

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2004-06378



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DESCHUTES COUNTY CLERK

CERTIFICATE PAGE



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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CANAL CROSSINGS**

These Covenants, Conditions and Restrictions are made this 5TH day of FEBRUARY 2004, by WICK Enterprises, LLC , an Oregon limited liability company, hereinafter referred to as "Declarant", as owner of the real property in the City of Bend, County of Deschutes, State of Oregon, described in Exhibit "A" attached hereto and incorporated herein by reference.

The property described on Exhibit "A" is hereby subject to these Covenants, Conditions and Restrictions and will be known as and hereinafter referred to as Canal Crossings.

Canal Crossings is being developed as a residential community. Except where this Declaration for Canal Crossings conflicts with any applicable government municipal regulations, this Declaration shall be binding upon all subject to this Declaration and their successors in interest as set forth herein. In the event any of the development standards or use restrictions of this Declaration should conflict with a more restrictive standard or requirement set by an applicable zoning ordinance of the City of Bend, the more restrictive standard or requirement of the applicable Coty of Bend ordinance shall apply.

Section 1. DEFINITIONS

- 1.1 Canal Crossings: The term "Canal Crossings" shall mean all of the real property now or hereafter made subject to this Declaration.
- 1.2 Declarant: The term "Declarant" shall mean WICK Enterprises, LLC, or its successors in interest.
- 1.3 Block: The term "block" shall mean those areas designated as blocks on subdivision or partition maps according to the records of Deschutes County.
- 1.4 Lot: The term "lot" shall mean each lot described on a subdivision plat or partition map to any alteration thereof as may be made by a valid lot line adjustment.
- 1.5 Declaration: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Canal Crossings.
- 1.6 Homesite: "Homesite" shall mean a lot as defined herein.
- 1.7 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.

After recording, return to:
Wight Development
1293 NW Wall, Suite 111
Bend, OR 97701

- 1.8 **Improvements:** The term “improvements” shall include, but not be limited to, any buildings, private roads, driveways, parking areas, fences and barriers, retaining walls and stairs, decks, hedges, windbreaks, planting, 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 **Streets:** The term “streets” shall mean any street, highway or other thoroughfare within or adjacent to Canal Crossings 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.

Section 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS RESTRICTIONS FOR CANAL CROSSINGS

- 2.1 **General Declaration Creating Canal Crossings.** Declarant hereby declares That all of the real property located 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 Canal Crossings 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, power and responsibilities of Declarant and owners of parcels within such added land shall be the same as in the case of the land described on Exhibit “A”.
 - (b) The notice of addition of real property referred to above shall contain a 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 his discretion, specify to regulate and control the use; occupancy and improvement of such added real property.

Section 3. ARCHITECTURAL CONTROLS

- 3.1 **Approval Required.** No improvement, 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 Declarant. All approvals shall be in conformance with the building site established on each lot by the Declarant for Canal Crossings. Building sites for Canal Crossings will be within the setbacks established in the Architectural Design Guidelines.
- 3.2 **Procedure.** Any owner proposing to construct any improvements Within Canal Crossings (including any exterior alteration, addition, destructions or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by Paragraphs 3.3. Failure to follow such procedures or obtain such approvals as required by Paragraphs 3.3 below shall be deemed a breach of this Declaration.
- 3.3 **Required Documents.** Any owner proposing to utilize, improve or develop real property within Canal Crossings shall follow the Architectural Design Guidelines and the Canal Crossings Design Review Process.
- 3.4 **Upon clearing or excavation of lot for construction improvements of any type, the lot owner has (12) months to complete the project. Failure to complete any improvement project within the (12) month period shall be deemed a violation of the Covenants, Conditions and Restrictions for Canal Crossings.**
- 3.5 **Completion of any construction improvement shall require landscaping per the Canal Crossing Architectural Design Guidelines. All landscaping must be completed within (6) months of construction completion. Failure to follow the landscaping guidelines shall be deemed a violation of the Covenants, Conditions and Restrictions for Canal Crossings.**

