free of chuck holes and deterioration and degradation of the surface, in a reasonable state of repair. All costs connected with the provision of additional fill, gravel, asphalt or similar materials; the correction of any defects in the road surface; the construction of any improvement to the paved or impervious surface and adjacent portions of the easement which are authorized by a vote or approval of the Association; and all costs incurred by the Association in carrying out their or its responsibilities under the terms of the CC&R's. Road Maintenance shall be considered at least annually.

(c) Each Owner shall also be responsible for the annual eradication of noxious weeds and blackberries within such easements where the right-of-way burdens a lot. In connection therewith, such areas of the easements shall be treated in a manner calculated to permanently eradicate such vegetation.

(d) The construction, maintenance and repair of the road surface and such ditches and drainage ways as are necessary to protect the road and adjacent properties in relation thereto, and mowing and weed and blackberry eradication next to the road, shall be defined as "Road Maintenance".

(e) It is agreed that each of the Owners is entitled to unrestricted use of any road easement, in common with other Owners, for foot and vehicular ingress and egress by themselves and their invitees; and for all utilities now or in the future serving the Development. However, no Owner shall destroy or alter improvements and vegetation installed in the easement by the underlying lot Owner if adequate room

Unofficial Document

and improvements exist for access and egress on adjacent portions of the easement.

3.03 **Maintenance and Repairs:** The need for maintenance and repairs shall be as agreed to in writing by Owners representing a majority of the lots, or by vote of the Association. Upon deciding that maintenance or repairs are necessary, Association shall contract for the same on behalf of all of the Owners. For the purpose of giving notice, the Owner of a lot shall be the person shown in the records of the Skamania County Assessor as receiving tax statements for the Lot on the date of the notice. All notices shall be personally delivered to the last known address of the Owner and left with a person of suitable age and discretion there residing on the premises, or sent by certified, return receipt requested mail to the address of the Owner as shown in the records of the Skamania County Assessor. The notice shall be deemed complete ten days following personal service, or thirteen days following mailing. The remaining Owners agree to save the agreeing Owners harmless of and from any claim or liability resulting from their decision that repairs or maintenance are necessary and contracting for the same. The Association may authorize, pay and assess for maintenance and repairs in any manner authorized for action by the Association in these CC&R's, or the Association By-Laws.

3.04 **Dues/Payment:** The Association shall collect maintenance fees of $300.00 per lot annually, starting July 1, 2005, and each July thereafter, for roads, common areas, trails etc. This money will be placed in a general fund with a maximum cap of approximately $5,000.00, to cover estimated costs of Association operating expenses, maintenance and repairs as needed. At such time as the general fund exceeds $5,000.00 no annual payments will be required, until such time as the general fund diminishes below $3,000.00. The estimated cost shall be divided equally between all of the lots, regardless of the sizes of the lots. The annual budget shall be generated by the board and voted by the board after a review with the Owners in the annual meeting. If the estimated cost of operation and maintenance for the balance of a fiscal year is projected to be or actually will diminish the general fund to an amount less than the minimum $3,000 balance in the general fund, the Owners shall immediately upon request of the directors representing a simple majority of the board, pay the additional amount. Likewise, the Directors representing a simple majority of the board may also establish and charge the Owners, for immediate payment, for a reserve against contract contingencies and emergency repairs.

3.05 **Failure to Pay:** In the event that an Owner shall fail to pay any of the above amounts, when due, they shall have a lien, as described below in section 3.06, for the unpaid amount. The Association shall also have an action for damages against any nonpaying Owner for any unpaid amount. In any action for the collection of

Unofficial Document

such amount, the substantially prevailing party shall be entitled to an award for such party's reasonable legal fees and costs.

3.06 **Lien:** The lien referred to above shall be calculated and perfected as follows. The Association shall be entitled to the actual amount unpaid plus interest thereon at twelve percent per annum. A notice of lien signed by the Association shall be recorded in the real property records of Skamania County so as to become a lien of record against the lot of any Owner who has not paid. Said notice of lien shall include at least a description of the defaulting Owner's property; a reference by recording number to these CC&R's; the amount due including interest and attorneys fees and costs for the preparation and recording of the lien, and an expected schedule of attorneys fees projected prior to the commencement of any judicial foreclosure; the name of the Association; and an address and phone number through which others interested in the lot may communicate with the Association. Said lien may be enforced by foreclosure through the same manner of judicial proceedings as labor and material men's liens are then foreclosed in the State of Washington, except that there shall be no time limit for the filing of the lien or the initiation of any judicial proceeding thereafter, and in addition to the principal and interest due, the Association shall be entitled to all costs of such foreclosure action and such reasonable attorneys' fees as the Court shall fix for the foreclosure action and any collection efforts preceding the foreclosure.

