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STATE OF OREGON
COUNTY OF DESCHUTES



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DATE AND TIME: Jun. 17, 1999; 1:15 p.m.

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 Conditions & Restrictions

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A handwritten signature in cursive script, reading "Mary Sue Penhollow".

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

99.30008-1

**DECLARATION OF COVENANTS, CONDITIONS &
RESTRICTIONS**

FOR AWBREY VILLAGE SUBDIVISION PHASE II

Return to:

Tennant Developments
516 SW 13th St, Ste A
Brd OK 97702

Michael J. Tennant, Owner

**AWBREY VILLAGE SUBDIVISION PHASE II
COVENANTS, CONDITIONS, AND RESTRICTIONS
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99.20008.3

**DECLARATION OF
AWBREY VILLAGE SUBDIVISION PHASE II
COVENANTS, CONDITIONS, AND RESTRICTIONS**

These Covenants, Conditions and Restrictions are made this 16th day of June, 1999 by MICHAEL J. TENNANT, hereinafter referred to as "Declarant", as sole owner and developer of the real property in the City of Bend, Deschutes County, State of Oregon, described as Lots 1 through 31 and 68 through 74, AWBREY VILLAGE Phase II as recorded in Deschutes County Records.

The property described above is hereby subject to these Covenants, Conditions and Restrictions and will be known as AWBREY VILLAGE Subdivision, hereinafter referred to as AWBREY VILLAGE Subdivision.

AWBREY VILLAGE Subdivision is being developed as a residential community. Except where this Declaration for AWBREY VILLAGE Subdivision conflicts with any applicable government municipal regulations, this Declaration shall be binding upon all property subject to this Declaration and its Owners and their successors in interest as set forth herein. In the event of 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.

Section 1. DEFINITIONS.**1.1 AWBREY VILLAGE Subdivision.**

The term "AWBREY VILLAGE Subdivision" shall mean all of the real property now or hereinafter made subject to this Declaration.

1.2 AWBREY VILLAGE- Vision Concept.

Awbrey Village development goal is to create the feeling of the developments in early Bend between 1910 and 1940. When complete, the neighborhood will convey a sense of an established community, which has been here for years.

The period between 1910 and 1940 was characterized by homes in a variety of styles including; Craftsman Bungalows, English Tudors, Colonial Revivals, Prairie Style and American Four Square, among several others. Awbrey village development will strongly encourage a wide variety of home plan designs and styles of this era.

Awbrey Village will build on the theme of an old-fashioned neighborhood with narrow streets, inviting distinctive entrances, and garages at the rear of the lot with alley access where viable. The neighborhood may also include commercial development such as a General Store, which will house the Post Office mailboxes.

1.3 Declarant.

The term "Declarant" shall mean Michael J. Tennant, or his successors in interest.

1.4 Architectural Review Committee (ARC).

The term ARC shall mean the group of individuals responsible for implementing, interpreting, and enforcing the Architectural Rules and Guidelines and the Conditions, Covenants, and Restrictions. (see Section 11).

1.5 Lot.

The term "Lot" shall mean each lot described on a subdivision plat or partition map or any alteration there of as may be made by a valid lot line adjustment.

1.6 Declaration.

The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for AWBREY VILLAGE Subdivision.

1.7 Homesite.

The term "Homesite" shall mean a Lot as defined herein.

1.8 Owner.

The term "Owner" shall mean and refer to either all holders of fee title to any Lot or any person entitled to possession pursuant to a contract of sale.

1.9 Improvements.

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

1.10 Streets.

The term "Streets" shall mean any street, highway or other thoroughfare within or adjacent to AWBREY VILLAGE Subdivision 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.

1.11 Park Strip.

The term "Park Strip" shall mean the area between the curb and the property line excluding any sidewalk.

1.12 Fence.

The term "fence" shall mean a structural barrier which separates one space from another; is used to define property boundaries, or which is constructed for ornamental purposes.

Section 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR AWBREY VILLAGE SUBDIVISION.

2.1 General Declaration Creating AWBREY VILLAGE Subdivision.

Declarant hereby declares that all the real property located in Deschutes County, Oregon, known as "Awbrey Village Phase II" as recorded on June 16, 1999, and shall be 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 VILLAGE Subdivision 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 set forth in this Declaration.

Section 3. ARCHITECTURAL CONTROLS.

