

VOL: 1999 PAGE: 43344
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES



*1999-43344 * Vol-Page

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DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Sep. 7, 1999; 11:02 a.m.

RECEIPT NO: 10903

DOCUMENT TYPE: Covenants,
Conditions & Restrictions

FEE PAID: \$55.00

NUMBER OF PAGES: 10

A handwritten signature in cursive script that reads "Mary Sue Penhollow".

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

99-43344-1

001

PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS

THE VILLAGE AT OAK TREE

Kelly W. Rogers and Gayla J. Rogers, hereinafter referred to as "Rogers," are the owners and developers of the following real property, hereinafter referred to as "The Property":

SEE ATTACHED LEGAL DESCRIPTION

Rogers wish to create protective covenants, conditions and restrictions (hereinafter "Protective Covenants") upon the development of The Property to allow them to guide future development of The Property in order to create an attractive living environment for future residents. The following covenants, conditions and restrictions shall apply to The Property and any future lots created with land included in The Property:

LAND USE AND BUILDING TYPE:

1. OCCUPANCY AND SIZE --

- a. No lot shall be used except for residential purposes.
- b. No building shall be erected which shall exceed two and one-half stories in height.
- c. No residence may be constructed on any lot unless it includes a garage on the same lot. The garage shall be large enough to accommodate a minimum of two cars.

2. BUILDING LOCATION --

- a. No building shall be erected in a location which violates the required yard (setback) requirements of the City of Bend's zoning ordinance, unless a variance to said standards is obtained from the City.
- b. Each building shall be located on each parcel so as to be compatible with the natural surroundings and with other buildings.
- c. The ACC rules may impose more stringent required yard (setback) requirements for structures than required by the City of Bend's zoning regulations. The more stringent of the two sets of rules shall apply to all structures.

Page 1 of 9 - Protective Covenants for The Vill

Return to: Hickman, Williams & ASS.
805 SW Industrial Way STE. 10
Bend, OR 97702

3. FENCES --

No fence shall be over seventy-two (72") in height.

4. TIME OF CONSTRUCTION --

All buildings constructed on subdivision lots must be completed within twelve months from the date construction is commenced.

5. BUILDING EXTERIORS --

All homes constructed after the effective date of these amendments shall include masonry on their exterior walls, in a location that is visible from an adjoining public street. All building exteriors shall be in harmony with existing residences, as determined in the sole discretion of the Architectural Control Committee (ACC). Paint color for building exteriors must be approved by the ACC. No visible reflective metal flashing shall be allowed on any home.

6. ROOF --

All structures shall be required to have a minimum of a 25 year architectural style roofing material and a roof with a minimum 6/12 pitch. An exception to the 6/12 roof pitch requirement may be granted by the ACC for dormers, porches or outbuildings where it is established by the applicant that the appearance of the building or outbuilding will not detract from the appearance of the lot and will not adversely affect neighboring properties. The ACC may require screening of outbuildings as a condition of approval of an exception to the 6/12 roof pitch requirement. An outbuilding is, for purposes of these covenants, a fully enclosed building or structure that is 125 square feet or less in size.

7. MOBILE STRUCTURES --

No building, whether intended for use in whole or in part as a main residential structure or for use as a garage or other outbuilding, shall be moved upon the premises, with the exception of new, manufactured outbuildings that have been pre-approved by the ACC. No motor homes, campers, trailers, camping equipment, or boats shall be used for overnight living accommodations. No mobile homes or modular homes of any kind are permitted in Oak Tree.

8. SIZE OF RESIDENCE --

No residence shall be constructed of less than 1600 square feet of living area, exclusive of garages, porches and outbuildings. Detached garages and outbuildings shall be constructed of quality materials and have an appearance which will conform to the residence.

9. DRIVEWAYS --

All driveways shall be concrete or paved. Parking areas shall be surfaced of materials approved by the ACC.

10. TREES --

Existing trees may be removed only with the express written permission of the Architectural Control Committee.

11. LANDSCAPING --

All yards shall be landscaped within six (6) months after the exterior of a residence is finished, and in no event later than six (6) months after occupancy of the dwelling, with landscaping approved by the ACC and according to the ACC approved plan.

12. NUISANCES --

- a. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.
- b. No pets or domestic animals shall be permitted to run loose or unattended.
- c. No excessive or unnecessary noise shall be generated by any vehicles, appliances, tools, or pets.
- d. No gasoline may be stored in bulk tanks upon the property, either above or below the ground.
- e. No garbage or refuse will be allowed to remain on property unless stored in sealed containers. In no event shall garbage or refuse remain on any property for a period in excess of two weeks.

13. LIVESTOCK & POULTRY --

No animals, livestock, swine or poultry of any kind shall be raised, bred or kept on any lot, with the exception of dogs, cats or household pets which may be kept provided that they are not kept, bred or maintained for any commercial purposes and are kept inside of the residence. The term "household pets" includes animals commonly kept as pets within a residence such as hamsters, gerbils, guinea pigs, birds, lizards and mice and specifically excludes, but is not limited to, pot-bellied pigs and other swine, poultry, rats and snakes.

14. ARCHITECTURAL CONTROL --

- a.. No building shall be erected, placed or altered on any lot until the construction plans and specifications (including, but not limited to, roofing material, paint colors for exterior surfaces, and siding) and a plan showing the location of the structure have been approved by the ACC as to quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. Written ACC approval must be obtained before applying for a building permit from the governing agency.
- b. Yard Improvements. No landscaping or ornamentation shall be erected, placed, altered or maintained on any property bound by these Protective Covenants until the plans and specifications for said landscaping or ornamentation have been approved by the ACC.
- c. The ACC shall have the sole and final authority to determine the appropriateness of all buildings, structures, landscaping and outbuildings and the requirements of these Protective Covenants as they relate to development of any of the lot bound by the covenants. Any judicial action or proceeding brought to challenge any decision of the ACC shall be commenced within thirty days of the mailing of the ACC's written decision to the applicant and other lot owners who submitted written comments to the ACC regarding the development proposal during the ACC review process. Any such judicial action challenging an ACC decision shall be limited to review for fraud, bad faith or a failure to exercise honest judgment.
- d. Application Deposit and Filing Fee. Applications for the review of structures and buildings by the ACC shall be accompanied by a filing fee of \$100 and deposit of \$650, payable to Pinnacle Productions. Failure to pay said fee will be grounds for denial of the application. The filing fee may be raised from time to time, as needed to cover all design review related costs incurred by Pinnacle Productions.

The deposit will be held by Pinnacle Productions until the applicant has done the following: i) obtained approval of the building and structural plans from the ACC; and ii) has obtained all required building or structural approvals required by regulating governmental entities; and iii) has built the buildings or structures in compliance with the approved plans and rules of the ACC and provisions of these Protective Covenants; and iv) has completely landscaped the yard in accordance with the ACC approved landscaping plan. At such time, the deposit will be refunded, without interest and less ACC imposed fines and charges for violations of the Protective Covenants, approved plans or ACC rules and extraordinary expenses incurred for design review (legal fees, architect or designer services, etc.).

- c. **Improvements to Comply with ACC Approved Plans.** All structures, buildings, improvements, landscaping and ornamentation must be completed in accordance with the plans and specifications approved by the ACC.
- f. **Revisions of Approved Plans.** ACC approval must be obtained for any changes in revised plans and prior to the construction or placement of any building, structure or outbuilding in a manner that does not conform to the approved plans. If plans are altered in any way, the above-required information must be resubmitted and ACC approval obtained.

15. **ARCHITECTURAL CONTROL COMMITTEE --**

- a. **Membership.** The Architectural Control Committee (ACC) shall consist of three persons appointed by Pinnacle Productions. Any two members of the ACC shall have the power to act on behalf of the ACC. Pinnacle Productions shall keep on file at its principal office a list of the names and addresses of the members of the ACC for review by lot owners.
- b. **Function.** The ACC will be responsible for reviewing and approving or denying approval of plans for the construction of buildings, structures and improvements to lots bound by the Protective Covenants, as well as the landscaping and ornamentation of such lots. The ACC is hereby delegated the authority to promulgate and amend ACC rules to regulate the location, orientation, design of and materials used for structures, buildings, improvements, landscaping and ornamentation located on property governed by the Protective Covenants. The rules may also interpret the provisions of these Protective Covenants and regulate construction activities on property bound by the Protective Covenants. The rules may include fine schedules for rule violations. All such interpretations shall be binding in any legal proceeding based upon the provisions of the Protective Covenants and obligations arising from said covenants. Copies of the ACC rules shall be made available to lot owners, upon request and payment of reasonable copying fees.
- c. **Application Materials.** The ACC may require that any or all of the following information be shown or included with the plans submitted to the ACC:
 - I. Existing and proposed land contours and grades; and
 - II. All buildings, garages, and other structures and improvements, access drives and other improved areas, and the locations thereof on the site; and
 - III. Plans for all floors, cross-sections, and elevations, including projections and wing walls and height of ridge measured from street grade; and
 - IV. All landscaping, including existing and proposed tree locations and planting areas and species thereof, mail boxes and exterior ornamentation; and

- V. Exterior lighting; and
 - VI. Wall, fences and screening; and
 - VII. Patios, decks, pools, and porches; and
 - VIII. Signs and parking areas; and
 - IX. Samples of materials to be used as may be reasonably requested by the ACC; and
 - X. Setbacks required by local land use or building regulations; and
 - XI. Utility lines and connections; and
 - XII. Scale of drawing; and
 - XIII. Specifications describing types of construction and exterior materials to be used, including, without limitation, the colors and manufacturer thereof; and
 - XIV. Such other relevant information, data and drawings as may be requested by the ACC.
- d. **ACC Discretion.** The interpretation and application of the provisions of the Architectural Regulations and the provisions of the Protective Covenants that relate to the construction of buildings, structures or improvements of lot landscaping or ornamentation shall be within the sole and exclusive discretion of the ACC.
- e. **Judicial Action.** Any judicial action or proceeding brought to challenge a decision of the ACC shall be commenced within thirty days after issuance of the Committee decision and, in no event, later than thirty days after the commencement of construction of an ACC approved building or structure.
- f. **Turnover of Control.** Pinnacle Productions may, at any time, delegate any and all of its duties and authority granted by the Protective Covenants, including, but not limited to its ability to appoint ACC members and to manage ACC funds, to some or all of the members of the ACC.
- g. **Liability.** Neither the ACC nor any member thereof shall be liable to any lot owner or any applicant for ACC approval or participant in ACC review or enforcement processes for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ACC or any member thereof provided only that the ACC, in accordance with actual knowledge possessed by it, has acted in good faith.
- h. The ACC and any duly appointed member of the ACC is hereby granted permission to enter upon any property bound by the Protective Covenants for the limited purpose of determining whether or not the use of the property or any improvement thereon is then in compliance with the Protective Covenants. Such entry may occur at any reasonable hour and at reasonable intervals of time. No

such entry shall be deemed to constitute a trespass or to otherwise create a right of action against the ACC or ACC member by the lot owner or other persons occupying some or all of the lot.

16. MAINTENANCE OF PROPERTY --

- a. Each parcel and its improvements shall be maintained in a clean and attractive condition in good repair and in such a fashion as not to create a fire hazard or visual problem.

17. FIREARMS --

- a. No firearms, air pistols, archery, sling shots or any other weapons or projectiles shall be used or discharged anywhere within Oak Tree.

18. PARKING AND STORAGE --

- a. No parking or storage of any vehicle used for commercial purposes will be allowed at any time within this subdivision. This provision extends specifically to trucks of any kind larger than one (1) ton size and generally to any other items which may be considered of a commercial nature.
- b. Storage of vehicles, trailers, pickups or boats will be allowed only if screened from sight from any street within the subdivision and if not otherwise prohibited by other provisions of the Protective Covenants. These items must be concealed by a solid screen behind a line extending from the front line of the house or in the case of a corner lot the side line of the house extending to the lot line. The design and construction of the solid screen must be approved by the ACC prior to construction.

19. GENERAL PROVISIONS --

- a. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them through January 1, 2010, after which time said covenants shall be automatically extended for successive periods of five (5) years unless an instrument stating that the covenants shall expire at the end of the then current term, signed by a majority of the present owners of the lots has been recorded in the deed records of the Deschutes County Clerk.
- b. Enforcement. The ACC is granted the authority to enforce the requirements of these covenants and compliance with ACC approved plans. Lot owners are responsible for any and all violations of these Protective Covenants or of ACC approved plans. Complaints of violations may be filed with the ACC by any lot

owner or any member of the ACC. Once a complaint is filed with the ACC, the ACC shall determine whether to resolve the matter informally with the lot owner who is allegedly violating the regulations or to set the matter for an informal hearing. If a lot owner is found by the ACC to have violated a provision of the covenants or ACC approved plans, the owner shall be given 30 days to correct the violation. If the violation is not corrected within 30 days of a determination of violation shall be subject to a fine of \$500 per day of violation beyond the 30 day period, until the violation is corrected. For violations that are not capable of correction, a fine of up to \$2500 may be imposed at the conclusion of the informal hearing.

- c. **Notice of Hearing.** The notice of the date and time of the informal hearing and the alleged violation shall be mailed certified mail, return receipt requested, to the person and address shown for the lot owner in the records of the Deschutes County Tax Assessor.
- d. **Fines.** Fines levied by the ACC shall be paid by the lot owner within 10 days of imposition of the fine. Unpaid fines shall accrue interest at a rate of 15% per annum. Delinquent fines may be collected by the ACC by filing an action to collect a debt in the appropriate state court. In such a proceeding, the merits of the matter that resulted in the imposition of a fine shall be irrelevant. The prevailing party in an action to collect a fine shall be entitled to recover their reasonable costs of collection and attorney fees at trial and on appeal therefrom. All fines shall be deposited in the Pinnacle Productions operating account and shall be used to fund ACC and subdivision improvement expenses.

Additionally, enforcement actions may be filed in the state court system by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Actions may be brought by any member of the ACC or by any lot owner. In such a proceeding, however, the reviewing court shall defer to the interpretations and the decisions of the ACC as to the meaning of the terms of the Protective Covenants relating to the construction of buildings, structures or improvements or to lot landscaping or ornamentation and as to the compliance of building and structural, landscaping, improvements or ornamentation plans with the requirements of the Protective Covenants.

- c. **Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.
- d. **Amendment.** The ACC is delegated the authority to file amended Protective Covenants in the official records of the Deschutes County Clerk, upon a vote in

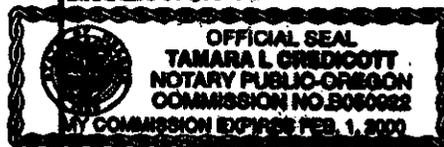
favor of the amendment by a majority of lot owners. Once filed, the amended Protective Covenants shall bind all lots then bound by the covenants in existence just prior to the recording of the amended Protective Covenants. Amended covenants shall be signed by a minimum of two members of the ACC. An amendment is effective when filed in the official records of the Deschutes County Clerk.

- e. Allocation of Votes. Each lot in The Village at Oak Tree shall be granted a single vote for purposes of voting to amend the Protective Covenants. That vote may be exercised by any owner of the lot. In the event that more than one vote is cast by owners of a single lot, the sole vote allocated to that lot shall be divided evenly between those owners casting ballots. For purposes of amending the covenants, when land is conveyed by a land sale contract, the contract purchaser and not the contract seller shall be entitled to exercise the voting rights of the lot.
- f. Additional Land. Pinnacle Productions hereby reserves the right to subject additional land to the controls and provisions of this Protective Covenants document by filing a declaration in the deed records of the Deschutes County Clerk to said effect. Said land must adjoin the boundaries of Phase I, The Village at Oak Tree or the boundaries of subsequently annexed property. Once property has been subjected to the provisions of these Protective Covenants, the majority required for amendment of the covenants shall be determined by counting all lots within the annexed area as well as all lots within Phase I of The Village at Oak Tree.

IN WITNESS WHEREOF, the owners and developers of OAK TREE subdivision have caused this instrument to be executed for recording as the Protective Covenants, Conditions and Restrictions for OAK TREE this 2nd day of September, 1999.

Kelly W. Rogers
KELLY W. ROGERS

Gayla J. Rogers
GAYLA J. ROGERS



STATE OF OREGON)
County of Deschutes) ss.

This instrument was acknowledged before me on September 2, 1999 by Kelly W. Rogers and Gayla J. Rogers.

Tamara L. Credicott
Notary Public for Oregon
My commission expires: 2/1/00

99-43344-10

**VILLAGE AT OAKTREE, PHASE II
BOUNDARY**

LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN A PORTION OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER (NW1/4 SW1/4) OF SECTION 26, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, COUNTY OF DESCHUTES, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LYING ON THE SOUTHERLY LINE OF A PARCEL OF LAND DESCRIBED AS THE SOUTH ONE-HALF OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER (S1/2 N1/2 NW1/4 SW1/4) OF SAID SECTION 26 (HEREINAFTER REFERRED TO AS "ALIQUOT NO. 1") LYING THEREON AT THE SOUTHWEST CORNER OF THE PLAT OF VILLAGE AT OAKTREE, PHASE I FILED IN THE OFFICE OF THE SURVEYOR OF SAID COUNTY; THENCE SOUTH 89°53'16" WEST ALONG THE SOUTHERLY LINE OF "ALIQUOT NO. 1", 657.68 FEET TO A LINE WHICH IS EASTERLY 40 FEET OF AND AT RIGHT ANGLES TO THE WESTERLY LINE OF SAID SECTION 26; THENCE NORTH 00°02'44" WEST ALONG LAST MENTIONED LINE, 329.43 FEET TO THE NORTHERLY LINE OF "ALIQUOT NO. 1"; THENCE NORTH 89°52'12" EAST ALONG SAID NORTHERLY LINE, 217.74 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 00° 07' 48" EAST A DISTANCE OF 27.50 FEET; THENCE NORTH 89° 52' 12" EAST A DISTANCE OF 302.70 FEET; THENCE NORTH 00° 07' 48" WEST A DISTANCE OF 27.50 FEET TO SAID NORTHERLY LINE OF "ALIQUOT NO. 1"; THENCE NORTH 89° 52' 12" EAST ALONG SAID NORTHERLY LINE A DISTANCE OF 136.75 FEET TO THE NORTHWEST CORNER OF SAID PLAT; THENCE SOUTH 00°07'48" EAST ALONG THE WESTERLY LINE OF SAID PLAT, 329.63 FEET TO THE POINT OF BEGINNING.

SUBJECT TO: ALL EASEMENTS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND.