

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR  
91-37783  
AVONLEA ESTATES

These Covenants, Conditions and Restrictions are made this \_\_\_ day of June, 1991, by Mazama Corporation, an Oregon corporation, hereinafter referred to as "Declarant", as owner of the real property Deschutes County, State of Oregon, described in Exhibit "1", attached hereto and incorporated by this reference herein.

The property described in Exhibit "1" is hereby subject to these Covenants, Conditions and Restrictions and will be known as AVONLEA ESTATES, hereinafter referred to as "AVONLEA".

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

## Section 1. DEFINITIONS:

1.1 AVONLEA: The term "AVONLEA" shall mean AVONLEA ESTATES.

1.2 Declarant: The term "Declarant" shall mean Mazama Corporation, an Oregon corporation, or its successors in interest.

1.3 Declaration: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for AVONLEA ESTATES.

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

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

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COURTESY  
RECORDED BY  
FIRST WESTERN TITLE

1.6 Owner: The term "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.

1.7 Plat: The term "plat" shall mean the recorded plat of AVONLEA ESTATES as recorded in the Official Records of Deschutes County and any subsequent recorded amendment.

1.8 Streets: The term "streets" or "street" shall mean any street, highway or other thoroughfare within or adjacent to AVONLEA 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 AVONLEA:**

2.1 General Declaration Creating AVONLEA: Declarant hereby declares that all of the real property located in Deschutes County, Oregon described in Exhibit "1" 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 the purpose of protecting the desirability and attractiveness of said real property and every part thereof. All of the Covenants, Conditions and Restrictions of AVONLEA 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.

2.2 Addition of Other Real Property by Declarant:

(a) Declarant may, at any time during the term of this Declaration, add all or a portion of any land now or hereafter owned by Declarant to the property which is covered by this Declaration, and upon recording of a notice of addition of real property, as set forth below, the provisions of this Declaration specified in said notice shall apply to such added land in the same manner as if it were originally covered by this Declaration. Thereafter, to the extent this Declaration is made applicable thereto, their rights, powers and responsibilities of Declarant and Owners of parcels within such added land shall be the same as in the case of the land described in Exhibit "1".

(b) The notice of addition of real property referred to above shall contain at least the following provisions:

(1) A reference to this Declaration stating the

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date of recording and the recording information where the Declaration is recorded.

(2) A statement that the provisions of this Declaration or some specified part thereof shall apply to such added real property.

(3) A legal description of such added real property.

(4) Such other or different covenants, conditions and restrictions as Declarant shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such added real property.

### Section 3. ARCHITECTURAL CONTROLS:

3.1 Approval Required. No improvement 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 Declarant.

3.2 Procedure. Any Owner proposing to construct any improvements within AVONLEA (including any exterior alteration, 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 use, improve, or develop real property with AVONLEA shall submit the following items for review:

3.3.1 A professionally prepared site plan showing the location, size, configuration and layout of any building, structure, or improvement (or, where applicable, any alteration, addition, modification, or destruction thereto) including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation.

3.3.2 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. Color samples and material samples shall be provided upon request of the Declarant.

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3.3.3 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).

3.3.4 Materials. No used materials shall be permissible on exterior surfaces. Exposed masonry will normally be limited to local stone. Concrete, concrete block, stucco, and brick may be used with specific approval of Declarant.

3.3.5 Exterior Lighting. Exterior lighting shall be of a type and so placed to eliminate glare and annoyance to adjacent property Owners and passersby. Exterior lighting shall not be continuously used as to cause a nuisance or annoyance to adjacent property Owners.

3.3.6 Driveways. Driveways shall be of concrete, concrete pavers or asphalt.

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 review 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 AVONLEA. 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 AVONLEA development concept, the Owner shall resubmit those nonconforming portions of the plans for review in accordance with the 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 all plans and drawings submitted to Deschutes County in connection with the construction of any improvement in AVONLEA must bear the prior written approval of Declarant.

3.5 Architectural Guidelines. The development concept for AVONLEA shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guideline setting forth various aspects of the development concept, in addition to their Declaration, may be published from time to time by Declarant, but Declarant shall not be required to do so.

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Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any part; provided, however, that once approval has been given pursuant to paragraph 3.4 above, work may proceed in accordance with 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, vegetation, ground cover or other improvements within AVONLEA shall be performed in strict conformity with the 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 to all work, if, in good faith it believes that any such work is nonconforming. In the event that it is determined in good faith by Declarant that certain work is nonconforming, a stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all nonconforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such nonconforming 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.

3.7 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 AVONLEA. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the 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 waive 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 to the party claiming the benefit of such waiver.

#### Section 4. RESTRICTIONS 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 an allowed residential use for one single family residence as provided by the applicable ordinances of Deschutes County.

4.2 Improvements. Each lot within AVONLEA shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.

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4.3 Appearance. All garbage, trash, cuttings, refuse, garbage and refuse containers, 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 Activity. No offensive activity shall be carried on nor shall anything be done which may be or become an annoyance or nuisance to the other Owners.