3.1 Approval Required.

No improvement, as defined in Section 1.9 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.

3.2 Procedure.

Any owner proposing to construct any improvements within the AWBREY VILLAGE Subdivision (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.

3.3 Required Documents.

Any owner proposing to utilize, improve and/or develop real property within the AWBREY VILLAGE Subdivision shall submit the following items for review:

- (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, and fences. The scale of plans shall be 1 inch = 20 feet or larger.
- (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 1/4 inch = 1 foot or larger.
- (c) Please refer to the Architectural Rules and Guidelines for additional documents that may be required.

3.4 Review.

All plans and drawings identified in paragraph 3.3 above shall be submitted to the ARC for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied with a check payable to Awbrey Village Home Owners Association (AVHOA) in an amount to be determined by AVHOA from time to time. No plans shall be reviewed until the architectural review fee is paid in full and ALL items noted on the Plan Review Checklist have been submitted and addressed by the applicant. The ARC shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for AWBREY VILLAGE Subdivision. In the event any of the plans do not conform to the AWBREY VILLAGE Subdivision 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 the ARC.

3.5 Architectural Guidelines.

The development concept for the AWBREY VILLAGE Subdivision shall be determined by the ARC 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, may be published and revised from time to time by the ARC, but the ARC shall not be required to do so. The ARC shall have the right to alter, rescind or amend any published guidelines without prior notice to any given 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.

3.6 Inspection.

All work related to any building, structure or improvement or any landscaping, vegetation, ground cover or other improvements within the AWBREY VILLAGE Subdivision shall be performed in strict conformity with the plans and drawings approved under paragraph 3.4 above. The ARC shall have the right to stop all work if it believes that any such work is non-conforming. In the event that it is determined by the ARC 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 ARC or officer, director, employee, agent or servant of the ARC shall not be responsible for any damages, loss, delay, cost or legal expense occasioned through a stop work notice 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 paragraph 3.2 through 3.6 above may be waived by the ARC in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for the AWBREY VILLAGE Subdivision. 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 the ARC and delivered to the party claiming the benefit of such waiver.

Section 4. RESTRICTIONS.**4.1 Access to Property.**

No other private properties may be used for access or parking without that Owner's written permission.

4.2 Alley Easements.

Lots are encumbered by recorded alley easements.

4.3 Antennas.

Television antenna, radio antenna, satellite antenna or other receiving or transmission devices are subject to approval by the ARC.

4.4 Appearance.

All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus, heat pumps, air conditioners, and other service facilities located on the Lot shall be screened from view of neighboring lots and streets and, are subject to approval by the Architectural Review Committee.

4.5 Chimney.

All exterior chimneys must be of wood, stone, textured masonry, or brick. Flues, caps and shrouds shall be painted to blend with roof colors, or body or trim colors as appropriate.

4.6 Clothes Drying Area.

No portion of any Lot shall be used as a drying or hanging area for laundry of any kind where it can be viewed from any front street.

4.7 Driveways and walkways.

Allowed materials for driveways include concrete, asphalt and masonry. All driveways shall be finished prior to occupancy. Exceptions may be allowed with ARC approval. Builders and Builder/Owners are responsible for repair of all driveway cuts, concrete breakage of curbs, sidewalks or sidewalk aprons. The Developer and ARC representative will monitor and provide written documentation to the offending Owner. All repairs must be completed within seven (7) working days from receipt of written notification from the Developer or ARC representative.

4.8 Exterior Colors and Materials.

All exterior colors and materials including those for trim windows and doors are subject to approval by the ARC. Clearly indicate on submitted plans locations of all proposed exterior colors. Samples may be standard manufacturer's paint

chip samples. Use of muted, earth related tones such as brown, green, dark red, blue or yellow which are appropriate to the historical style of the building are encouraged. Simple color schemes were typical of the early Bend neighborhoods.

All exposed exterior metals (including vent pipes, fireplace flues and flashing), PVC vents and plumbing pipes must be painted to match or blend with exterior house colors or roofing. This includes the gas furnace and gas fireplace exhausts. These metals should be located on roof areas away from view at the main front street. All exterior mechanical equipment shall be centralized and screened from view.

4.9 Exterior Lighting.

No exterior lighting shall be placed on a lot or any portion thereof without approval by the ARC.

4.10 Fences and Walls.

No fences shall be placed on any lot or any portion thereof without approval by the ARC.

4.11 Firearms and Related Activity.

The subdivision is subject to the City of Bend Codes for firearms which state, in part: "There shall be no discharge of any gun or other weapon, including spring or air-activated pellet guns or a weapon which propels a projectile by use of a bow or sling, explosives or jet or rocket propulsion."

4.12 Front Entrance.

Front entrances are essential elements in creating a sense of neighborhood; as a welcoming gesture. This element to the neighborhood may be a large columnar porch, classical portal, a loggia or other architectural feature appropriate to the style of the building. All entrance features are subject to the review and approval of the ARC.

4.13 Garages.

Lots with alley access are required to site garages and access at the rear of the lot. The intent is to build an environment suited to people by reducing the impact of the automobile on the street, not to build homes for cars. All designs shall be subject to ARC approval.

4.14 Garbage and Recycling Pickup.

Garbage and recycling pickup is anticipated to be adjacent to paving in the alley for those homes with alley access. Curbside will be in the street for those homes without alleys. However, due to the grade in the alleyways, the disposal company shall have the final right to determine where pickup will be.

4.15 Heating/ Cooling Systems.

Any exposed solar heating system must be approved by the ARC. All exterior elements of heating and/or cooling systems shall be out of the direct view of neighboring homes and concealed from street view.

4.16 House Plan Design.

The use of the same house front exterior elevation is not allowed. The intent of this rule is to avoid the repetitive, exterior sameness that results from building the same plan side-by-side on the same block.

4.17 Improvements.

Each Lot within Awbrey Village Subdivision shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. Home building must be completed within one year from the start of construction. ("Complete" means obtaining certificate of final inspection from the city.) Yards and park strip must be improved and landscaped not later than 90 days from occupancy including the park strip area between the sidewalk and curb; in the event that the house is completed in winter, a 60 day extension may be granted.

Each owner shall attempt to preserve as many trees on each lot as possible. Builders shall not disturb adjoining lots without permission. Each residence shall contain a minimum of 1400 square feet (not to include garage or storage). No T-1-11 or similar type of siding will be allowed on the exterior walls of any home, garage or any improvement. Installation of underground sprinkler systems for front lawns and park strip of each home is mandatory. All lots shall provide a front walk a minimum of 3' in width, which access the front of the house from the sidewalk or street, exceptions approved by ARC.

While the park strip in front of each home is within the street right-of-way, it is each homeowner's responsibility to install and maintain sprinklers, landscaping and any retaining wall within the parkstrip.

4.18 Landscaping.

All disruption of the natural landscape must be repaired within 90 days of occupancy. On unimproved lots, areas that have been disturbed and are highly visible or that constitute a dust problem must be reestablished within six months. During the winter, a 60-day extension may be granted.

Those lots with electrical transformers located in the park strip shall not plant any trees in the front and 3' feet within the side and rear of the transformer.

The front and side yards shall be covered with a minimum of 30% grass (sod). An exception may be allowed for steep, hillside lots with approval from the ARC. Landscaping that blends with the natural surroundings is encouraged. Excellent

advice can be gained from the local nurseries and landscaping professionals. All landscape design is subject to review and approval by the ARC.

4.19 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 eight (8) persons.

4.20 Livestock, Poultry and Pets.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and do not constitute a nuisance.

All AWBREY VILLAGE homesites are within the City limits of Bend and resident animals are subject to the City of Bend leash laws. Animal nuisance ordinances are also in effect for barking and trash strewing dogs. If an animal is off the owner's homesite, it must be on a leash. Please contact the City of Bend Police Department to report violations. The City of Bend is best equipped to deal with these problems and can enforce stringent fines.

4.21 Lot Area Width, Setback Lines.

Lot area, width and setback lines shall be in accordance with the requirements of the applicable City of Bend Zoning and Use Regulations and as shown on the Plat. No residential lot shall be further partitioned or subdivided.

4.22 Nuisances.

No obnoxious or offensive activity shall be carried on upon any Lot therein nor shall anything be done thereon which may be an annoyance or nuisance to the other Owners. Boundary fences, walls or hedges must be kept in good condition and repair. Lawns must be cut sufficiently and maintained year round so that they do not become eyesores and detrimental to the values of other properties. Trees and shrubs that encroach on any other lot shall be trimmed and pruned if it is a nuisance to neighbors.

4.23 Occupancy.

No occupancy will be allowed before:

- (a) Final inspection and approval by the ARC and compliance with all governmental regulations.
- (b) Removal of all construction waste, materials and portable toilet.
- (c) Completion of exterior painting.

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, their family or their guests, except that each Owner shall be permitted to rent the unit when he is not in occupancy. The rental period shall not be less than one month. Home occupations will be allowed as under the current City of Bend Zoning Ordinance.

In the event that the City of Bend approves proposed living quarters above garages, a maximum of two persons will be allowed and only one (1) additional automobile is allowed per living unit and must be parked alongside the garage on a concrete or asphalt pad.

If the proposed above-garage living quarters receives City of Bend approval, and the Owner wishes to build and rent one of the units, the Owner must occupy the other residence at all times.

4.24 Outside Fixtures.

No recreational equipment, like basketball hoops or play structures, are allowed in any street. Basketball is only allowed in the alleys. Children's play structures are only allowed in the backyard. Doghouses shall be limited to two, and only allowed in the backyard.

4.25 Parking.

No parking on any street shall be allowed of any horse trailer, travel trailer, commercial 18-wheel tractor, boat trailer, camper or incapacitated motor vehicle. Boats, trailers, buses, motor homes, commercial vehicles, trucks larger than one (1) ton, recreational vehicles, disabled vehicles or other similar vehicles shall not be parked or stored on any Lot in a position whereby said vehicles will be visible from the street. No unit shall exceed 25 feet in length. Owners are encouraged to utilize asphalt pads. No parking whatsoever shall be allowed in alleys; it is each owner's responsibility to see that their guests, invitees, and lessees abide by this condition. No vehicle shall be parked in the street for more than 24 hours at a time.

4.26 Required Setbacks.

All Improvements shall be erected, placed, altered and maintained in accordance with all applicable City of Bend setbacks, building height limitations, solar setbacks, building codes and the ARC guidelines for AWBREY VILLAGE Subdivision.

4.27 Roofs.

All roofs and roofing materials shall be limited to quality composition roofs (30-year or better), slate, tile, fiberglass or other acceptable fire resistant materials approved by the ARC. No wood, shake-shingle or other highly combustible roof

materials will be allowed. Roof materials shall be of earth related colors; no metal roofs are allowed. Colors shall not be bright and outstanding. Suggested colors include Weatherwood, Ebonywood (black), and Driftwood (gray).

4.28 Sidewalks.

Owners are responsible for clearing sidewalks of snow and debris.

4.29 Sight Distance at Intersection.

Sight distance at intersections shall conform to City of Bend ordinance.

4.30 Signs.

No sign of any kind shall be displayed to public view on or from any Lot without the ARC prior written consent provided, however, that an Owner may display not more than one (1) "for sale" sign or one (1) "for rent" sign per Lot. Said signs shall be limited in size to not more than four (4) square feet.

4.31 Street Lights.

One light will be provided at the intersections of Colonial and Summit, and Merchant Way and Summit.

4.32 Structures and Out Buildings.

No house trailer, manufactured home, modular home, mobile home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot. No portable storage units shall be allowed.

Only earth tone (brown, gray, etc.) colored tarps and covers shall be allowed.

4.33 Model/Offices.

A model/office is allowed for any builder with multiple homes for sale with Declarant's approval.

4.34 Utilities.

No above ground utilities, pipes or wires shall be used to connect improvements with supplying facilities.

4.35 Vacant Lot.

The Owner of a vacant Lot shall maintain the Lot year round in a groomed and attractive manner so that the Lot does not become an eyesore or fire hazard and detrimental to the values of other properties.

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4.36 Water and Sewer Supply.

No individual water supply system or sewage disposal system shall be permitted on any Lot.

Section 5. DECLARANTS IMMUNITY.

The Declarant has a non-exclusive right and power to enforce these Covenants, Conditions, and Restrictions, but the Declarant does not have the legal obligation to enforce or attempt to enforce the provisions hereof. In the event the Declarant refuses, neglects, fails or is negligent in enforcing or attempting to enforce these Covenants, Conditions and Restrictions there shall not exist or be created any cause of action or claim against Declarant, and each owner or any person or entity claiming by, through or from said owner hereby releases Declarant from and against any claim arising in connection with the development of Awbrey Village or related to Declarant's acts or omissions in preparing, filing or enforcing these Covenants, Conditions and Restrictions and shall be stopped from making or enforcing any such claim.