- 3.6 Addendum "A" recorded with this document includes:
- I. Canal Crossings Introduction to Architectural Review Process,
 - II. Canal Crossings Design Review Process,
 - III. Canal Crossings Lot and Building Regulations,
 - IV. Canal Crossings Architectural Design Guidelines and
 - V. Canal Crossings Architectural Review Application

Section 4. RESTRICTIONS ON USE OF PROPERTY

- 4.1 **Occupancy.** No owner shall occupy, use or permit his lot or any part thereof to be used for any purpose other than a private residence for the owner, his family or his guests, except that each owner shall be permitted to rent the unit when he is not in occupancy. Secondary dwelling units that are on lots permitted by the City of Bend may be rented when not occupied by the owner, his family or guests.
- 4.2 **Improvements.** Each lot within Canal Crossings 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 within the Declarant's prior written consent; provided, however, that an owner may display not more than one (1) "for sale" sign per lot which has a maximum area not to exceed 600 square inches, the longest dimension being not greater than 25 inches placed not closer than three (3) feet from front property line.
- 4.7 **Exterior lighting or Noise Making Device.** No exterior lighting or noise making device shall be placed on a lot or any portion thereof without the Declarant's prior written consent.

- 4.8 **Antennas.** No television antenna, radio antenna, satellite antenna, or other receiving device shall be placed on any lot without the Declarant's prior written consent.
- 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 (10) persons.
- 4.10 **Mobile Homes.** No house trailer, mobile home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any lot.
- 4.11 **Single Family Residences.** No more than one single family residence shall be erected or placed on any lot. With the exception of lots that have been approved by the City of Bend for two (2) dwelling unit lots.
- 4.12 **Utilities.** No above-ground utilities, pipes, or wires shall be used to connect improvements with supplying facilities.
- 4.13 **View.** The height of 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. Each lot owner does acknowledge that every lot owner has the right to build a home not exceeding 30 feet in height and that their views may be affected in the future.
- 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. Camping trailers, commercial trucks, motorhomes, campers, boats, cars under repair and boat trailers may not be parked or placed on any lot for any extended period over three days unless they are screened from view by a minimum six foot (6 ft.) solid fence.

- 4.15 **Transient Rental Use.** No owner or owners of any unit within Canal Crossings shall be permitted to Rent their unit to any person or persons for transient occupancy which shall be for a period of 30 days or less. A rental shall be defined as the use or possession or the right to use or possess for lodging or sleeping purposes any unit in Canal Crossings and rent shall mean the consideration charged whether or not received by the owner, for the occupancy of the unit any money, goods, labor, credits, property or other consideration valued in money without any deduction. Transient use shall not include a rental of any unit for a period of in excess of 30 consecutive calendar days.
- 4.16 **Open Burning.** No open burning of any type shall be allowed, except warming fires during initial construction of single-family residences.

Section 5. DETERMINATION OF DECLARANT'S ROLE

- 5.1 **Declarant's Control.** At such time as the Declarant shall no longer desire to exercise the architectural, landscaping, signing and lighting controls over any lots within Canal Crossings, 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 Canal Crossings. Recordation of such a declaration shall formally terminate Declarant's interest and all rights of architectural landscaping, signing and lighting controls, as well as any other duties of Declarant under this Declaration.
- 5.2 **Formation of CCARC:**
- (a) Upon formal termination of Declarant's control, Declarant shall form an Oregon nonprofit organization called the Canal Crossings Architectural Review Committee (CCARC). The CCARC shall be governed by a five-person board of directors. CCARC shall succeed to all powers, responsibilities and rights of Declarant under this Declaration with respect to the exercise of architectural, landscaping, signing and lighting controls.
 - (b) Within thirty (30) days after the commencement date of CCARC, the initial board of directors shall be elected. Persons eligible for the initial CCARC shall be limited to owners of any lot within Canal Crossings. Declarant shall solicit from and circulate to all lot owners a list of nominees for the initial board of director's positions within the 30 day CCARC organizational period. Declarant shall

then conduct an election of the initial board of directors. The five nominees obtaining the five highest vote totals shall constitute the initial board of directors.