4.6 Signs. No sign of any kind shall be displayed to public view on or from any lot except that not more than one "For Sale" or "For Rent" sign placed by the Owner, the Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may temporarily displayed on any lot. This restriction shall not prohibit the temporary placement of political signs on any lot by the Owner.

4.7 Exterior Lighting or Noise Making Device. No exterior lighting or noise making device shall be placed on a lot or any portion thereof with the Declarant's prior written consent.

4.8 Antennas. No television antenna, radio antenna, satellite antenna, or other receiving or transmitting device shall be placed on any lot without the Declarant's prior written consent. Satellite antennas shall be screened from view and may not be placed on roofs or in front yards.

4.9 Limitation on Transfer. No Owner shall transfer either by conveyance, contract of sale or lease any interest in the Owner's lot which would result in ownership of such lot being held by 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 Utilities. No above-ground utilities, pipes or wires shall be used to connect improvements with supplying facilities without prior written consent of Declarant.

4.12 Parking. Camping trailers, trucks, boats, and boat trailers may not be parked or placed on any lot for any extended period over three days outside of an enclosed garage or other permitted screened enclosure. Motorhomes and campers shall not be parked or placed outside a screened enclosure for more than fourteen days in a calendar year.

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

4.14 Construction Standards. No structure shall be erected, altered, placed or permitted to remain on any lot which, in the opinion of Declarant, does not comply with the following standards:

4.14.1 Minimum Size. No residence of less than 1144 square feet of living space, exclusive of garage, shall be permitted to be erected on any lot.

4.14.2 Roofs. All roofs shall have not less than a 4 in 12 pitch and be covered with composition shingles or earth tone concrete or clay tiles.

4.14.3 Height. No building shall be higher than 24 feet.

4.14.4 Garage. Each residence shall have at least one private garage for no less than two automobiles. No Owner shall have more than three vehicles for the use of the occupants of Owner's lot parked outside of the garage, outside of a permitted screened enclosure, or on the street as part of the Owner's or occupant's regular practice.

4.14.5 Completion of Construction. The construction of any building on any lot, including private lot drainage, painting, and all exterior finish, shall be completed within four (4) months from the beginning of construction so as to present a finished appearance when viewed from any angle. Within thirty (30) days of occupancy, all Owners shall install drapes or blinds in the windows of the residence which are visible from the street. Sheets and other temporary methods are not allowed. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Declarant.

4.14.6 Landscape Completion. All landscaping must be completed within sixty (60) days after the date the exterior of the residence is completed. The front yards shall be complete with grass and planting beds. Rear and side yards must be planted with grass, barkdusted, or fenced. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Declarant.

4.14.7 Fences and Hedges. The maximum height of a site obscuring fence on any lot shall be six (6) feet. The location of any fences erected shall be along the rear lot line and/or along the side lot lines, but said fences shall not be placed forward of the front setback line for the residence. All fences shall be

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of wood or chain link with wood slats. Brick or masonry posts shall be allowed. No fence, hedge, or shrub that obstructs sight lines at elevations between two and six feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street, property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines. No fence or wall shall be erected without prior written approval of the Declarant.

4.14.8 Exterior Materials and Finish. Exterior materials must be approved for use by the Declarant as set forth in these covenants. The exterior finish of all construction on any lot shall be designed, built, and maintained in such a manner as to blend in with the existing structures, and landscaping with AVONLEA. Exterior colors must be approved by the Declarant as set forth in these covenants. Exterior trim, fences, doors, railings, decks, eaves, gutters, and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structures they adjoin.

4.15 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that of a reasonable number (not to exceed three) of dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes and are reasonably controlled so as not to be a nuisance.

4.16 Commercial or Business Use. No trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any lot, nor shall any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business be kept or stored on any lot, excepting the right of any homebuilder and Declarant to construct residences on any lot, to store construction equipment and materials on said lots in the normal course of said construction and to use any single family residence as a sales office or model home for purposes of sales in AVONLEA. This provision, however, shall not be construed so as to prevent or prohibit an Owner from maintaining a personal professional library, keeping their personal business or professional records or accounts, handling their personal business or professional telephone calls, or conferring with business or professional associates, clients or customers, in the Owner's home. This provision shall not be construed so as to prohibit the rental or leasing of any residence unit. This provision shall not be construed so as to prohibit an Owner from parking one vehicle used in the Owner's business in Owner's garage or other permitted screened enclosure.

4.17 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an unreasonable state of disrepair or to be abandoned or to remain parked upon any lot or on any street for a

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period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an "unreasonable state of disrepair" when due to its continued inoperability or significant damage, reasonably offends the occupants of AVONLEA or Declarant. This provision shall not be construed as to prohibit Owner from storing a vehicle in an unreasonable state of disrepair inside Owner's garage.

4.18 Private and Public Utility Easements depicted on Plat. Easements for installation and maintenance of utility lines and drainage facilities are reserved as specified on the recorded plat of AVONLEA and shall continue in perpetuity. Said easements are intended to, and do attach to and run with the land affected herein.