Section 6. DURATION AND AMENDMENT OF THIS DECLARATION.

6.1 Duration.

The Covenants, Conditions and Restrictions of AWBREY VILLAGE Subdivision shall 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 (30) years from the date this Declaration is recorded. However, unless within one (1) year from the date of said termination, there shall be recorded an instrument directing the termination of this Declaration signed by the 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 an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of such period the Covenants, Conditions, and Restrictions for AWBREY VILLAGE Subdivision 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 written consent of the Owners of seventy-five (75%) of the Lots subject to these Restrictions.

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

Section 7. ASSOCIATION.

Declarant shall organize an association of all of the Owners within Awbrey Village. Such Association, its successors, and assigns, shall be organized under the name "Awbrey Village Homeowners Association, Inc." or such similar name as Declarant shall designate, and shall have such property, powers, and obligations as are set forth in this Declaration for the benefit of Awbrey Village and all Owners of property located therein.

7.1 Organization.

Declarant shall, before the first Homesite is conveyed to an Owner, organize the Association as a nonprofit mutual benefit corporation under the Oregon nonprofit Corporation Act.

7.2 Membership.

Every Owner of one or more Homesites within Awbrey Village shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Homesites within Awbrey Village, be a member of the Association. Such membership shall commence, exist, and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

7.3 Voting Rights.

Voting rights within the Association shall be allocated as follows:

- a) Homesites. Except as provided in Section 7.3(b) with respect to Class B members, Homesites shall be allocated one vote per Homesite.
- b) Classes of Voting Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to voting rights for each Homesite owned computed in accordance with Section 7.3(a) above. When more than one person holds an interest in any Homesite, all such persons shall be members. The vote for such Homesite shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Homesite.

Class B. The Class B member shall be Declarant and shall be entitled to nine times the voting rights computed under Section 7.3(a) for each Homesite owned by Declarant. The Class B membership shall cease and be converted to

Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) When seventy-five percent (75%) of the Homesites in the final phase of development of Awbrey Village have been sold and conveyed to Owners other than Declarant; or
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

7.4 Powers and Obligations.

The Association shall have, exercise, and perform all of the following powers, duties, and obligations;

- (a) Declaration. The powers, duties and obligations granted to the Association by this Declaration.
- (b) Statutory Powers. The powers, duties, and obligations of a mutual benefit nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act and of a homeowners association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time.
- (c) General. Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within Awbrey Village.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the Oregon Nonprofit Corporation Act.

7.5 Liability.

In consideration for each officer or member of the Board of Directors consent to serve the Awbrey Village Home Owners Association, the owners, their successors and assigns, hereby release and forever acquit each officer and member of the board from all acts and omissions performed in their capacity as officers or board members. This release includes both ministerial and discretionary acts, omissions, and decisions. No officer or member of the board shall be liable at law or in equity for their individual acts or omissions or the acts, omissions or decisions of the officers or board as a whole.

7.6 Interim Board; Turnover Meeting.

Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarant or their successors have been elected by the Owners at the

turnover meeting described in this Section. Declarant shall call a meeting by giving notice to each owner as provided in the Bylaws of the Association for the purpose of turning over administrative responsibility for Awbrey Village to the Association not later than one hundred eighty (180) days after Homesites representing seventy-five percent (75%) of the votes in all phases of Awbrey Village computed in accordance with Section 7.3(a) above have been sold and conveyed to Owners other than Declarant. If Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 7.7 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

7.7 Transitional Advisory Committee.

Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant of Awbrey Village to administrative responsibility by the Association. Not later than the ninetieth (90th) day after the Declarant has conveyed to Owners other than Declarant Homesites representing sixty-seven percent (67%) of the votes of all phases in Awbrey Village computed in accordance with Section 7.3(a) above, Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Declarant, shall select two or more members. Declarant may select no more than one member, which may be the Declarant. The Transitional Advisory Committee shall have reasonable access to all information and documents which Declarant is required to turn over to the Association under ORS 94.616.

- (a) Declarant Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.
- (b) Owners' Failure to Select Members. Notwithstanding for foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.
- (c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 7.6 above has been held.

