

DESCHUTES COUNTY OFFICIAL RECORDS  
MARY SUE PENHOLLOW, COUNTY CLERK

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# DESCHUTES COUNTY CLERK

## CERTIFICATE PAGE



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*Planned Community Subdivision Declaration*

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
AWBREY ROAD HEIGHTS  
PHASES II AND III**

These Covenants, Conditions and Restrictions are made this 30th day of July, 2002, by Brooks Resources Corporation, and Oregon corporation, hereinafter referred to as "Declarant", 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.

### **OBJECTIVES**

Declarant owns this property located on Awbrey Butte in Deschutes County, Oregon. Developer proposed to develop a portion of this property to be known as Awbrey Road Heights Phases II and III. Developer intends that the property covered within the plat of Awbrey Road Heights Phases II and III will be subject to essentially the same architectural rules and design guidelines and review and appeals process as described in the Awbrey Butte Architectural Committee Rules and Design Guidelines with some exceptions more particularly described in Article 3 below.

NOW THEREFORE, Declarant hereby declares that the property covered in the plat of Awbrey Road Heights, Phases II and III, more particularly described on Exhibit A attached hereto shall be held, sold, and conveyed subject to the following easements, covenants, conditions restrictions and charges which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof. Except where this Declaration for Awbrey Road Heights conflicts with any applicable government municipal regulations, this

Declaration shall be binding upon all owners of real property 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 an applicable zoning ordinance of the City of Bend, the more restrictive standard or requirement of the applicable City of Bend ordinance shall apply.

### **ARTICLE 1: DEFINITIONS**

1.1 Awbrey Road Heights Homesites: Shall mean all of the real property now or hereafter made subject to this declaration.

1.2 Architectural Review Committee or "ARC": Shall mean the Awbrey Butte Architectural Review Committee.

1.3 Architectural Review Committee Rules and Design Guidelines: Shall mean the Awbrey Butte Architectural Review Committee Rules and Design Guidelines.

1.4 Declarant: Shall mean Brooks Resources Corporation, an Oregon corporation, or its successors in interest.

1.5 Declaration: Shall mean this Declaration of Covenants, Conditions, and Restrictions for Awbrey Road Heights.

1.6 Exempt Lots: Shall mean lots that are exempt, as described in this Declaration, from certain restrictions contained in the Architectural Review Committee Rules and Design Guidelines.

1.7 Homesite: Shall mean a lot as defined herein.

1.8 Improvements: Shall include, but not be limited to, any buildings, outbuildings, private or shared driveways, parking areas, fences and barriers, retaining walls and stairs, decks, hedges, windbreaks, plantings, planted trees and 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.

1.9 Lot: Shall mean each lot described on a subdivision plat or partition map to any alternation thereof as may be made by a valid lot line adjustment.

1.10 Owner: Shall mean any person or persons or legal entity owning real property within the Plat of Awbrey Road Heights Phases II and III.

1.11 Streets: Shall mean any Street, highway or other thoroughfare within or adjacent to the Awbrey Road Heights homesites 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, land, circle or otherwise.

## **ARTICLE 2: PROPERTY SUBJECT TO THESE DECLARATIONS**

2.1 General Declaration creating Awbrey Road Heights. Declarant hereby declares that all of the real property located within the Plat of Awbrey Road Heights, Phases II and III, in Deschutes County, Oregon described in Exhibit "A" 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 Awbrey Road Heights 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 Grantor.

(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, the 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 "A".

(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 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.

### **ARTICLE 3: ARCHITECTURAL REVIEW AND CONTROLS**

3.1 **Approval Required.** No improvement, as defined in Section 1.8 above, 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 the ARC. Lots 14 through 23 of Phase III, and other lots that may be designated by the Declarant, shall be in conformance with a building site circle established on each lot by the Declarant as described in the Awbrey Butte Architectural Committee Rules and Design Guidelines.

3.2 **Exempt Lots.** Lots 24 through 45 in Phases II and III shall be Exempt Lots and shall be exempt only as to Building Site Location, Building Setbacks, Other Setbacks, and Fencing restrictions as described in the Architectural Review Committee Rules and Design Guidelines. However, location and design of such improvements will be subject to the Architectural Review Committee Rules and Design Guidelines.

