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Sharon R. Smith - Bryant Lovlien & Jarvis, P.C. ✓

P.O. Box 1151

Bend, Oregon 97709

**COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DARNEL ESTATES**

**THIS DECLARATION OF BUILDING AND USE RESTRICTIONS AND
ARCHITECTURAL CONTROL**, made this 26th day of December, 2003, by Babcock
Brothers, Inc., an Oregon Corporation, hereinafter collectively referred to as "Grantor".

WHEREAS, Grantor is the Seller and/or Owner of the real property in Deschutes
County, Oregon, known as Darnel Estates Phase I, the same appears on the Plat recorded
December 2, 2003, Pages G-101 and G-102, Document Number 2003-82644 of Plat records of
Deschutes County and also described on Exhibit A.

WHEREAS, Grantor desire to declare of public record their intention to create certain
protective Covenants, Conditions and Restrictions (CC&R's) in order to effectuate a general
scheme of development creating benefits and obligations for the Owners of said property.

NOW, THEREFORE, Grantor hereby declares that all of the properties described shall
be held, sold and conveyed subject to the following easements, restrictions, Covenants and
Conditions which are for the purpose of protecting the value and desirability of the real property
which shall run with the land and shall inure to the benefit of each Owner thereof. These
easements and (CC&R's) shall be binding on all parties having any right, title or interest in the
described properties or any parts thereof, their heirs, successors and assigns.

ARTICLE I

RESIDENTIAL CONVENANTS

1. LAND USE AND BUILDING TYPE

No lot shall be used except for residential purposes. No building shall be erected, altered
or permitted to remain on any lot other than one single family site built dwelling not to exceed
thirty (30) feet in height and a private garage for not less than two (2) cars. The foregoing
provisions shall not exclude construction of a private greenhouse, storage unit, private swimming
pool or a shelter or port for the protection of such swimming pool, provided the location of such
structures is in conformity with the applicable municipal regulations and is compatible in design
and decoration with the residence constructed on such lot and has been approved by the
Architectural Control Committee, as designated by Grantor.

A. No alteration shall be made in the exterior design or color of any structure unless the Architectural Control Committee shall have first approved such alteration, including any addition, in writing. The exterior finish of all construction on any lot shall be designed, built and maintained in such a manner as to blend in with the existing structures and landscaping within this subdivision. Exterior colors must be approved by the Architectural Control Committee in accordance with Article II. Exterior trim, fences, doors, railings, decks, eaves, gutters and exterior finish on garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structures they adjoin. Irrespective of the foregoing, Grantee or Owner, without prior approval of the Architectural Control Committee shall not enclose any porch area of any residential unit constructed by Grantor. Enclosing shall include screening, glass or any solid construction material. Porches shall remain as a roofed-over deck area and constitute part of the architectural theme of Darnel Estates.

B. Lighting shall not glare onto neighboring properties.

The provisions of this section shall not be deemed to prohibit the right of any licensed builder to construct a residence on any lot, to store construction materials and equipment on said lots in the normal course of construction and to use any single family or duplex residence as a home.

2. SIDEWALK COMPLETION

In order to avoid damage to sidewalks and driveway aprons during construction, Grantor has not yet installed sidewalks along the frontage of Lots. Purchasers of lots (hereafter "Owners") shall be responsible for completing the sidewalks and driveway aprons as part of construction. The completion shall be to City standards and it shall be the responsibility of Owner to have the sidewalks and aprons inspected and approved by the City of Bend.

3. REQUIREMENT OF OWNERS TO REIMBURSE FOR SYSTEM DEVELOPMENT CHARGES FOR AVION WATER

Grantor has previously paid systems development charges in the amount of \$1,000 per lot to Avion Water Co. At such time as the Owner hooks up to Avion Water Co.'s water system, the Owner shall reimburse Grantor in the amount of \$1,000 for such systems development charge. This shall be payable prior to issuance of architectural review approval. If not so paid, architectural review shall not be granted.

4. DUPLEX DEVELOPMENT

The City of Bend requires any duplex to obtain site plan approval. The Owner is responsible for obtaining such approval.

5. DWELLING SIZE

The minimum square footage of any home within this subdivision shall be 1,200 square feet for a single level and 1,500 square feet for a multi-level. These minimums are exclusive of garages and open porches.

6. OFFENSIVE ACTIVITIES

No noxious, offensive or illegal activity shall be carried out upon any lot, nor shall anything be done, grown or placed upon any lot which interferes with or jeopardizes the enjoyment of other lot Owners within this subdivision.

7. ANIMALS

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that a reasonable number (not to exceed three (3) dogs, cats or other household pets) may be kept provided that they are not kept, bred or maintained for commercial purposes and are reasonably controlled so as not to be a nuisance.

