

97-02858

**DECLARATION OF COVENANTS, CONDITIONS &
RESTRICTIONS**

FOR MILLER HEIGHTS SUBDIVISION PHASE I

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 JAN 29 AM 10:58

MARY SUE PENHOLLOW
COUNTY CLERK

BY: *M. Dains* DEPUTY
NO. **97-02858** FEE **100**—
DESCHUTES COUNTY OFFICIAL RECORDS

After recording please return to:

MIKE TENNANT
497 SW CENTURY DRIVE BLDG A
BEND, OR 97702

**MILLER HEIGHTS SUBDIVISION PHASE I
COVENANTS, CONDITIONS, AND RESTRICTIONS
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**DECLARATION OF
MILLER HEIGHTS SUBDIVISION PHASE I
COVENANTS, CONDITIONS, AND RESTRICTIONS**

These Covenants, Conditions and Restrictions are made this 28 day of January 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 in Lots 1 through 37 Miller Heights Phase I, as recorded December 19th, 1996 plat number 96-46530 located in cabinet D, pages 303 through 307 and incorporated by reference herein.

The property described above is hereby subject to these Covenants, Conditions and Restrictions and will be known as Miller Heights Subdivision Phase I, hereinafter referred to as Miller Heights Subdivision.

Miller Heights Subdivision is being developed as a residential community. Except where this Declaration for Miller Heights 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 Miller Heights Subdivision.

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

1.2 Miller Heights- Vision Concept

Miller Heights development is conceived as an extension of "Old Bend." The goal is to recreate the feeling of the developments in early Bend between 1910 and 1940; a period in which Bend was flourishing. 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 bungalows in a variety of styles including: Craftsman, English Tudor, Classical Revival and Dutch Colonial among several others.

Miller Heights will continue and build on the theme established in West Bend Village of an old-fashioned neighborhood with narrow streets, inviting covered porches, and garages at the rear of the lot with alley access where viable.

It is our goal that many years from now, Miller Heights will be viewed as an important part of Bend's historic development.

1.3 Declarant.

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

1.4 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.

1.5 Declaration.

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

1.6 Homesite.

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

1.7 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.

1.8 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.

1.9 Streets.

The term "Streets" shall mean any street, highway or other thoroughfare within or adjacent to Miller Heights 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.

1.10 Park strip.

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

1.11 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 MILLER HEIGHTS SUBDIVISION

2.1 General Declaration Creating Miller Heights Subdivision.

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 Miller Heights 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 1.8 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the ARC.

3.2 Procedure.

Any owner proposing to construct any improvements within the Miller Heights 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 Miller Heights 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 1/8 inch = 1 foot or larger

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. Within 30 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 Miller Heights Subdivision. In the event any of the plans do not conform to the Miller Heights 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 Miller Heights 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 Miller Heights 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 Miller Heights 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 by certified mail to the party claiming the benefit of such waiver.

Section 4. RESTRICTIONS

4.1 Adjacent Property.

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

4.2 Alley Easements.

Certain lots are encumbered by recorded alley easements. Included with these recorded easements is a maintenance agreement whereby 51% of the owners of an alley may decide to incur expenses for the maintenance or improvement of the alley.

4.3 Antennas.

No television antenna, radio antenna, satellite antenna or other receiving device shall be placed on any lot without Declarant's prior consent or approval of 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, if questionable, must be approved by the Architectural Review Committee.

4.5 Chimney.

All exterior chimneys must be of wood, stone or brick. Flues and caps should be painted to blend with roof colors.

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 Covered Porches.

All homes shall have covered porches on the front. These porches are essential elements in creating a sense of neighborhood; as a welcoming gesture. This "gift" to the neighborhood may be a large columnar porch, classical portal, a loggia or other architectural feature. The porch and front yard

areas are a place to sit and greet neighbors, as well as a shelter to guests arriving in poor weather.

The purpose of this provision is to maintain the vision concept. The porch concept, at the front of each home, is essential to creating the overall image of the subdivision. The ARC has final approval of all porch designs.

4.8 Driveways.

Driveway cuts onto Miller Heights Subdivision streets shall be limited to one per home site on lots without alley access. No curb cuts are allowed on lots with alley access. The driveway shall be a maximum of 12' in width from the house side of the sidewalk to the property line. Exceptions may be allowed with ARC approval. Allowed materials for driveways include concrete, asphalt and masonry. Use of paving strips is encouraged where possible. All driveways shall be finished prior to occupancy. 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.

4.9 Exterior Colors.

All exterior colors including those for trim windows and doors are subject to approval by the ARC. Samples may be standard manufacturer's paint chip samples. Use of muted, natural earth tones of brown, green dark red, blue or yellow are encouraged. Simple color schemes were typical of the early Bend neighborhoods.

4.10 Exterior Lighting.

Exterior lighting on the front of homes is required to have translucent glazing (indirect lighting). Lights shall be no more than 60 watts. No exterior standing pole lights are permitted. Indirect, low walkway and landscape lights less than 18" high are acceptable. Pedestrian access steps shall be lit, preferably with indirect, recessed fixtures in the sidewall. When in doubt, contact a representative of the ARC for approval.

4.11 Fences and Walls.

Fences six (6) feet high are allowed on the rear property line of lots 23-25. All remaining fences within the Miller Heights Subdivision shall be five (5) feet or less. The only exception, which must be approved by the ARC, is for privacy screening at the back of homes. Any fence extended in front of the house must not exceed three (3) feet. Wood posts for fences may be higher than five (5) feet with ARC approval. Height shall be measured from the natural grade. "Natural grade" is defined as the site topography which exists at the time a lot is

sold to the first owner by the project developer; fill material subsequently brought to a site does not modify this original grade reference.

Painting of fences is allowed with ARC approval of colors. Any painted fence must be maintained so as to conform to the standards established for fences left in their natural state.

No boundary line, hedge or shrubbery shall be permitted with a height of more than (6) feet. The heights or elevations of any wall or fence shall be measured from the existing elevations of the property at or along the applicable points or lines. No cyclone, or chain link fences are allowed whatsoever except that fence posts may be metal or steel. Five foot fences along the rear and sides of the homes shall be "good neighbor" fences with boxed posts, top and bottom rails as illustrated in Diagram "A" (see attached). Fences shall be constructed of grade #2, no-hole cedar or materials approved by the ARC. All side and rear fences constructed on the property line by the developer, or builder, are the property of the adjoining property owners. It is the adjoining property owner's responsibility to jointly maintain, repair or replace side fences when needed. Corner lots that anticipate constructing fences must have ARC approval to the start of construction.

4.12 Firearms and Related Activity.

No firearm, crossbow, bow and arrow or air gun, including without limitation, BB type or pellet guns, whether for purposes of hunting or target practice, shall be used within the subdivision.

4.13 Garages.

Lots with alley access are required to site garages and access at the rear of the lot. Homes without alley access must site garages so the front face of the garage is recessed at least eight feet from the front face of the home. Hillside lots may get an exception with ARC approval. Garages which front the street shall have no planes greater than 15' in width, using jogs, pergolas, columns, and single car garage doors to reduce the scale of the facade. 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.

4.14 Garbage and Recycling Pickup.

Garbage and recycling pickup will be at curbside in the alley for those homes with alley access. Curbside will be in the street for those homes without alleys. The disposal company shall have the right to alter this provision upon notification to the owner.

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 must 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 plan more than one (1) time on any block is discouraged unless approved by ARC. 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 Miller Heights 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 nine months 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 will be granted.

Each owner shall attempt to preserve as many trees on each lot as possible. Builders shall not disturb adjoining lots. 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 strips 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. On hillside lots where retaining walls are erected at the sidewalk by the developer, a 6' opening will be provided if requested prior to wall construction. The homeowner shall construct steps, a minimum of 3' in width, with either sloped or stepped sidewalls to a front walk. The homeowner is responsible for all maintenance of the retaining walls in the right-of-way in front of their lot. The materials used are to be approved by the ARC (suggested materials are concrete, asphalt, or masonry).

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 and maintain any retaining wall within the parkstrip. Each home with a parkstrip shall have a concrete walkway or stepping stones from the curb to the sidewalk in front of each home.

4.18 Landscaping.

All disruption of the natural landscape must be repaired within 90 days of occupancy. On vacant lots, areas that have been disturbed and are highly visible or that constitute a dust problem, must be revegetated within six months.

Those lots with electrical transformers located in the park strip shall not plant any trees or shrubs within 10' feet in the front area and 3' feet within the side and rear of the transformer.

Landscaping of park strips must include commercially-grown sod covering the entire park strip allocated to each property owner. No amateur-grown sod will be allowed. Landscaping, trees and irrigation are also to be maintained by the homeowner.

The front and side yards shall be 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

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 ten (10) 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 Miller Heights homesites are within the City limits of Bend and resident animals are subject to the City leash laws. If an animal is off the owner's homesite, it must be on a leash. Animal menace ordinances are also in effect for barking and trash strewing dogs. Please contact the City of Bend Police Department with reports of violations.

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 face of the Plat. No lot shall be further partitioned or subdivided.

4.22 Nuisances.

No obnoxious, offensive, industrial or commercial activity or pursuit 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. All Lots must be for residential use only. 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 shall be trimmed and pruned and not allowed to encroach on any other Lot, sidewalk or street.

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 an above garage unit, the Owner must occupy the Primary residence at all times.

4.24 Outside Fixtures.

No basketball hoops or playing basketball is allowed in any street except for alleyway.

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. No boats, trailers, buses, motor homes, commercial vehicles, trucks larger than one (1) ton, disabled vehicles or other similar vehicles shall be parked or stored on any Lot in a position whereby said vehicles will be visible from the street. Parking is allowed for small recreational vehicles (small is defined as not to exceed 25 feet in total length), when parked along side of garages on asphalt or concrete pads. 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 Miller Heights Subdivision. All garages shall have a minimum of 24 feet of clear space in front of all garage door openings, whether street or alley access. Alleys can count for up to 14' of this requirement. The intent of this requirement is to provide an added measure of safety to drivers while backing out of garages and driveways.

4.27 Roofs.

All roofs and roofing materials shall be limited to quality composition roofs (Firehail 25-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 tone colors; no metal roofs are allowed.

4.28 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.

4.29 Sidewalks.

Owners are responsible for clearing sidewalks of snow and debris.

4.30 Sight Distance At Intersection.

On a corner Lot, no fence, wall or shrub planting which obstruct sight lines at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain within the triangular area formed by the street property lines and line connecting them at points fifteen (15) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the property lines extended.

The same sight line limitations shall apply on all Lots within the first ten (10) feet of a street right-of-way line. No trees shall be permitted to remain within such distances unless the foliage line is maintained at sufficient height to prevent obstruction of such lines.

4.31 Signs.

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

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.

4.33 Temporary Structures.

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. A model/office is allowed by the builder during the development and construction of homes in Milier Heights Subdivision. No model/offices are allowed after the subdivision is 95% completed (homes built).

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.

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

Section 6. DURATION AND AMENDMENT OF THIS DECLARATION

6.1 Duration.

The Covenants, Conditions and Restrictions of Miller Heights 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 Miller Heights 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.

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 Enforcement.

The 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.

7.2 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 8. ARCHITECTURAL REVIEW COMMITTEE

8.1 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 Miller Heights 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.

8.2 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.

8.3 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 Miller Heights Subdivision.

8.4 Membership.

The ARC shall initially consist of five members. Those members shall be Vern Palmer, Charlotte Van Valkenburg, Sandy Gamer, Mike Tennant, and Ron White. 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 homes are completed, a the majority of the owners may elect the members of the ARC.

8.5 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.

8.6 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 30 days. There shall be no construction or disturbance of any vegetation on any lot before approval is obtained by an owner.

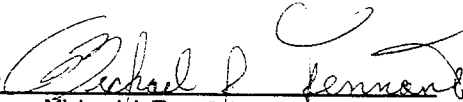
Approval by the ARC of any matter proposed to it shall not be deemed a waiver or a precedent impairing the ARC's right to withhold approval as to any similar matter thereafter submitted to it.

Section 9. EFFECT OF DECLARATION

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

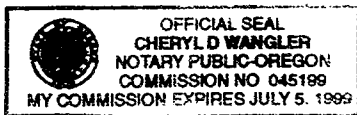
Subdivision and their successors in interest, including any person who holds such interest as security for the payment of any obligation including any mortgagee or other security holder in actual possession of any Lot by foreclosure or otherwise and any other person taking title from such security holder.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 28th day of January, 1997.

By 
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: 
NOTARY PUBLIC FOR OREGON
My commission expires: 7-5-99

DIAGRAM "A"