3.3 **Procedure.** Any owner proposing to construct any improvements within Awbrey Road Heights Phases II and III (including any exterior alteration, addition, destruction, 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.

3.4 **Required Documents.** Any Owner proposing to utilize, improve, or develop real property within Awbrey Road Heights shall submit the following items for review along with application fee.

- (a) A 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.
- (b) 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 1 inch = 20 feet or larger.
- (c) A landscape plan showing the nature, type, size, location, and layout of all landscaping and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

3.5 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 Awbrey Road Heights. 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 development concept, the owner shall resubmit those non-conforming 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 required under paragraph 3.3 above have been approved by Declarant. Any site plans, construction plans or similar plans and drawings submitted to the City of Bend in connection with the construction of any improvement in Awbrey Road Heights prior to written approval of Declarant is at the sold risk of the applicant.

3.6 Architectural Guidelines. The development concept for Awbrey Road Heights shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, are essentially contained in the Architectural Review Committee Rules and Design Guidelines and may be published from time to time by Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any party; provided however, that once approval has been given pursuant to paragraph 3.4 above, work may proceed in accordance with the approved plans and drawings notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

3.7 Inspection. All work related to any building, structure or improvement or any landscaping, vegetation, ground cover or other improvements within Awbrey Road Heights 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 a stop to all work, if, in good faith, it believes that any such work is non-conforming. In the event that it is determined in good faith by Declarant that certain work is non-conforming, a stop work notice may be issued, without necessity of court order, which shall require the owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non conforming 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, or 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.

3.8 Waiver. Any condition or provision of paragraph 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 Awbrey Road Heights. 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 waiver 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 by certified mail to the party claiming the benefit of such waiver.

#### **ARTICLE 4: RESTRICTIONS ON USE OF PROPERTY**

Restrictions on use of property are included but not limited to those outlined in paragraphs 4.1 through 4.14, and may be more particularly described in the Architectural Review Committee Rules and Design Guidelines.

4.1 Occupancy. No owner shall occupy, use or permit his lot or any part thereof to be used for any purpose other than a private residence for the owner, his family, or his guests, except that each owner shall be permitted to rent the home on a thirty day or longer, basis when not in occupancy.

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

4.3 Appearance. All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus 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 or Commercial Activity. No offensive or commercial 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 without prior ARC approval, provided, however, that an owner may display not more than one (1) "for sale" sign per lot which sign has a maximum area not to exceed 300 square inches, the longest dimension being no greater than 20 inches and in conformance with signage restrictions more particularly described in the Architectural Review Committee Rules and Design Guidelines.

4.7 Exterior Lighting or Noise Making Device. No exterior lighting or noise making device shall be place on a lot or any portion thereof without prior approval and in conformance with lighting restrictions more particularly described in the Architectural Review Committee Rules and Design Guidelines.

4.8 Antennas. No television antenna, radio antenna, satellite antenna, or other receiving device shall be place on any lot without prior approval.

4.9 Limitation on Transfer. No owner shall transfer either by conveyance, contract of sale or lease any interest in his 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, unless such structure is for the purpose of construction of the improvement and only with approval of Declarant. The location of such temporary structures must be approved by Declarant

4.11 Single Family Residence. No more than one single family residence shall be erected or placed on any lot.

4.12 Utilities. No above-ground utilities, pipes or wires shall be used to connect improvements with supplying facilities, unless such temporary use is for the purpose of construction of the improvement and approved by Declarant.

4.13 View. The height of improvements or vegetation and trees on a lot shall not materially restrict the view of other lot owners. The Declarant shall be the sole judge of the suitability of such heights. If the Declarant determines there is such restriction in the view of the other lot owners, written notice shall be delivered to the offending lot owner. If after 30 days the improvement, vegetation, or trees are not removed or reduced in height as directed by the Declarant, the Declarant shall enter the offending lot, complete the removal or reduction, charging the owner of the lot the reasonable costs for the work done. This section is not to be read as justification to create views not present when the lot was originally purchased, or to prevent the construction of an improvement on another lot provided such improvement is in conformance with the ARC approval.

