

97-04593

## CONDITIONS, COVENANTS, AND RESTRICTIONS FOR AWBREY HIGHLANDS HOMES

THESE CONDITIONS, COVENANTS, AND RESTRICTIONS are made on this 31<sup>st</sup> day of January, 1997, by Raymond Development, L.L.C., a Washington limited liability company and registered to do business in the State of Oregon as Owner of the real property in the City of Bend, Deschutes County, State of Oregon, described in Exhibit A attached hereto and incorporated by reference herein.

The property described in Exhibit A is hereby subject to these conditions, covenants, and restrictions and will be known as AWBREY HIGHLANDS HOMES Phases One, Two, and Three.

Except where this declaration for AWBREY HIGHLANDS HOMES conflicts with applicable government, municipal, or state regulations, this declaration shall be binding on all of the successors in interest as set forth herein. In the event that any development standards or restrictions should conflict with the restrictive standard or requirement of the zoning ordinance of the City of Bend, the more restrictive standard or requirement of the ordinance shall apply.

### 1. Definitions:

- A. AWBREY HIGHLANDS HOMES. The term "AWBREY HIGHLANDS HOMES" shall mean all of the real property made subject to this declaration.
- B. Declarant. The "Declarant" shall mean Raymond Development, L.L.C., a Washington limited liability company doing business in the State of Oregon as Raymond Development, L.L.C.
- C. Lot. The term "lot" shall mean each lot as described on the subdivision plat or any alterations that may be made thereon.
- D. Declaration. The term "declaration" shall mean this declaration of covenants, conditions, and restrictions for AWBREY HIGHLANDS HOMES.
- E. Owner. "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.

- F. Improvements. The term "improvements" shall include, but not be limited to, any buildings, private roads, driveways, parking areas, fences, retaining walls, stairs, decks, hedges, planting, trees, shrubs, signs, storage area, or other structures and the vegetation on the land surface.
- G. Streets. The term "streets" shall mean any street or highway that is a public road in AWBREY HIGHLANDS HOMES as recorded on the subdivision map.
2. Property subject to Covenants, Conditions, and Restrictions for AWBREY HIGHLANDS HOMES.
- A. The general declaration creating AWBREY HIGHLANDS HOMES. The Declarant hereby declares that all real property located in Deschutes County, Oregon, described in Exhibit A shall be the subject of this declaration. All restrictions are declared and agreed to be established with the purpose of protecting the desirability and value of said real property and every part thereof. All of the covenants, conditions, and restrictions of AWBREY HIGHLANDS HOMES run with all of said real property for all purposes and shall be binding upon and inure to the benefit of the Declarant and all owners and their successors in interest as set forth in this declaration.
3. Architectural Controls.
- A. Building Area and Required Approvals. Each homesite in AWBREY HIGHLANDS HOMES contains an established and documented "Building Area". This area is a circle of fifty (50) feet with the center of the circle shown on the building site location map and physically on the homesite by the "Building Site Stake". The map should be used for the most accurate location. The Building Areas were chosen by the Declarant for their privacy and orientation and views. Owners are encouraged to submit proposals which site a home within the Building Area. Declarant will consider other building area locations which are consistent with the overall objectives provided herein. Final location of permitted building areas shall be subject to the approval of the Declarant whose decision shall be final. All proposals for improvement shall be submitted with two sets of plans and specifications to be approved in writing by the Declarant. All approvals must conform to all city, county, and state standards.
- B. Procedure and required documents. Any owner proposing to construct improvements within AWBREY HIGHLANDS HOMES shall follow procedures outlined below. The documents must include a site plan, landscape plan and building elevations showing the location and architectural and landscaping details of the site to be improved or to be added or modified. The Site Plan must include the perimeter dimensions of the homesite, building and

access locations, location of the Building Site Stake, topography (with five foot contours), location of all decks, fences, walkways and all easements and setbacks as shown on the applicable subdivision plat at a minimum scale of 1" = 20'. The Landscape Plan for any portion of the homesite to be disrupted shall be submitted at a minimum scale of 1" = 20' and show all existing major vegetation along with proposed plant material or other landscaping elements and any landscape lighting. Except within the proposed building and driveway footprint, the plan should minimize any changes to the existing topography and significant rock outcroppings and should preserve major trees to the extent consistent with allowing views from the proposed homes. Building Elevations at a scale of 1/4" = 1' shall be provided showing the four elevations of the proposed improvement(s) as situated on the homesite and shall include details of proposed exterior lighting. A Floor Plan at a scale of 1/4" = 1' shall be submitted showing the proposed improvements.