8. SIGNS

No signs shall be erected or maintained on any lot (excluding Darnel Estates entry signs) except that not more than one "FOR SALE" or "FOR RENT" sign placed by the Owners, Grantors or by a licensed real estate agent, not exceeding twenty-four inches high and thirty-six inches long, may be temporarily displayed on any lot. This restriction shall not prohibit the temporary placement of "political" signs on any lot by Owner or appointees provided the same shall not be a violation of the controlling governmental sign ordinances.

9. PARKING

Parking of boats, trailers, motor homes, motorcycles, trucks, truck-campers and like equipment shall not be allowed on any part of the property nor on public street adjacent thereto excepting only within the confines of an enclosed garage or screened from view from all Public Right of Ways by a sight obscuring fence of approved design. Overnight parking is permitted for the purpose off loading and loading. Each dwelling must have off street parking spaces for at least four vehicles. Garage bays may be counted for the purposes of meeting this requirement. Visitor RV parking is permitted for not more than 5 calendar days in any one month period.

10. VEHICLES IN DISREPAIR

No lot shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any lot or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an "extreme state of disrepair" when due to its continued inoperability or significant damage it offends the occupants of the neighborhood.

11. RUBBISH AND TRASH

No lot shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings and dirt resulting from landscaping work shall not be dumped onto streets or on any lots.

12. TEMPORARY STRUCTURES

No structure of a temporary character, trailer, motor home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence. Freestanding basketball hoops may be left on the parking strip at curbside or on the residence driveway they are not permitted in the street.

13. UTILITIES

No outdoor overhead wire or service drop for the distribution of electric energy or telecommunication purposes, nor any pole, tower or other structure supporting said overhead wire shall be erected, placed or maintained within this subdivision. All Owners of lots within this subdivision, their heirs, successors and assigns shall use underground wires to connect their premises and the structures built thereon to the underground electric T.V. cable, or telephone utility facilities provided.

14. COMPLETION OF CONSTRUCTION

The construction of any building on any lot, including private lot drainage, painting and all exterior finish, shall be completed within six (6) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Control Committee.

15. LANDSCAPE COMPLETION

All front, rear and side yard landscaping and tree removal must be completed pursuant to a landscaping plan approved by the Architectural Control Committee. Front yard and side yard landscaping on corner lots must be installed upon substantial completion of the residence. All remaining landscaping must be completed within six (6) months of occupancy of the dwelling. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable time, but only after a written application is made to the Architectural control Committee and the Committee's approval is obtained.

16. FENCES AND HEDGES

No fence greater than three (3) feet six (6) inches in height shall be permitted in the front yard on any residential unit. The maximum height of a site obscuring fence or hedge on any lot shall be six (6) feet. The location of any fences or hedges erected shall be along the rear lot line

and/or along the side lot lines or along easement lines if applicable, but said fence or hedge may not be placed forward of the front setback line for the residence. All fences shall be of wood construction or approved by the Architectural Control Committee. No fence, hedge or wall shall be erected without prior written approval of the Architectural Control Committee. All fencing added or replaced by an Owner shall be similar in appearance to any fencing provided by the Grantor. This provision is not meant to prohibit or restrict the developer of Darnel Estates from erecting an entrance monument and fence, whose architecture and composition shall be determined at the developer's sole discretion.

17. ANTENNAS AND SERVICE FACILITIES

No exterior antennas or satellite dishes of any kind shall be permitted, except "**Digital Satellite Systems**" are permitted. The dish may not exceed 25 inches in diameter. Clotheslines and other service equipment shall be screened so as not to be viewed from any street.

18. EXTERIOR MATERIALS

Exterior materials must be approved for use by the Architectural Control Committee, and in accordance with the provisions appearing in the Real Estate Contract for purchase of lots in this subdivision. Roofing materials must be composition shingle (G.A.F.), 25 year or like quality. The exterior siding material shall be cedar, stone, bricks, stucco or composite lap siding. Windows and exterior doors shall be wood or approved vinyl. Garage doors can be either of wood or metal construction. In appropriate circumstances the Architectural Control Committee can approve other materials, if necessary, to facilitate design, provided they are in keeping with the character of Darnel Estates.

19. WINDOW COVERINGS

Window coverings, other than commercially produced curtains, shutters, drapes or blinds, or those non-commercially produced but of comparable quality, shall not be permitted to be visible from any street at any time after occupancy of dwelling.

20. STREET TREES AND PARK STRIP LANDSCAPING WITHIN THE CITY RIGHT OF WAY

After planting, street trees and the parking strip landscaping must be maintained by the homeowner whose property is contiguous. If street trees and landscaping die, for any reason, they must be replaced by the individual lot Owners with similar vegetation.