- (c) The total number of votes entitled to be cast for each director's position shall be based upon the total number of lots within Canal Crossings. Each lot owner shall have the right to cast one vote for each lot owned. The initial board of directors shall meet ten (10) days after their election and may, at that time, adopt any governing documents, including bylaws, guidelines, procedures, rules and regulations, relating to the architectural, landscaping, signing and lighting controls within Canal Crossings.

- 5.3 **Failure to Organize.** In the event Declarant is unsuccessful in organizing the board of directors of CCARC within the 30-day organizational period specified above, Declarant shall have no further responsibilities relating to CCARC and the CCARC board of directors shall be organized exclusively by the owners of lots within Canal Crossings. Such failure of organization of the CCARC board of directors shall not affect the existence of CCARC or the effectiveness of this Declaration.

Section 6. DURATION AND AMENDMENT OF THIS DECLARATION

- 6.1 **Duration.** The Covenants, Conditions and Restrictions of Canal Crossings shall continue to remain in full force and effect at all times within respect to all property, and each part thereof, now or hereafter made subject thereto (subject however, to the right to amend and repeal as provided for 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 owners of not less than two-thirds 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 years and thereafter for successive periods of ten years unless within one year prior to the expiration of such period the Covenants, Conditions and Restrictions for Canal Crossings 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 fifty-one percent (51%) 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 Recording. Any amendment, deletion or repeal of this Declaration Shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

Section 7. ENFORCEMENT

- 7.1 This Declaration shall be specifically enforceable by Declarant or by any owner of any lot in Canal Crossings. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement or condition.
- 7.2 In the event that legal suit or action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney fees incurred in such suit or action (or any appeal there from) as adjudged by the trial or appellate court.

Section 8. EFFECT OF DECLARATION

The covenants, Conditions and Restrictions of this Declaration shall run with the land included in Canal Crossings and shall bind, benefit and burden each lot in Canal Crossings, 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 Canal Crossings, their successors, assigns, heirs, administrators, executors, mortgages, lessees, invitees or any other party claiming or deriving any right, title or interest or use in or to any real property in Canal Crossings. The use restrictions and regulations set forth in Sections 4 and 5 of this Declaration shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as Canal Crossings and their successors in interest as set forth in this Declaration, including any person who holds such interests as

ADDENDUM "A"

I. CANAL CROSSINGS INTRODUCTION TO ARCHITECTURAL REVIEW PROCESS

The Architectural Design Guidelines are intended to define and describe the Developers' vision for the character of Canal Crossings. The goal is for the architectural styles of the homes to blend and complement each other along with being consistent with the natural environment.

There is not a particular architectural style that is required in Canal Crossings; the architectural character should be tasteful, and appropriate for the neighborhood identity. The designs should reflect the influences of traditional homes often described as Craftsman, Northwest, Tudor and Cottage. The Architectural Design Guidelines will address the design parameters for the individual houses in Canal Crossings.

ADDENDUM "A"

II. CANAL CROSSINGS DESIGN REVIEW PROCESS

To facilitate the design development process of each home within Canal Crossings, the Canal Crossings Architectural Review Committee will review each proposed residence prior to submission of plans to the City of Bend Building Department. Upon receipt of design approval from Canal Crossings, the building plans may be submitted to the City of Bend for permit issuance. Canal Crossings approval deals only the aesthetic qualities of the building and does not address structural or zoning compliance.

The design review submittal shall consist of two (2) copies of the following drawings presented to the Canal Crossings, or its authorized representative, on 24" x 36" (minimum) sheets, except the site and landscaping plans which can be on 8 ½" x 11 paper.

- 1) Elevations, all sides (with color chips)..... ¼" scale
- 2) Floor plans and footprint..... ¼" scale
- 3) Site layout..... 1" = 20' (minimum)
- 4) Landscape and hardscape conceptual plan..... 1" = 20' (minimum)

The fee for the design review is \$250.00 payable to WICK Enterprises, LLC or designee. Submittals shall include the plans, completed application form and a check for the review fee. Contact WICK Enterprises, LLC (Rick Wight) @ (541) 948-2710. Written response will be sent by mail within fifteen (15) working days.