- C. Architectural guidelines. The development concept for AWBREY HIGHLANDS HOMES shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning, and other governmental land use controls. The architectural guidelines may be added to and may be changed from time to time by the Declarant, but the Declarant shall not be required to do so. In order to create architectural compatibility within AWBREY HIGHLAND HOMES, architectural designs shall consider existing topography, rock outcroppings, trees as well as compatibility of design with adjacent homes. Exterior architectural details and materials shall be of high quality and consistency. The minimum size of the home shall be fifteen (1500) square feet of livable area plus the requirement for a two car garage. The Declarant shall have sole authority in deciding whether to accept; accept subject to modifications; or reject architectural proposals.
- D. Inspection. The Declarant shall have the right to inspect all of the work that is covered in the approved plans as submitted to the Declarant. If the work is not done in good faith and is not in accordance with the plans, such work will be declared nonconforming. In that event, the Declarant shall have the right to stop the work without the necessity of a court order and require the owner to correct all nonconforming work specified in the notice before the remainder of the work may be completed. Continued work without correction of such nonconforming work shall be deemed a breach of this declaration. The Declarant, nor his agents or employees, shall not be subject to any responsibility for damages, loss, delay, or cost of legal expenses occasioned through the stop-work notice given in good faith if it is ultimately determined that such work was in conformity with the plans and drawings. All work shall be satisfactorily completed with twelve (12) months from the start of construction.
- E. Waiver. The Declarant may waive, at its discretion, any nonconformity within the development. Any waiver shall not be deemed a general waiver of all

aspects or any other aspects than the specific waiver that is being granted, and a waiver to one owner shall not automatically entitle another owner to a waiver for the same or similar conditions or provisions. No waiver shall be valid unless it is in writing and signed by the Declarant or his agent.

- F. Occupancy. The sites in AWBREY HIGHLANDS HOMES are to be used only for private residence for the owner, his family, and/or guests, except that each owner may be permitted to rent the unit when he is not in occupancy. Such rentals shall not be less than a thirty (30) day tenancy.
- G. Improvements. Each owner shall maintain his home in a clean and attractive condition and in good repair. Care must be taken with the landscaping not to create a fire hazard.
- H. Utilities. All utilities shall be underground and no exterior antennas shall be allowed.
- I. Accessory buildings. Only temporary construction shelters may be placed on the homesite prior to the construction of the main residence. Outbuildings, such as woodsheds, tool sheds, and doghouses, which are not an integrated part of the main structure, will generally not be allowed. If they are required, a specific approval by the Declarant must be obtained.
- J. Animals. All animals are subject to the City of Bend laws and ordinances.
- K. Building height and modulation. Building height limits are hereby imposed to preserve the views of neighboring homes and to minimize the cut and fill necessary for architectural purposes. The height of a home to be built on downhill site may not be such as to completely obscure the view of the upper floor of the home on the site above. In addition to height, tall, flat, imposing facades are not desirable. Efforts should be taken to modulate facades in order to reduce impacts to neighboring sites.
- L. Driveways. Driveways must be paved with asphalt, concrete, or masonry and shall be twelve to fourteen feet in width.
- M. Excavation. Each site must consider the minimum excavation necessary to marry the house to the site. This may be done with several stories and must be carefully planned to minimize cut and fill.
- N. Exterior colors. Exterior colors must be approved by the Declarant. They should be earth-tone colors that harmonize with the surrounding houses and environment and not be brilliant.
- O. Roofs. Roof material must be a noncombustible material. Dimensional

asphalt shingles are preferred. No wood shingles or shakes shall be allowed for reasons of fire safety.

P. Fences. Perimeter fencing is not permitted with the exception that:

Lots 8,9,10,11,12 may erect an unpainted wooden fence not greater than six feet high adjacent to their westerly property lines.

Lots 12, 13, 14, 15, 17 may erect an unpainted wooden fence not greater than six feet high adjacent to their southerly property lines.

Lot 18 may erect an unpainted wooden fence not greater than six feet high adjacent to its easterly property line.

The dedicated ten (10) foot wide public pedestrian access may not be fenced. Fences required to screen animal runs shall be adjacent to the house, conceal the run from view from roadways and neighboring homesites, and shall be subject to architectural review and approval by the Declarant.

A standard fence design shall be approved by Declarant and such design shall be used wherever fences are permitted as described above.

Q. Garages. Garages shall relate to the architecture of the house structure.

R. Exposed understructures. Exposed understructures of homes shall not be allowed. The siding material must extend to the grade and be of a similar material to the rest of the house.

S. Landscaping. All landscaping must have a pleasing appearance to the street and also to the adjacent lots within Awbrey Highlands. Landscaping plans should emphasize native and natural landscaping. Manicured lawn areas should be developed as useable recreation area for the house rather than as an ornamental feature. Care should be exercised to minimize the fire danger and to moderate dust. Landscaping must be completed within a year of completion of the house.

T. Outdoor play equipment. Outdoor play equipment which is to be permanently installed shall not be permitted unless it can be screened from the roadways, and screened from view within Awbrey Highlands, if at all possible.

U. Parking and screening and exterior lighting. A minimum of two parking spaces for each home shall be provided within a garage. Motor homes, trucks, campers, boats, trailers, cars under repair, etc. must be parked in the garage so that they are concealed from view. Guest recreational vehicles must be parked

so as to not clog the roadways and may not be parked for more than seven (7) nights. No prefabricated housing will be allowed in AWBREY HIGHLANDS HOMES. Exterior lighting shall be indirect and shall avoid creating glare for adjacent sites. Low-voltage yard lighting mounted close to grade is permitted for the illumination of outdoor pedestrian walkways. Flood lighting of yard areas, driveways or a house is not permitted.

- V. Service yards. Garbage, trash containers, firewood, clothes drying apparatus, bicycles, outdoor maintenance equipment, and other unsightly equipment shall be screened from the roadways and neighboring homesites. This may be done with an attached structure which is integrated into the architecture.
  - W. Signs. One "for sale" sign may be displayed per homesite. It may be no more than 800 square inches.
  - X. View preservation. View preservation is a requirement of these Conditions, Covenants, and Restrictions. To ensure preserving the existing view for all homesites, any owner shall have the right to request and require any other owner to trim trees which, have over time, substantially encroached on their territorial or mountain views. This must be done without any damage to the tree. If there is a question whether or not there will be damage to the tree, a certified arborist shall be hired. If the arborist decides that trimming of the tree will damage the tree, the tree may not be trimmed. The requesting owner may then apply to the Declarant for permission to have the tree removed. The decision of the Declarant shall be final. The word "tree" shall include shrubs and other plant material which may encroach on the view of any owner. All tree trimming and/or removal shall be subject to approvals and permits, if required, by the City of Bend. All costs associated with tree trimming or removal shall be paid for by the requesting owner.
  - Y. Severability. If any section, portion, clause, or part of these rules and regulations shall be declared invalid, they shall not affect the validity of the rest of the rules.
  - Z. Nonwaiver. Consent by the Declarant to any matter proposed or contained herein or failure by the Declarant to enforce any violation of these rules shall not be deemed to constitute a waiver impairing the Declarant's right to withhold approval in any similar situation.
4. Declarant's role.
- A. Declarant control. At such time as the Declarant no longer wishes to exercise the architectural, landscaping, and other controls within AWBREY HIGHLANDS HOMES, Declarant shall cause to be recorded in the official records of Deschutes County, Oregon, a declaration stating the above.

i. The recording of such a declaration shall formally terminate Declarant's interest. Upon formal termination of Declarant's control, Declarant shall form an organization called "The Awbrey Highlands Review Committee" and it shall be governed by a three-person board of directors.

ii. The review committee shall succeed in all powers, responsibilities, and rights of the Declarant under the declaration with respect to the conditions, covenants, and restrictions.

iii. The initial board of directors shall be elected within 30 days of the commencement date of the review committee and Declarant shall notify all homeowners of the election and ask that they nominate the members of the board. Each homeowner shall have one vote and the votes shall be cast in writing for the nominees that have been nominated for the board of directors.

B. Failure to organize. In the event that the Declarant is unsuccessful in organizing the board of directors within 30 days of the specified period, the Declarant shall have no further responsibilities relating to the review committee. Such failure to organize the board of directors shall not affect the existence of the board or the effectiveness of this declaration.

5. Duration.

The covenants, conditions, and restrictions of the AWBREY HIGHLANDS HOMES shall continue and remain in full force and effect at all times with respect to all property and every part thereon for a period of thirty (30) years from the date that this declaration is recorded, unless an instrument signed by a majority of the owners of the lots has been recorded, agreeing to change said covenants in whole or in part and/or extending the effective period of said covenants, conditions, and restrictions.

6. Enforcement.

This declaration shall be enforceable by the Declarant or any owner of any lot in AWBREY HIGHLANDS HOMES. Any breach of this declaration shall subject the breaching party to any and all legal remedies, including damages, or by destruction, removal, or enjoining the offending improvement or condition. In the event a legal action is instituted for the enforcement of this declaration, or any part thereof, the prevailing party shall recover that party's reasonable attorney fees incurred in such action, or any appeal thereof, as adjudged by the trial or appellate court.

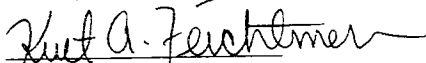
7. Effect of declaration.

The covenants, conditions, and restrictions of this declaration shall run with the land

included in AWBREY HIGHLANDS HOMES and shall bind, benefit, and burden each lot in AWBREY HIGHLANDS HOMES. Terms of this declaration shall inure to the benefit of the Declarant, all successors and assigns of the Declarant, and all owners of any lot in AWBREY HIGHLANDS HOMES, their successors, assigns, heirs, administrators, executors, mortgagors, mortgagees, lessees, invitees, or any party claiming or deriving any right, title, or interest to the use of any real property in AWBREY HIGHLANDS HOMES. The use of restrictions and regulations set forth in the above declaration shall be binding on all owners, licensees, lessees, occupants and users of the property known as AWBREY HIGHLANDS HOMES and their successors in interest as set forth in this declaration, including any person who holds such interest as a security for the payment of obligations, including any mortgagee or other security holder in actual possession of any lot by foreclosure.

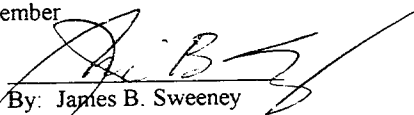
**DECLARANT:**

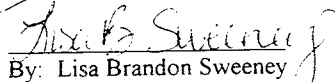
Raymond Development, L.L.C.  
6107 13th Avenue South  
Seattle, WA 98108



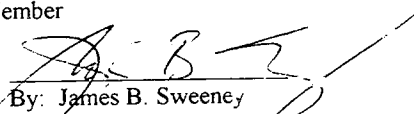
By: Kurt A. Feichtmeir  
Its: Member

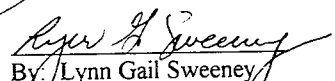
By: The Living Trust of Lisa Brandon Sweeney  
Its: Member

  
By: James B. Sweeney  
Its: Co-Trustee

  
By: Lisa Brandon Sweeney  
Its: Co-Trustee

By: The Living Trust of Lynn Gail Sweeney  
Its: Member

  
By: James B. Sweeney  
Its: Co-Trustee

  
By: Lynn Gail Sweeney  
Its: Co-Trustee



STATE OF WASHINGTON)  
COUNTY OF KING ) S.S.

On this 31<sup>st</sup> day of January 1997 personally appeared **Kurt A. Feichtmeir** to me known to be the individual named in and who executed the foregoing document and acknowledged to me that they sign the same as a free and voluntary act and deed for the uses and purposes therein mentioned. I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Samuel J. [Signature]*

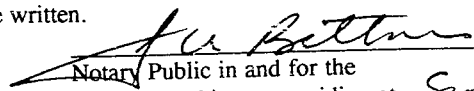
\_\_\_\_\_  
Notary Public in and for the  
State of Washington, residing at Ravenstale  
My commission expires 2/3/98

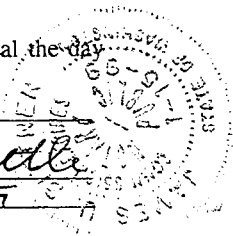


On this 31 day of January 1997 personally appeared **James B. Sweeney** to me known to be the individual named in and who executed the foregoing document and acknowledged to me that they sign the same as a free and voluntary act and deed for the uses and purposes therein mentioned. I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

**JAMES U. BITTNER**

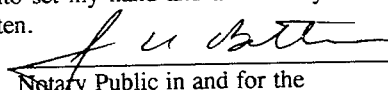
  
Notary Public in and for the  
State of Washington, residing at Seattle  
My commission expires 1/15/99

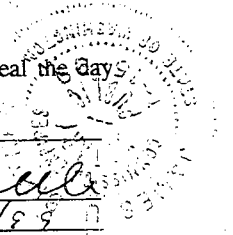


On this 31 day of January 1997 personally appeared **Lisa Brandon Sweeney** to me known to be the individual named in and who executed the foregoing document and acknowledged to me that they sign the same as a free and voluntary act and deed for the uses and purposes therein mentioned. I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

**JAMES U. BITTNER**

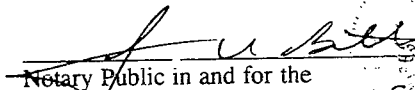
  
Notary Public in and for the  
State of Washington, residing at Seattle  
My commission expires 1/15/99

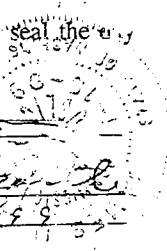


On this 31 day of January 1997 personally appeared **Lynn Gail Sweeney** to me known to be the individual named in and who executed the foregoing document and acknowledged to me that they sign the same as a free and voluntary act and deed for the uses and purposes therein mentioned. I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

**JAMES U. BITTNER**

  
Notary Public in and for the  
State of Washington, residing at Seattle  
My commission expires 1/15/99



437 - 2252

EXHIBIT "A"

Lots One (1) thru Twenty-Five (25), AWBREY HIGHLANDS, City of Bend, Deschutes County, Oregon.

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENNOLLO, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY

97 FEB 11 PM 3:50

*M. Dains* DEPUTY  
P. NO. 97-04593 FEE  
DESCHUTES COUNTY OFFICIAL RECORDS