ARTICLE II

ARCHITECTURAL CONTROL COMMITTEE

1. ARCHITECTURAL REVIEW

No structure, including storage shelters, shall be commenced, erected, placed or

altered on any lot until construction plans and specifications and a plat showing the nature, shape, heights, material, colors and proposed location of the structure or change have been submitted to and approved in writing by the Architectural Control Committee. It is the intention and purpose of this Architectural to assure quality of workmanship and materials, harmony of external design with the existing structures as to location, topography and finished grade elevations to avoid plan repetition. In all cases, the Architectural Control Committee's consent is required.

(a) MAJOR CONSTRUCTION

In the case of initial or substantial additional construction of a dwelling the Owner shall prepare and submit to the Architectural Control Committee such plans and specifications for the proposed work as the Committee may require. Materials required by the Committee may include, but not necessarily be limited to the following:

(A-1) A Plan indicating location of all improvements, including private drainage.

(A-2) Drawings showing elevations, exterior materials and exterior color scheme of all improvements including fencing.

(A-3) Drawings showing front yard landscape design and location including a description of plant materials. The parking strip shall be included in the landscaping plan.

The Architectural Control Committee shall render its decision with respect to the proposal after it has received all required materials.

(b) MINOR WORK

In the case of minor additions or remodeling, change of existing exterior color scheme or exterior materials, greenhouse, swimming pools construction or any other work not referred to in (a) above, the Owner shall submit to the Architectural Control Committee such plans and specifications for the proposed work as the Committee determines to be necessary to enable it to evaluate the proposal. The Architectural Control Committee shall render its decision with respect to the proposal after it has received all material required by it with respect thereto.

(c) REVIEW FEE

Upon submission of plans and specifications to the Architectural Review Committee, the lot Owner shall pay a \$250.00 fee for such review.

2. ARCHITECTURAL CONTROL COMMITTEE

(a) There shall be An Architectural Control Committee, consisting of three (3) persons, for the purpose of exercising the power and functions conferred upon said Committee

by this section. The initial Committee may be less than three (3) members and shall be appointed by Grantor, each of said persons so appointed being subject to removal at Grantor's sole and absolute discretion. All vacancies on said Committee shall be filled by appointment by Grantor. Upon the sale by Grantor of all Ownerships or, at the Grantor's discretion, after the period of one (1) year, a new Committee of three (3) members shall be appointed by Grantor.

(b) Said Committee shall have the right and power to interpret and enforce all restrictions in its sole discretion, exercised in good faith and independently of the Owners. Decisions by the Architectural Control Committee are final and legally binding pertaining to judgments rendered regarding claims of covenant breach.

(c) This appointed Committee shall serve until such time as there may be an election by a majority of fifty-one percent (51%) of the lot Owners, each lot being entitled to one (1) vote. Duplex lots will be entitled to one vote. Upon such elections, the powers of the Committee first appointed shall cease and the newly elected Committee shall exercise those powers in its stead. In the event of the death, resignation or incapacity to serve of a member or members so elected, a successor or successors shall be elected by a majority of fifty-one percent (51%) of the lot Owners. In the event that there is no election of a successor or successors within thirty (30) days of such death, resignation or incapacity to serve, the remaining member or members of the Committee shall appoint a successor or successors by a majority vote of the remaining Committee membership.

(d) Any decision of the Committee shall be in writing and signed by at least two (2) members or by the Grantor. The Committee shall adopt rules and regulations for the conduct of these proceedings and may fix the time and place for its regular meetings and for such extraordinary meetings as may be necessary.

(e) Unless otherwise specified, enforcement of the restrictions set forth herein shall be by proceedings at law or equity brought by any member of the Committee, pursuant to the authorization of the Committee, against any person or persons violating or attempting to violate any provision or covenant, either to restrain violation or to recover damages. Neither Grantor nor the Architectural Control Committee, nor any member or successor member thereof, shall ever be liable because of any action they take, or fail to take, or for any defect in any building erected pursuant to this section, or at all, as a result of these restrictions, and the Owners of the Residential Units, and each of them, agree jointly and severally to hold Grantors and the members of the Architectural Control Committee (as the membership of that body may be changed from time to time) free and harmless and to indemnify them accordingly from any claims and liabilities whatsoever arising from the operation of this section.

(f) If a violation of these restrictions occurs and if the Architectural Control Committee fails to act pursuant to its powers as set forth in this Declaration of Conditions, Covenants and Restrictions to enforce said provision, and after making unsuccessful demand in writing upon said Committee to carry out said enforcement by any Residential Unit Owner within this Project, said Owner shall have the right to act as plaintiff in any action against the violating party at said Owner's sole cost and expense, and to recover said cost and expense from the violating party in any legal action said Owner may bring.

(g) Should legal action be instituted as a result of any claim of breach as described in Paragraph 3 Article II, below, or any restriction contained herein, the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action, suit, or arbitration, including actual attorney fees, at trial, and on appeal, arbitration, or in any bankruptcy court.