7.8 Declarant Control After Turnover.

After the turnover meeting described in Section 7.6 above, Declarant shall continue to have the voting rights described in Section 7.3(b) above. In addition, a majority of the Board of Directors of the Association shall be elected by Declarant, as Class B member, with the balance of the Board of Directors elected by the Class A members. After termination of Class B membership, all directors shall be elected by the Class A members.

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7.9 Subassociations.

Nothing in this Declaration shall be construed as prohibiting the formation of subassociations within Awbrey Village.

7.10 Association Rules and Regulations.

The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Homesites and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property within Awbrey Village. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Homesites upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

SECTION 8. MAINTENANCE, LIGHTING, AND SERVICES.

8.1 Maintenance and Lighting.

The Association shall perform all maintenance upon Pedestrian Paths, Alleyways (including Alleyway snow removal), and parkway landscaped areas along the north Right-of-Way on Summit Drive. The Association shall also incur expenses for water bill for parkway-landscaped areas along the north Right-of-Way on Summit Drive and replacement of streetlights, if needed.

SECTION 9. ASSESSMENTS.

9.1 Annual Operating Budgets.

The Association Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, and previous overassessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law. The method of adoption of the budget shall be as provided in the Bylaws.

9.2 Operating Assessments.

All Homesites shall be assessed equally for operation costs. The amount of the assessment per Homesite shall be determined by dividing the annual budget by the total number of Homesites. Assessments exceeding 10% increases annually require majority vote of members.

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9.3 Reallocation Upon Annexation or Withdrawal of Property.

When additional phases of Awbrey Village are platted, the Association shall, within 60 days recompute the budget in accordance with Section 9.1 based upon the additional Homesites and recompute assessments for each Homesite based upon the formula set forth in Section 9.2. Newly platted Homesites shall be subject to assessment from the time of platting of such Homesites to Awbrey Village, in accordance with the provisions of Section 9.2. The Association shall send notice of the assessment to the Owners of newly platted Homesites not later than sixty (60) days after the platting or with the next occurring annual assessment whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days from the date that notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. To the extent that any adjustment results in a credit for an Owner, such credit shall be applied towards the next occurring payment or payments on the annual assessment.

9.4 Payment of Assessments.

The Association shall, not less than annually, provide notice to the Owner of each Homesite of the amount of the assessments for such Homesite. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. The first assessment is due 1/31/99 and will be set at \$65.

9.5 Creation of Lien; and Personal Obligation of Assessments.

Declarant, for each Homesite owned by it within Awbrey Village does hereby covenant, and each Owner of any Homesite by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorney fees imposed pursuant to Section 10.6, shall be a charge on the land and a continuing lien upon the Homesite against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligations of the person who was the Owner of such Homesite at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 10 below.

Section 10. ENFORCEMENT.

10.1 Provision Violations.

In the event any Owner, agent, tenant or the invitee of any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Homesites, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such owner is responsible for them, and may, after reasonable notice, do any or all of the following: (a) suspend the Owner's voting rights for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) bring suit or action against such Owner to enforce this Declaration, (c) impose fines as provided in Section 10.5, or (d) any other action authorized by law

10.2 Nonqualifying Improvements and Violation of General Protective Covenants.

In the event any Owner constructs or permits to be constructed on such Owner's Homesite and Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Homesite, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Homesite, the Improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives or remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after written notice to the Owner, then the Association acting through its Board of Directors, shall have, in addition to any other rights or remedies provided in this declaration, at law or inequity, the right to do any or all of the following:

- (a) Remove Cause of Violation. Enter onto the offending Homesite, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation, or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done.
- (b) Sit or Action. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.
- (c) Fines. Impose one or more fines as provided in Section 10.7.

10.3 Default in Payment of Assessments; Enforcement of Lien.

If an assessment, fine, or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth below and, in addition, the Association may exercise any or all of the following remedies:

- (a) Suspend of Rights; Acceleration. The Association may suspend such Owner's voting rights until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable.
- (b) Lien. The Association shall have a lien against each Homesite and improvements thereon for any assessment levied and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Homesite from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation, duration and foreclosure of liens established on real property under ORS 94.709 et. seq. shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under such statutes. The Association, its duly authorized agents, may bid on the Homesites at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Homesite. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.
- (c) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in paragraph 10.3(b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- (d) Other Remedies. The Association shall have any other remedy available to it by law or in equity.