3.07 **Arbitration:** In the event that the Owners, or any of them, or the Association, are unable to agree on any matter covered by these CC&R's, including but not limited to the necessity for Road Maintenance, the dispute shall be settled by a single arbitrator who shall direct any disposition that he deems equitable under the circumstances. Any single Owner may initiate this arbitration procedure if the Road Maintenance provided in these CC&R's which is required, necessary or prudent is not being performed, or for which timely provision has not been made. Such arbitrator shall have the power to assess the Owners' lots who are responsible for Road Maintenance and the respective prorated share for such Owner(s), irrespective of the amount of such share. The arbitrator shall also have any authority available to the Superior Court, and any authority which would be available to the Association. The arbitrator shall be appointed by a judge of the Skamania County Superior Court upon request of any Owner under these CC&R's, unless the parties are able to reach unanimous agreement upon the appointment of such arbitrator. The decision of the arbitrator shall be final and binding, and shall not be subject to appeal. The decision of the arbitrator may be enforced by any party bound by these CC&R's in any court of competent jurisdiction. The costs of the arbitrator shall be considered as Road Maintenance, except however, in the event that it should be necessary to commence proceedings in any court to enforce the provisions of the arbitration award, the substantially losing party or parties in such proceeding shall pay the reasonable attorney fees of

Uncertified Copy

the substantially prevailing party or parties, together with such prevailing party's costs and disbursements.

3.08 **Enforcement:** The failure on the the part of any person affected by these CC&R's, at any time to enforce any of the provisions hereof, shall in no event be deemed a waiver thereof or of any existing violation thereof; nor shall the invalidation of any said CC&R's by judgment or court order affect any of the other provisions hereof, which shall remain in full force and effect.

3.09 **Safety:** Any owner not practicing due safety while using common improvements shall be, upon 60% vote of all owners, excluded from use.

SECTION 4 - CONSTRUCTION, DEVELOPMENT AND LAND USE

4.01 **Use:** Marble Creek is intended for *recreational* use.

4.12 **Tree Cutting:** No clear-cutting of land or commercial selective logging (tree farms) shall be allowed. Any property owner may remove trees on his own lot as needed, or to improve or keep the desired view. If trees on a neighboring lot grow to block the view of another lot, the lot owner may apply to the Association and ask permission to remove or trim the tree as needed. This will be at the applicant's expense including complete tree and stump removal or trimming. However if determined stump removal may lead to erosion then the stump will stay.

4.03 **Prior Construction Approval Required**: No structure, dwelling or accessory building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location and type of structure or buildings have been approved by an Architectural Review Committee organized for that purpose. In the event approval or disapproval is not given in writing within 30 days after plans and specifications have been submitted, approval will not be required, except that even though approval is not required, all construction and alteration of vegetation shall nevertheless be in accordance with all standards set forth in these CC&R's. If any request for approval is returned for modification or correction, the request shall be deemed denied pending resubmission and approval of a modified or corrected request. For the purpose of these CC&R's, the installation of a mobile home or modular home upon a lot, or the construction or placement of a dwelling not in accordance with the construction standards governed by the UBC, although not allowed, shall constitute the erection of a dwelling unit. The Marble Creek Architectural Review Committee shall approve all site and building plans. Outside construction; shell, roof, windows', siding, doors, shall be weather tight with an exterior finished look within 1 year of the crawl hole excavation. All construction shall be double wall construction. Roofs shall be metal

Unofficial Copy

or 40 year laminated composition, with color approved by the Association. Exterior cabin colors shall be approved by the Association.

4.04 **Dwelling Size:** Each single-family dwelling unit structure shall be a minimum of Nine Hundred square feet of finished living space for human habitation, exclusive of the vehicle and equipment storage area of a garage. All dwellings and accessory buildings shall be constructed in accordance with the construction standards regulated by the Uniform Building Code (UBC) as it has been adopted by the State of Washington or the local municipality with jurisdiction for the issuance of building permits on the lot.

4.05 **Easement:** Easements for access and egress and for the installation of utilities and drainage facilities, including septic tank drain field and access, within the development shall be maintained in as attractive and well-kept condition as the remainder of the lot. In particular noxious weeds, such as but not limited to Himalayan blackberries and scotch broom, shall not be maintained or permitted to grow in easements, and it shall be the responsibility of the Owner to remove the same. Immediately after the installation, replacement, repair, or maintenance of utilities and drainage facilities, including septic tanks and septic tank drainage fields and pipes in easements, the preexisting grade of the disturbed land, any road surface, and any cultivated vegetation shall be restored by and at the expense of the Owner causing the installation, replacement, repair or maintenance.

4.06 **Building Type and Location:** The building type and location shall be reviewed by the Architectural Review Committee. All dwelling and accessory buildings shall be properly maintained and not allowed to fall into a state of disrepair or dilapidation, and all reasonable and practicable natural growth of trees and shrubs shall be retained, in the interest of maintaining a private, natural atmosphere.