3. NONWAIVER

Consent by the Architectural Control Committee to any matter proposed to it within its jurisdiction under these Architectural shall not be deemed to constitute a precedent or waiver impairing its rights to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

4. EFFECTIVE PERIOD OF CONSENT

The Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has commenced or the Owner has applied for and received an extension of time from the Committee.

ARTICLE III

GENERAL PROVISIONS

1. TERM AND AMENDMENT

These Covenants and Restrictions shall run with and bind all the property within this subdivision for a term of twenty (20) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This declaration or parts hereof can be terminated, revoked or amended only by duly recording an instrument which contains the amendment or the order of revocation or termination and which is signed by the Owners of seventy-five (75) percent of the Owners of the lots in Darnel Estates. The Grantor has the sole and exclusive authority to terminate, revoke, or amend these Covenants and restrictions until the last lot has been sold and built upon.

2. ENFORCEMENT

In the event of any violation of any of the provisions of this declaration, the Grantors or any other person or persons owning real property within the plat may, at their option, exercise the right to enforce these Covenants by bringing action in a court of law. Failure by any party to enforce any Architectural or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action, suit, or arbitration, including actual attorney fees, at trial, and on appeal, arbitration, or in any bankruptcy court.

3. NOTICES

Any notice permitted or required to be delivered as provided herein may be delivered personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, by certified mail, addressed to each such person at the last known residence or domicile address of such person.

4. PAINING, MAINTENANCE AND REPAIRS

In the event that the Architectural Control Committee, in its sole discretion, determines that painting, maintenance or repair (hereinafter "work") of a Residential Unit or lot is reasonably necessary to preserve the appearance and value of said Residential Unit or lot or an adjacent Residential Unit or lot, the Architectural Control Committee shall give written notice of the necessity of such work to the Owner of such Residential Unit or lot, in which event said Owner shall be obligated, at his sole cost and expense, to perform said work.

5. ACCESS TO SLOPES OR DRAINWAYS

Each Owner of a lot agrees for himself, his assigns, heirs or successors in interest, that he will permit access by Owners of adjacent lots to slopes or drainage ways located on his property which affect said adjacent lots, when such access is essential for the maintenance of the drainage facilities for the protection and use of property other than the lot on which the slope or drainage way is located.

6. DRAINAGE

Each Owner of a lot agrees for himself and his assigns that he will not, in any way, interfere with the established drainage pattern of his lot from adjacent lots or other lots in said Project or that he will make adequate provisions for property drainage in the event it is necessary to change the established drainage over his lots. For purposes hereof, "established" drainage is defined as the drainage which occurred at the time the overall grading of said Project, including landscaping of each lot in the Project, was completed by the undersigned Grantor.

7. SEVERABILITY

Invalidation of anyone 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.

8. LIMITATION OF LIABILITY OF GRANTOR

Neither Grantors nor any officer or director thereof shall be liable to any Owner on account of action or failure to act by Grantors in performing their duties or rights hereunder, provided that Grantors have, in accordance with actual knowledge possessed by them, acted in good faith.

9. **ADDITION OF OTHER REAL PROPERTIES**

During the term of these CC&Rs, the Grantor may from time to time subject additional real property to these CC&Rs. Additional real property need not be denoted Darnel Estates on its subdivision or partition map. The addition shall be effective upon the recording of a notice of addition of real property as set forth below. The provisions of these CC&Rs shall fully apply to such added land with the same effect as if it were originally covered by these CC&Rs, unless the notice specifically states otherwise.


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

- (1) A reference to these CC&Rs stating the date of recording and the recording information.
- (2) A statement that the provisions of these CC&Rs or some specified part thereof shall apply to such added real property; and
- (3) A legal description of the additional real property.

IN WITNESS WHEREOF, the undersigned, being Grantor herein, have hereto set their hands this 26th day of November, 2003.

GRANTOR:

BABCOCK BROTHERS, INC.


BY: KEN BABCOCK
ITS: SECRETARY/TREASURER

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

The foregoing instrument was acknowledged before me this 26th day of November, 2003, by Ken Babcock, Sec./Treasurer of Babcock Brother, Inc.



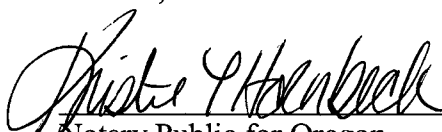

Notary Public for Oregon
My Commission Expires: JUNE 15, 2006

EXHIBIT A

PLAT RECORDING NO.: 2003-825644

LOTS: 1 – 24

DARNEL ESTATES PHASE I

LOCATED IN THE NW $\frac{1}{4}$ SW $\frac{1}{4}$ OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 12
EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON.