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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

FOR FRONTAGE PARK SUBDIVISION

STATE OF OREGON)
COUNTY OF DESCHUTES) ss.

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

97 SEP 11 PM 12:51

MARY SUE PENHOLLOW
COUNTY CLERK

BY: *M Dains* DEPUTY

NO. 97-32754 FEE 45

DESCHUTES COUNTY OFFICIAL RECORDS

After recording return to:
Mike Tennant
497 SW Century Dr. Bldg A
Bend OR 97702

**FRONTAGE PARK SUBDIVISION
COVENANTS, CONDITIONS, AND RESTRICTIONS
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**DECLARATION OF
FRONTAGE PARK SUBDIVISION
COVENANTS, CONDITIONS, AND RESTRICTIONS**

These Covenants, Conditions and Restrictions are made this 11 day of SEPTEMBER, 1997 by MICHAEL J. TENNANT, hereinafter referred to as "Declarant", as owner, representative of all other owners by power of attorney and developer of the real property in the City of Bend, Deschutes County, State of Oregon, described in Lots 1 through 11 Frontage Park, as recorded 9-3-97 plat number CS-13036 and incorporated by reference herein.

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

Frontage Park Subdivision is being developed as a light industrial subdivision. Except where this Declaration for Frontage Park 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 Frontage Park Subdivision.**

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

1.2 Declarant.

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

1.3 Lot.

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

1.4 Declaration.

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

1.5 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 sale.

1.6 Improvements.

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

1.7 Streets.

The term "Streets" shall mean any street, highway or other thoroughfare within or adjacent to Frontage Park Subdivision or shown on any recorded subdivision or partition map, or survey map of record, whether designated thereon as street, alley, boulevard, place, drive, road, terrace, way, lane, circle or otherwise.

1.8 Park strip.

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

1.9 Fencing.

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 FRONTAGE PARK SUBDIVISION**2.1 General Declaration Creating Frontage Park Subdivision.**

Declarant hereby declares that all of the real property located on the plat of Frontage Park in Deschutes County, Oregon 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 Frontage Park 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 1.6 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 Frontage Park 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 as breach of this Declaration.

3.3 Required Documents.

Any owner proposing to utilize, improve and/or develop real property within the Frontage Park Subdivision shall submit items for review as designated in the Frontage Park Design Guidelines.

3.4 Review.

All plans and drawings identified in the Frontage Park Design Guidelines, shall be submitted to the ARC for review prior to the performance of any proposed work. Within 14 days of following receipt of such plans and drawings, the ARC shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for Frontage Park Subdivision. In the event any of the plans do not conform to the Frontage Park 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. It is recommended that all plans be submitted to the ARC prior to being submitted to the City. The approval shall be good for up to 12 months from the date of acceptance of approved plans.

3.5 Design Guidelines

The development concept for the Frontage Park 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 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 Frontage Park 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, in good faith, it believes that any such work is non-conforming. In the event that it is determined in good faith 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 given in good faith 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 Frontage Park 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.

Section 4. REGULATION OF IMPROVEMENTS**4.1 Setback Lines.**

Setback lines shall conform to City standards.

4.2 Adjacent Property.

Adjacent property may not be used for access or parking without that Owner's written permission.

4.3 Completion of Construction.

After commencement of construction of any structure, the owner shall diligently prosecute the work thereon, to the end that all sitework and structure exteriors shall not remain in a partly finished condition any longer than one year. An extension may be granted, in writing, under special conditions.

In the event construction is not completed within 12 months after commencement, the ARC shall impose upon the owner a \$50 per day penalty for each day until the sitework and structure exteriors are completed. The ARC shall not issue its final approval of any construction until all fines and other charges imposed have been paid in full. Any payments received under this paragraph shall be placed in a bank account for the ARC's use in performing its function conferred upon it herein and under the CC&R's for Frontage Park Subdivision.

In the event the owner disputes the imposition of the late penalty or does not pay upon demand of the ARC, the ARC shall be entitled to enforce this provision as set forth in Section 8. In the event the ARC prevails in such procedures, the arbitrator shall, in addition to all other powers conferred upon it, provide for judgment to be docketed in the Deschutes County Circuit Court with the owner named as the defendant.

4.4 Excavation.

No excavation shall be made except in connection with construction of an improvement, and upon completion thereof exposed openings shall be backfilled and disturbed ground shall be graded and leveled in accordance with approved plans.

4.5 Landscaping.

(a) Every lot on which a building shall have been placed shall be landscaped according to plans approved as specified herein and maintained thereafter in a sightly and well-kept condition.

(b) The owner shall landscape and maintain unpaved areas between the property lines and the setback lines. The setback from the street property lines shall be used exclusively for landscaping except for walks and driveways bisecting the required landscape area. The owner shall be responsible for installation and maintenance of landscaping in the road or street right-of-way adjacent to their property which are not otherwise improved. The street right-of-way landscaping will consist of grass sod and trees. Small areas of other types of landscaping may be allowed with ARC approval, but the intent of the street right-of-way is to have a continuous grass strip with trees. The developer is willing to provide the street trees up to one every 75 feet to insure a harmonious transition from one lot to the next.

(c) Landscaping as approved by the ARC shall be installed within one hundred and eighty (180) days of completion of the building.

(d) All areas within improved lots proposed for future expansion shall be maintained in a weed-free condition.