4.14 Parking. No extended parking on any street shall be allowed by any house trailer, travel trailer, boat trailer, camper or incapacitated motor vehicle.

#### **ARTICLE 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 Awbrey Road Heights, 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 Awbrey Road Heights. Recording of such a declaration shall formally terminate Declarant's interest and all rights and controls under this declaration.

5.2 Architectural Controls Upon Declarant's Termination. Upon formal termination of Declarant's control, architectural controls will remain under the control of the Architectural Review Committee Rules and Guidelines and this Declaration unless Declaration is terminated in accordance with paragraph 6.1 below.

#### **ARTICLE 6: DURATION AND AMENDMENT OF THIS DECLARATION**

6.1 Duration. The Covenants, Conditions, and Restrictions of Awbrey Road Heights shall continue to remain in full force and effect at all times with 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 herein) for a period of 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 the termination of this Declaration signed by owners of not less than

seventy-five percent (75%) of the lots then subject to this Declaration, this Declaration, as in effect immediately prior to the expiration date, shall be continued automatically without further notice for periods of ten years unless within one year prior to the expiration of such period the Covenants, Conditions, and Restrictions for Awbrey Road Heights 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 seventy-five percent (75%) 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 Amendment, Deletion or Repeal. Any amendment, deletion, or repeal of this Declaration shall not become effective until recorded in the official records of Deschutes County, Oregon.

## **ARTICLE 7: ENFORCEMENT**

7.1 Enforcement: This declaration shall be specifically enforceable by Declarant or by any owner of any lot in Awbrey Road Heights. 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 Legal Suite or Action. 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 suite or action, or any appeal therefrom as adjudged by the trial or appellate court.

## **ARTICLE 8 EFFECT OF DECLARATION**

8.1 Effects. The Covenants, Conditions and Restrictions of this declaration shall run with the land included in Awbrey Road Heights and shall bind, benefit, and burden each lot in Awbrey Road Heights, 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 Awbrey Road Heights, 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 Awbrey Road Heights. The use restrictions and regulations set forth in Article 4 and Article 5 of this Declaration shall be binding upon all owners, lessees, licensees, occupants and users of the property know as Awbrey Road Heights and their successors in interest 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.

## **ARTICLE 9: MISCELLANEOUS PROVISIONS**

9.1 Joint Owners. In any case in which two or more persons share the ownership of any Homesite, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest.

9.2 Construction; Severability. This Declaration and all declarations adding property to Awbrey Road Heights shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and all declarations adding property to Awbrey Road Heights shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

9.3 Number. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires.

9.4 Captions. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration

9.5 Notices and other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States Postal Service certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided herein:

- (a) If to an Owner, then to the last address known for such owner kept at the Brooks Resources Corporation main Office.

(b) If to Declarant or the Architectural Review Committee, then to  
Declarant or Committee at:

Brooks Resources Corporation  
296 SW Columbia Street, Suite A  
Bend, Oregon 97708  
Attention: Mr. Kirk E. Schueler, President

In WITNESS WHEREOF, Declarant has executed this Declaration the  
date first above written.

BROOKS RESOURCES CORPORATION

By: *Kirk E. Schueler*

Kirk E. Schueler, President

STATE OF OREGON )

) SS

COUNTY OF DESCHUTES )

The foregoing instrument was acknowledged before me on this 30  
day of July, 2002, by Kirk E. Schueler, President of  
Brooks Resources Corporation on behalf of the corporation.

*Kathleen Restivo*

Notary Public for Oregon





**EXHIBIT A****AWBREY ROAD HEIGHTS  
PHASES II AND III**

**A track of land located in the Southwest one quarter (1/4) of  
Section 29, Township 17 South, Range 12 East, Willamette  
Meridian, more particularly described as:**

**Lots 26 through 35 of Awbrey Road Heights, Phase II and  
Lots 14 through 25 and Lots 36 through 45 of Awbrey Road  
Heights, Phase III.**