ADDENDUM "A"

III. CANAL CROSSINGS LOT & BUILDING REGULATIONS

Each home within Canal Crossings will conform to the applicable zoning, use, and height restrictions imposed by the City of Bend. The siting of each home on its lot will be in accordance with the setback requirements of the City of Bend.

It is preferable to site the homes so that the front of the home is closer to the street than the garage. Porches are encouraged. Designs that allow for spacious yards are also encouraged.

Use of architectural and landscape details as described in the Architectural Design Guidelines will enhance the street scene and provide an inviting sense of neighborhood.

Lots that allow an additional dwelling shall follow the architectural design guidelines. The additional dwellings will conform to all applicable zoning, use and height restrictions imposed by the City of Bend.

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.

WICK Enterprises, LLC

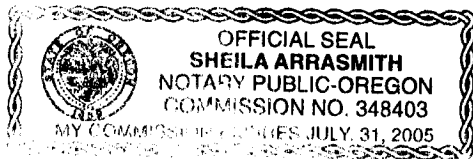
By: *Paul Imwalle*
Paul Imwalle, member

By: *Cathy Imwalle*
Cathy Imwalle, member

By: *R Wight*
Wight Development, LLC, member

STATE OF OREGON, County of Deschutes.

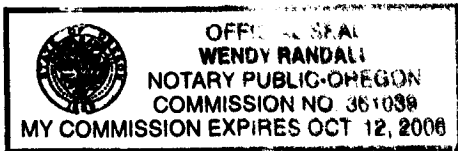
The foregoing instrument was acknowledged before me this 5th day of Jan, 2004, by Paul and Cathy Imwalle, Declarant.



Sheila Arrasmith
Notary Public for Oregon
My Commission Expires: July 31, 2005

STATE OF OREGON, County of Deschutes.

The foregoing instrument was acknowledged before me this 5th day of Feb, 2004, by Rick Wight, President of Wight Development, LLC.



Wendy Randall
Notary Public for Oregon
My Commission Expires: Oct 12, 2006
361039

ADDENDUM "A"

IV. CANAL CROSSING ARCHITECTURAL DESIGN GUIDELINES

- SIZE:** Principle dwelling units shall have a minimum of 1400 square feet of living space. Living space does not include garages, decks, porches, or covered storage. Secondary dwelling units as permitted by the City of Bend shall adhere to all Canal Crossing Architectural Design Guidelines. Secondary dwelling unit foundation footprints shall not exceed 75% of the primary dwelling units footprint. The primary and larger of the two dwelling units shall be closet to the public right of way (street) and shall be constructed first or concurrently with secondary dwelling unit.
- Height :** Maximum building height is controlled by the City of Bend zoning Ordinance. However, care should be taken to preserve views from Neighboring homes.
- Duplication:** There shall be no duplication of street-side elevations.
- Porches** Covered front porches are encouraged. Design, size, and placement shall integrate with the overall design of the home.
- Decks:** Decks that are 30" to 60" above finish grade shall be skirted with siding to match the residence. Decks over 60" above finish grade shall use structural posts proportioned to the size and height of the deck. sided columns are preferred.
- Garages:** Each residence will have a minimum two (2) car attached garage. overhead doors shall be designed to match the character of the dwelling unit and may be metal or wood. Overhead doors that face the street shall be limited to three (3) single doors or a combination of one (1) single door and one (1) double door. Overhead doors taller than 10' are discouraged. As with the porches – design, size, and placement shall integrate with the overall design of the home.
- Fences:** Fences within twenty feet (20') of the street shall be a maximum of 42" tall, and shall be wood, vinyl, or wrought iron. Rear yard fences shall be a maximum of 72" tall, and shall be wood, masonry or a combination thereof, or other materials subject to approval. Materials and colors are to be approved.
- Chimneys:** All venting of fireplaces and pellet stoves, must have a chase and a chase cap that shields from view the flue and flue cap unless they are side-vented.
- Doors:** Entry doors shall be wood or glass or approved fiberglass. Patio doors may be vinyl, wood, or clad wood frame. Other exterior doors may be

wood, metal, glass or fiberglass. The panel design and glazing must be appropriate for the design of the residence.