4.6 Signs.

(a) No sign shall be permitted, other than the following:

(1) Those identifying the name, business and products of the person or firm occupying the premises; and

(2) Those offering the premises for sale or lease which are subject to ARC approval.

(b) Signs shall be placed according to City of Bend standards.

(c) Signs and identifications on building sites shall only be of such size, design and color as covered in the Frontage Park Design Guidelines.

4.7 **Parking Areas.**

(a) General. Adequate off-street parking shall be provided to accommodate all parking needs for employee, visitor and company vehicles on the site. On-street parking is not allowed. If parking requirements increase as a result of a change in use or number of employees, additional off-street parking shall be in conformance with applicable City of Bend ordinances.

(b) Parking shall not be permitted between public street pavement and property line.

4.8 **Storage and Loading Areas.**

(a) No materials, supplies or equipment shall be stored in any area on a site except inside a closed building, or behind a visual barrier, as approved by the ARC, screening such areas so that they effectively reduce visibility from the neighboring property or streets. Screening may be accomplished by dense planting of shrubs or trees.

(b) Loading docks shall be set back and screened to minimize the effect from the street.

(c) Refuse collection areas shall be visually screened so as to reduce visibility from streets and neighboring properties as per the design guidelines.

Section 5. REGULATION OF OPERATIONS

5.1 **Partition, Subdivision and Lot-Line Adjustments**

(a) A Site shall not be partitioned or subdivided, nor shall any lot line be adjusted, without the prior written approval of Declarant. A request for approval shall be submitted and reviewed in the same manner provided in Section 3.4 above.

5.2 **Permitted Operations and Uses.**

(a) Unless otherwise specifically prohibited by Declarant herein, any use is allowed as permitted by The City of Bend Zoning Ordinance.

5.3 **Right of Entry.**

During reasonable hours, and subject to reasonable security requirements, Declarant, or its authorized representative, shall have the right to enter upon and inspect any building, site or parcel and the improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and neither Declarant nor its authorized representatives, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 6. 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 out of or related to Declarant's acts or omissions in preparing, filing or enforcing these Covenants, Conditions and Restrictions and shall be esstopped from making or enforcing any such claim.

Section 7. DURATION AND AMENDMENT OF THIS DECLARATION**7.1 Duration.**

The Covenants, Conditions and Restrictions of Frontage Park 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 Frontage Park Subdivision are terminated as set forth above in this section.

7.2 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.

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

Section 8. ENFORCEMENT.**8.1 Enforcement.**

The ARC, Declarant, or any Owner shall have the right, but not the obligation, to enforce all the provisions of these Covenants, Conditions and Restrictions and/or any that may hereafter be enacted. Failure to enforce the restrictions shall not be deemed a waiver of a continuing violation or any similar violation.

8.2 Arbitration.

Any and all disputes, whether legal or equitable, arising directly or indirectly from the rights and obligations conferred hereby shall be resolved by binding arbitration. The parties to such a dispute shall agree upon an arbitration procedure and an arbitrator with ten (10) days of a request by one of the parties. In the event the parties cannot agree, then each party shall select an arbitrator and those two arbitrators shall select a third. The three arbitrators shall, by majority, resolve the dispute.

The costs of the arbitration proceeding, including the arbitrator's fees, shall be shared equally by the parties to the dispute. The party prevailing in the dispute shall recover from the other parties reasonable attorney fees, including those incurred on appeal. The amount of attorney fees shall be decided by the arbitrator(s) and the arbitrator's decision in this regard shall also be binding upon the parties.

The arbitrators shall have all the authority vested in the Circuit Court for the State of Oregon, including the authority to issue injunctions, both permanent and temporary, to award damages and to decide procedural, evidentiary and substantive matters that come before the arbitrators during the dispute resolution process.

In the event the parties or the arbitrators cannot agree on the selection of the arbitrators or the procedure to be used in the arbitration proceeding, the terms and provisions of ORS.365.300 through 365, or its successor, shall apply.

Section 9. ARCHITECTURAL REVIEW COMMITTEE**9.1 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 Frontage Park 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 9 hereof.

9.2 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.

9.3 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 Frontage Park Subdivision.

9.4 Membership.

The ARC shall initially consist of 3 members. Those members shall be Mike Tennant, Nick Amundson, and Tracy Thompson. A majority of the ARC may designate a representative to act for it. In case of death or resignation of any member, the remaining member or members shall 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, a majority of the owners shall elect the successors. When 90% of the lots are built on, the majority of the owners may elect the members of the ARC.

9.5 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.

9.6 Approvals.

The ARC shall approve or disapprove plans within a reasonable time after the same has been submitted to it in writing and in no event shall approval or disapproval take longer than 14 days. 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 10. EFFECT OF DECLARATION

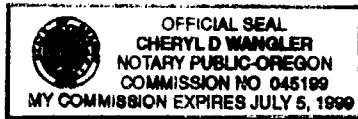
The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in Frontage Park Subdivision and shall bind, benefit and burden each Lot in Frontage Park Subdivision, including any additions thereto. The terms of this Declaration shall inure to the benefit of the Owners of any Lot in Frontage Park 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 Frontage Park Subdivision. The restrictions set forth herein shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as Frontage Park 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 11th day of Sept., 1997.

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: *Cheryl D. Wangler*
NOTARY PUBLIC FOR OREGON
My commission expires: 7-5-99