4.18.1 Adjoining Lots. Adjoined lots as depicted on the plat, shall have an equal nonexclusive right to the use of that area of land for the installation and maintenance of utility lines. In addition by this covenant there is granted to all appropriate government agencies and public utility companies nonexclusive easements for the installation and maintenance of utility lines and the right of access needed to perform their duties.

4.18.2 Indemnification and Restoration. Owners of any easement shall require all workers and contractors undertaking maintenance work hereunder to maintain standard liability insurance in a reasonable amount from a reputable insurance company protecting each Owner. Each of the owners of an easement agrees to release and indemnify the Owners of the burdened lot against all liability for any injury, personal or property, to the owners of an easement, agents, employees, assignees or officers of said owners of an easement, when such injury or damage shall result from any maintenance undertaken pursuant to this agreement. It shall be the responsibility of the easement owner to restore the easement area to a condition equal to that which existed prior to any work performed in the easement.

#### 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, signing and lighting controls over any lots within AVONLEA, 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 AVONLEA. Recordation of such a declaration shall formally terminate Declarant's interest and all rights of architectural landscaping, signing and lighting controls, as well as any other duties of Declarant under this Declaration.

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## 5.2 Formation of ARC.

(a) Upon formal termination of Declarant's control, Declarant shall form an Oregon nonprofit organization called the AVONLEA ESTATES Architectural Review Committee (ARC). ARC shall be governed by a three person board of directors.

(b) Within thirty days after the commencement date of ARC, the initial board of directors shall be elected. Person eligible for the initial ARC shall be limited to Owners of any lot with AVONLEA. Declarant shall solicit from and circulate to all lot Owners a list of nominees for the initial board of directors positions within the thirty day ARC organizational period. Declarant shall then conduct an election of the initial board of directors. The three nominees obtaining the three highest vote totals 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 within AVONLEA. 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 bylaws, guidelines, procedures, rules and regulations, relating to the architectural, landscaping, signing and lighting controls with AVONLEA.

5.3 Failure to Organize. In the event Declarant is unsuccessful in organizing the board of directors of ARC within the thirty day organizational period specified above, Declarant shall have no further responsibilities relating to ARC and the ARC board of directors may be organized exclusively by the Owners of lots with AVONLEA. Such failure of organization of the ARC board of directors shall not affect the existence of ARC or the effectiveness of this Declaration.

## Section 6. DURATION AND AMENDMENT OF THIS DECLARATION:

6.1 Duration. The Covenants, Conditions and Restrictions of AVONLEA shall continue to remain in full force and effect at all times within respect to all property, and each part thereof, now or hereafter made subject thereto (subject however, to the right to amend and repeal as provided for therein) for a period thirty 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 termination of this Declaration signed by Owners of not less than two-thirds of the lots then subject to 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

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period the Covenants, Conditions and Restrictions for AVONLEA are terminated as set forth above in this section.

6.2 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 two-thirds 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 other Owner, person or entity and shall not give any third party any right or cause of action on account of 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.

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

#### Section 7. ENFORCEMENT:

7.1 This Declaration shall be specifically enforceable by Declarant or by any Owner of any lot in AVONLEA. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement or condition.

7.2 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 fees incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.

#### Section 8. EFFECT OF DECLARATION:

The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in AVONLEA and shall bind, benefit and burden each lot in AVONLEA, including any additions thereto. The terms of this Declaration shall inure to the benefit and shall bind Declarant, all successors and assigns of Declarant and all Owners of any lot in AVONLEA, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving any right, title, or interest or use in or to any real property in AVONLEA. The use restrictions and regulations set forth 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 AVONLEA and their successors in interest

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as set forth in this Declaration, including any person who holds such interests as security for the payment of an obligation including any mortgagee or other security holder in actual possession of any lot by foreclosure or otherwise and any other person taking title from such security holder.

MAZAMA CORPORATION

*Gerald K. Eischen*  
By: Gerald K. Eischen  
President

STATE OF OREGON )  
                          ) ss.  
County of Deschutes )

The foregoing instrument was acknowledged before me by Gerald K. Eischen, as President of Mazama Corporation, an Oregon corporation, on behalf of the corporation, this 12<sup>th</sup> day of July, 1991.

*Billy K. Ryan*  
Notary Public for Oregon  
My Commission Expires: 1/24/94

AFTER RECORDING  
RETURN TO:

HENDRIX & CHAPPELL  
716 NW Harriman  
Bend, OR 97701  
503/382-4980

HENDRIX & CHAPPELL ATTORNEYS AT LAW  
716 NW Harriman/Bend, Oregon 97701/503/382-4980

252 - 2649

EXHIBIT "1"

Parcel I of Partition Plat No. 1991-9, being a portion of the Southeast Quarter of the Northeast Quarter (SE1/4 NE1/4) of Section Three (3), Township Eighteen (18) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon.

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:

91 DEC 23 AM 11:48  
MARY SUE PENHOLLOW  
COUNTY CLERK

BY: *M. Penhollow* DEPUTY  
NO. 91-37783 FEE 6.50  
DESCHUTES COUNTY OFFICIAL RECORDS