4.07 **Temporary Structures:** No structure of a temporary nature, mobile home, trailer, tent, recreational vehicle, motor home, shack, garage, barn, or other outbuildings shall be used on any lot at any time as a residence for a period of more than 90 days without permission of the Association.

4.08 **Utilities:** If at any time electric service is available to lots in the development, any building constructed on any lot shall take electric service only through underground service wires, or underground cable rated not less than 200 amps, and equipped with a service entrance panel of not less than 200 amp capacity, and an approved type meter socket connected to a rigid metallic conduit of not less than two inch diameter extending from the meter to not less than twenty four (24") inches below the finished ground surface, all except underground service wires to be installed and maintained at the expense of the builder or Owner of said dwelling in conformity with applicable codes and regulations. No wire or conduit carrying electrical impulses, radio, television or other similar transmission shall be above

Unofficial Document

ground on any lot, except where in complete direct contact with a radio or television antenna, or satellite dish.

4.09 **Existing Structures:** No existing structure, residential or otherwise, shall be moved onto any lot, nor shall any dwelling therein be occupied prior to its completion. However once the outer shell of structure is complete it may be occupied during completion of the interier.

4.10 **Fences:** There shall be no fences except those that are rustic, such as a split rail fence. There shall be no wire fences of any kind, except with written permission by the Architectural Review Committee.

4.11 **Sanitation:** All permanent sewage disposal shall be by means of public sanitary sewers or private septic tank, the construction, outlets and drain fields for which shall conform with Washington State Health Department codes and regulations, and which shall be placed to reasonably preclude any invasion of the rights of Owners of adjoining lots. Any septic tank or drainage field operated in violation of any rules or regulations of the Washington State Health Department codes or the local jurisdictional public health agency, or which is failing, is hereby declared to be a nuisance in violation of these CC&R's.

4.12 **Land Use:** The construction on and/or usage of lots within Marble Creek shall be limited to one single-family residence per lot, together with accessory buildings incidental thereto, including the storage of a boat and/or a camping trailer kept for personal use, or a small storage building, provided the location of such structures are in conformity with the applicable municipal regulations, and are compatible in design and decoration with the residence constructed on such lot and preapproved by the Architectural Review Committee prior to construction. All native vegetation or vegetation of the same species as natural vegetation existing on a Lot shall be maintained and not removed or destroyed, except in accordance with a plan for the same that has been approved by the Architectural Review Committee.

4.13 **Garbage and Refuse Disposal:** No lot or common area shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers, pending collection and removal. All equipment for the temporary storage or disposal of such material shall be kept in a clean and sanitary condition. The only garbage or refuse collection container that may be maintained outside would be fully enclosed garbage cans stored out of sight, or left for collection at the time set for collection.

4.14 **Driveways:** All driveways shall be constructed following general road specifications so as to support heavy vehicles, of at least 30,000 pounds Gross Vehicle Weight. Driveway widths are not to exceed 15 feet of drivable surface, except for parking areas. Each lot owner is responsible for construction,

Unofficial Copy

maintenance, upkeep, snow removal, and repair of his own driveway. Driveways shall be kept in good repair, with prevention and prompt correction of major problems, such as ruts, potholes, and washouts. Driveway construction shall be such that dust is minimized and water runoff is controlled into proper drainage areas.

4.15 **Oil and Mining Operations:** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted in connection with or upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

SECTION 5 - RECOGNITION

Running Covenant: These CC&R's contained herein shall run with the land described in section one, and shall be binding upon all parties having or acquiring any right, title, or interest in any lot, parcel, or tract within the Development, and shall be for the Benefit of each Owner of any lot.

DATED as of the 29 day of April, 2004

(Acknowledgements need to be added)

ROBERT W. BALLARD
NOTARY PUBLIC
STATE OF WASHINGTON
APPOINTMENT EXPIRES AUGUST 1, 2005

4/29/04

Unofficial Copy

maintenance, upkeep, snow removal, and repair of his own driveway. Driveways shall be kept in good repair, with prevention and prompt correction of major problems, such as ruts, potholes, and washouts. Driveway construction shall be such that dust is minimized and water runoff is controlled into proper drainage areas.

4.15 **Oil and Mining Operations:** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted in connection with or upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

SECTION 5 - RECOGNITION

Running Covenant: These CC&R's contained herein shall run with the land described in section one, and shall be binding upon all parties having or acquiring any right, title, or interest in any lot, parcel, or tract within the Development, and shall be for the Benefit of each Owner of any lot.

DATED as of the 29 day of April, 2004

James P. Hagan

(Acknowledgements need to be added)

ROBERT W. BALLARD
NOTARY PUBLIC
STATE OF WASHINGTON
APPOINTMENT EXPIRES AUGUST 1, 2005

4/29/04

Unofficial Copy