10.4 Interest, Expenses, and Attorney Fees.

Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at the rate of twelve percent (12%) per annum. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed ten percent (10%) of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or

action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

10.5 Fines.

The Board of Directors may establish a schedule of fines applicable to violations of this Declaration or rules and regulations established pursuant to this Declaration. Fines may be imposed by the Board of Directors after giving the alleged violator notice of the proposed fine and an opportunity to be heard. Fines shall be payable within ten days after receipt of written notice of the imposition of the fine. All fines shall be deposited in the Association's operating account.

10.6 Nonexclusiveness and Accumulation of Remedies.

An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

10.7 Severability.

Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 11. ARCHITECTURAL REVIEW COMMITTEE.

11.1 Responsibility.

There shall be an Architectural Review Committee (ARC). The committee shall be responsible for implementation, interpretation and enforcement of the Architectural Rules and Guidelines. The committee or any of its members have the right to enforce the Awbrey Village Conditions, Covenants, and Restrictions. Each decision of the ARC made in conjunction with its responsibilities shall be conclusive, determinative and binding upon the owners and their agents.

The ARC may enforce the Architectural Rules and Guidelines in the same manner and are subject to the same requirements, restrictions and effects as set forth in Section 7 hereof.

11.2 Liability.

In consideration for each committee member's consent to serve on the committee, the owners, their successors and assigns, hereby release and forever acquit each member of the committee from all acts and omissions performed in their capacity as committee members. This release includes both ministerial and discretionary acts, omissions, and decisions. No member of the committee shall be liable at law or in equity for their individual acts or omissions or the acts, omissions or decisions of the committee as a whole.

11.3 Non waiver.

The guidelines shall generally set forth the procedures owners are to follow for the approval, construction and maintenance of any improvement, landscaping and the like on any Lot within Awbrey Village Subdivision.

11.4 Membership.

The ARC shall initially consist of three members appointed by the Declarant. Those members shall be , Sandy Garner, Kris Rees, and Rod Tomcho. A majority of the ARC may designate a representative to act for it. In case of death or resignation of any member, the Declarant may appoint a successor. Neither the members of the ARC nor its designated representative shall be entitled to any compensation for services performed by said members. In the event of the deaths or resignations of all members of the ARC occurs without successors having been appointed, the Declarant shall appoint the successors.

When 90% of the homes are completed, the majority of the owners may elect the members of the ARC. In case of death or resignation of any member, the remaining member or members shall appoint a successor.

11.5 Decisions.

Except as otherwise provided herein, a majority of the Architectural Review Committee shall have the power to act on behalf of the committee without the necessity of a meeting and without the necessity of consulting the remaining members of the committee. The committee shall render its decisions in writing, copies of which shall be sent or delivered to the owner involved.

11.6 Approvals.

The ARC shall approve or disapprove plans within a reasonable time after the same has been submitted to it in writing. The ARC will not commence reviews of an applicant's submittal until ALL items noted on the Plan Review Checklist have been submitted and addressed by the applicant. There shall be no construction or disturbance of any vegetation on any lot before approval is obtained by an owner.

Approval by the ARC of any matter proposed to it shall not be deemed a waiver or a precedent impairing the ARC's right to withhold approval as to any similar matter thereafter submitted to it.

Section 12. EFFECT OF DECLARATION.

The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in AWBREY VILLAGE Subdivision and shall bind, benefit and burden each Lot in AWBREY VILLAGE Subdivision, including any additions thereto. The terms of this Declaration shall inure to the benefit of the Owners of any Lot in AWBREY VILLAGE Subdivision, their successors, assigns, heirs, administrators, executors, mortgagees, invitees, or any other party claiming or deriving any right, title or interest or use in or to any real property in AWBREY VILLAGE Subdivision. The restrictions set forth herein shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as AWBREY VILLAGE Subdivision and their successors in interest, including any person who holds such interest as security for the payment of any 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.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 16th day of June, 1999.

By Michael J. Tennant
Michael J. Tennant

STATE OF OREGON, County of Deschutes, ss.

The above named MICHAEL J. TENNANT personally appeared before me and acknowledged the forgoing instrument as his voluntary act.



Before Me: Camille M. Scott
NOTARY PUBLIC FOR OREGON
My commission expires: 6-18-02