- Windows:** Windows may be vinyl, clad wood, or wood frame. Glass block may be used where appropriate as an exterior design element. Use of window grids is encouraged. Size, shape, placement, and proportions must contribute to the overall design of the residence. All windows must have exterior trim. For vinyl windows a minimum 5/4" x 4" material shall be used.
- Roof Pitch:** Roof pitches shall be a minimum of 5:12. Overhangs for gable ends shall be 12" to 24", and eaves shall be 18" to 30". Fascia shall be scaled appropriately with a minimum 2 x 6 at small gables. Larger gables shall be 2 x 8 or 2 x 10 with 1 x 2 minimum shake mold. Exposed rafter tails must be a minimum of 2 x 6. Eaves without exposed tails shall have 2 x 6 minimum size fascia.
- Siding:** Siding shall be horizontal lap with a maximum exposure of 7 1/2" accent materials such as side-wall shakes, knee braces, and trim bands are encouraged. Stucco may also be used if appropriate to the design integrity.
- Masonry:** Use of masonry is encouraged. Natural or manufactured stone is Acceptable. Brick and "texture" block may also be used.
- Roofing:** Roofing material must be 25 year Architectural comp shingles or better, or concrete tile. Dura Ridge, or equal is required on comp shingle roofs.
- Columns:** Columns and posts on street-side elevations must be a minimum of 8" x 8". Bases for columns must have a minimum size of 16" x 16".
- Railings:** Railings on street-side elevations must be wood or wrought iron and finished to coordinate with the color of the residence. Unfinished wood is not allowed.
- Colors:** Exterior surfaces that are painted and/or stained shall have a minimum of two (2) colors, and a maximum of four(4) colors. All original materials and finishes must be approved by the Canal Crossings Review Committee. Colors that blend with the surrounding landscape are preferred.
- Drives:** All drive-way surfaces shall be concrete, asphalt, or masonry.

Lighting: Exterior lighting must conform to the City of Bend lighting ordinance. indirect lighting is preferred. Vapor and/or fluorescent lighting is prohibited.

Landscape: Front yard and street side corner lot side yards must be landscaped. Landscaping shall utilize elements and flora of the region, including ground cover, natural rock areas, shrubs, trees and other elements consistent with the architectural and landscape plans for the lot.

ADDENDUM "A"

V. CANAL CROSSINGS ARCHITECTURAL REVIEW APPLICATION

Date _____

Lot _____

Property Owner _____

Mailing Address _____

Telephone (daytime) _____ (evening) _____

Architect/Designer _____

Telephone (office) _____ (mobile) _____

Contractor _____

Address _____

Telephone (office) _____ (mobile) _____

CCB License # _____ Liability Insurance Carrier _____

Site Planning

1. Square footage of living space: _____
2. Square footage of garage: _____
3. Height of highest point of building: _____
4. Are there any encroachments of the building, rooflines, eaves, driveway or parking areas, decks, or screening walls, over any required minimum setback? _____. If Yes, please describe: _____
5. Do you plan to bring in any fill material, or remove material from the site? _____. If yes, please describe: _____
6. Are any trees over 7" in diameter or 20' in height to be removed and are they located correctly on the site plan? _____ if yes, please describe: _____

Driveways and Walkways:

1. Width of access drive at road interface in _____ feet.
2. Paving material for access drive: _____
3. Color of paving material: _____
4. Describe material and color for paths, steps, patios, decks and any paved areas other than access drive: _____

Utilities:

1. Where will the electrical meter panel be located? _____
(also indicate on site plan)

Fences:

1. Are any fences or screening walls proposed? If so describe in detail the location, height, material, color and construction of each.

Heating, Cooling and Ventilating Equipment:

1. If there is any exterior heating, ventilating or cooling equipment, is it located on the site plan? _____ Describe how it is to be screened:

Hot tubs and spas:

1. If a hot tub or spa is planned please describe the location and method of screening: _____