DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WARMSCOMBE ADDITION SUBDIVISION

RECITALS

Declarants, Anthony and Lilian Bell, hereinafter referred to as Developers, are the owners of certain real property located in the City of Dayton, County of Yamhill and State of Oregon, known as Warmscombe Addition, a duly recorded plat, (hereinafter sometimes jointly referred to as "development").

Developers desire to create therein a residential community.

Developers desire to declare of public record their intent to create certain restrictive conditions and covenants to the ownership of said property (hereinafter C C and Rs).

THEREFORE, Developers do hereby establish and declare that the following C C and Rs shall become and are hereby made a part of all conveyances of lots 1 through 3, inclusive, and lots 6 through 12, inclusive, within the plat of Warmscombe Addition, recorded July 27, 1999, in Volume **Page** of the Plat Records of Yamhill County, and the following C C and Rs shall become a part of any such conveyances and shall apply thereto as fully and with the same effect as if set forth at large therein. **Instrument No. 199915552

ARTICLE I

Section 1. Initial Development. Developers hereby declare that all of the real property described above is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved, subject to the following C C and Rs, which are adopted and stated for the purpose of protecting the value and desirability of, and which shall run with, the real property, and shall be binding on all parties having any right or title to, or interest, in the above described properties, or any part thereof; their heirs, successors, and assigns, and enure to the benefit of each present and future owner thereof.

Section 2. Subsequent Phases of Warmscombe Addition. Developers may, but are not promising, from time to time to add to Warmscombe Addition any adjacent real property now or hereafter acquired by them. These covenants shall also apply to such real property, including the ten-lot Phase II Warmscombe Addition.

ARTICLE II

DEFINITIONS

Section 1. Lot. "Lot" shall mean and refer to one of the numbered parcels on the plats referred to in the description of the property above.
Section 2. Owner. "Owner" shall mean the record owner, or contract purchaser, whether one or more persons or entities, of a fee simple title to any lot, but notwithstanding any applicable theory of mortgage, shall not mean or refer to the mortgagee or beneficiary of a trust deed unless such mortgages or trust deed beneficiary has acquired title pursuant to foreclosure or any proceeding in legal foreclosure.

Section 3. Setback. "Setback" means the minimum distance between the dwelling house or other structure referred to and a given property line, unless otherwise indicated.

Section 4. Definitions. Other property terms shall be taken as defined in City of Dayton Zoning Ordinance.

ARTICLE III

USE OF PROPERTY AND DESIGN STANDARDS

Section 1. Residential Purpose. No lot shall be used for any purpose other than residential purposes. To the extent permitted by the zoning and other governmental regulations, occupants of any home may use their home for a home occupation as allowed by the ordinances of the City of Dayton, as long as such activities do not detract from the nature of Warmscombe Addition as a high quality residential neighborhood.

Section 2. Size, Height and Materials.

a. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) single-family dwelling not more than two (2) stories in height, including the main floor level used for living, and not more than thirty-five (35) feet in height. Dwellings may contain a basement, in addition to the two stories in height referred to above, of garage area. Living area of each dwelling shall be not less than 1,100 square feet and each dwelling shall have an attached garage, adequate for a minimum of two cars.

b. Every building, fence, wall, or other structure placed on any part of any lot shall be constructed of new material.

c. Roof pitches shall be a minimum of 4 in 12.

d. All buildings shall have siding materials on all sides of every structure or improvement placed on the premises; however, on the street facing sides, double wall siding of Hardiplank, vinyl, or cedar or other lap lap siding shall be installed. Brick, or stucco siding may also be used on any side of the buildings. On non street facing sides of the buildings, panelized sidings may be used.

e. One storage shed, no more than 10'x10' by 14' tall, intended for storage of garden tools, lawn mowers etc., may be constructed on each lot. The street facing side of the shed shall be of the same material as the street facing side of the home on the same lot and the shed roofing shall also match that of the home.
Section 3. Temporary Occupancy. No building shall be in any manner occupied while in the course of original construction or until it complies with all C C and Rs stated herein. The construction or remodeling of any building or structure shall be prosecuted with reasonable diligence continuously from the time of commencement until fully completed.

Section 4. Temporary Structures; Recreational Vehicles. 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. No campers, motor homes, boats, boat trailers, utility trailers, tents, or nonoperable vehicles shall be permitted to be left where they shall be visible from the street or from contiguous property within Warmcombe Addition, for a period in excess of seven (7) days. If any such structure, vehicle, or boat is permanently stored on the premises, it shall be stored either inside a garage or detached structure or shall be physically obscured from view from the street or contiguous parcels by means of a fence or hedge-type landscaping. No vehicle of the type described herein shall be kept on the street for any longer period than permitted by the ordinances of the City of Dayton.

Section 5. Fences.

a. Any fence constructed, erected, placed or maintained on a lot will be governed by all city ordinances. In addition, hedges or sight obscuring fences on any lot shall not exceed two and one-half (2- 1/2) feet in height in the front yard, or on the side yard forward of the building line with the greatest set back on the lot, or on corner lots on the side abutting either street. Other fences shall not exceed six (6) feet in height. All fences shall be constructed of suitable fencing material and shall not detract from the appearance of the dwelling located on the lot or on adjacent lots or be offensive to the owners or occupants thereof.

b. Notwithstanding subsection a. above, and subject to the approval of the Dayton City Planning Director, with regard to any lot which abuts on more than one street, hedges or sight obscuring fences on said lot in a street side yard or back yard may be constructed up to six (6) feet in height, provided any such plantings or fence exceeding two and one-half (2-1/2) in height shall be set back a minimum of twenty (20) feet from the property line. The owner of said lot shall landscape and maintain the area between such fence and the curb.

c. All walls and fences constructed by Developer shall be maintained by the owner of the nearest lot adjacent thereto as to the portion of said wall or fence which is within the boundaries of said lot or would be within such boundaries if they were extended in a straight line to an intersection with said wall or fence.

Section 6. Commercial Vehicles. No commercial vehicles shall be permitted to be parked on any of the streets of the development for periods longer than those permitted by the ordinances of the City of Dayton.
Section 7. Telecommunication Devices. Satellite dishes, not visible from the street or adjacent lots may be installed on the roofs of buildings in Warmscombe Addition. Satellite dishes, visible from the street or adjacent lots, up to twenty four (24) inches in diameter may be installed on building roofs provided that they are mounted so that their topmost portion is below the building roof line.

Section 8. Landscaping Requirements. All yard areas on each lot, exclusive of buildings, shall be landscaped, except that rear yard may remain unlandscaped if fenced.. Landscaping shall present a complete and finished look to the entire lot. The nature, kind of materials, and topography of the landscaping and its maintenance shall be consistent with the quality generally maintained in the neighborhood. All unbuilt yard areas shall have their initial landscaping installed within nine (9) months from the date of building completion.

Section 9. Completion of Construction. All construction on any lot must be completed and the occupancy permit issued within 365 days from the date of the issuance of the building permit.

Section 10. Animals. No animals or fowl shall be raised, kept or permitted upon any lot or any part thereof except domestic dogs, cats, and caged pets kept within the dwelling house, provided said dogs, cats and caged pets are not kept, bred or raised for commercial purposes, or are kept in an unreasonable number so as to constitute a nuisance to the immediate neighbors.

Section 11. Nuisance. No activity shall be carried on upon any lot, or on the public streets or rights-of-way within or adjacent to any lot, nor shall anything be done or maintained thereon which may be or become a nuisance to the neighborhood or detract from its value as a high-class residential district.

Section 12. Vacant lots. Until such time as any lot owner constructs a residence on said lot, the lot owner shall maintain the lot in such a manner as to keep the lot free from weeds, briars, and other types of vegetation which would infiltrate lawns of other lot owners. Lot owners shall also keep vacant lots free from debris. Vacant lots shall also be subject to all other C C and Rs set forth herein, including, but not limited to, those conditions involving temporary structures, recreational vehicles and commercial vehicles. If a lot owner fails to perform the lot owner’s obligations under this Section, the developer or the architectural committee may, but is not required, to hire someone to perform those obligations. In such instances, the cost of hiring the person to perform the owner's obligation shall constitute a lien against owner's property. It may be enforced in accordance with then applicable Oregon law in addition to the right to proceed directly against the owner.

Section 13. Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than three (3) feet by two (2) feet which advertises the property for sale or rent. Such sign shall be removed immediately upon completion of the sale or rental advertised. This prohibition shall not apply to political lawn signs neatly erected and maintained on the owner's lot. Political signs relating to an election shall be removed no later than one (1) week following election.
Section 14. No mobile homes, manufactured dwellings or modular homes.

No manufactured dwelling or mobile home (which include but are not limited to travel trailers, recreational vehicles, residential trailers, mobile homes and manufactured dwellings as are presently defined in ORS 446.003), nor any modular homes (meaning dwellings with major component parts, other than trusses and walls, produced or manufactured off-site), nor any improvements that would meet one of these definitions, even if such improvement is declared to be or made real property through a statutory procedure or otherwise, shall be placed, used occupied or located, on or within the property.

An owner of a permitted residence on the property may store or keep the owner's travel trailers or recreational vehicle on the lot where the permitted dwelling is located, however, so long as the travel trailer or recreational vehicle is not used as for overnight sleeping purposes on the lot for more than ten consecutive days or twenty days in any calendar year and is stored in conformance with the other requirements of the CCRs. This provision also does not prohibit the location of a temporary construction trailer or office on the property as required during construction, so long as such is used only for construction purposes.

ARTICLE IV
REQUIREMENTS FOR MAINTENANCE

Section 1. Structures. It shall be the duty of the owner and occupant of any lot to maintain all improvements thereon in good order and repair and in an attractive and neat condition, including, but not limited to roofs, gutters, downspouts, and external building surfaces.

Section 2. Site Maintenance.

a. It shall be the duty of the owner and occupant of each lot to maintain the entire site thereon in an attractive and neat condition, including, but not limited to:

(i) Yards, which shall be attractively landscaped and maintained in a neat and orderly manner free of weeds and debris;
(ii) Driveways and sidewalks, which shall be maintained in a good, weed-free condition and repair;
(iii) Grass on improved lots, which shall be cut during the growing season at least once every three (3) weeks.
(iv) Trees and shrubs, which shall be trimmed when necessary for the plant's appearance and as necessary to avoid interference with pedestrian traffic and to maintain safe sight lines for vehicular traffic on or onto the adjoining street or streets.

ARTICLE V
ENFORCEMENT OF PROVISIONS
Section 1. Enforcement. Enforcement of the provisions hereof shall be by action at law or suit in equity against any persons or persons violating or attempting to violate any provision or provisions hereof brought by the Developer, or any lot owner or owners.

Section 2. Binding Effect. The provisions contained in this Declaration shall bind and inure to the benefit of, or be enforceable by, the Developer, and the owner or owners of any portion of said property and each of their respective legal representatives, successors, heirs and assigns. Failure by the Developer or by any of the property owners or their respective legal representatives heirs, successors or assigns at any time to enforce any of the C C and Rs herein contained, shall not be a waiver of the right to do so at any time in the future.

Section 3. Notice. Should the owner or occupant of any lot be in violation of any of the provisions of these C C and Rs, then, in addition to all other remedies available at law or in equity, or otherwise, the Developer, or any lot owner shall have the right to proceed as follows:

a. A written notice setting forth with specificity the nature of the violation shall be mailed or delivered to the owner or occupant of the property. Delivery of this written notice shall be sufficient if it is sent by regular mail, postage prepaid; or hand delivered to an occupant of the property of the age of fourteen (14) years of age or older; or in the event the premises are unoccupied, by affixing the written notice to the front door of the home and mailing a copy to the owner as determined by the records of the County Tax Collector. A copy shall be mailed to the address of the property and to the address listed on the property tax statement, if different.

b. In the event the violation is not cured by the owner or the occupant of the premises within thirty (30) days of the date written notice is mailed, delivered or posted and mailed, as provided in subsection 3a above, then Section 4 and/or 5 below may be followed.

Section 4. Right of Entry for Correction of Violations. After the procedures set forth in Section 3 above, the Design Review Committee shall have the right to engage agents, employees or independent contractors to enter upon the parcel and to repair, maintain and restore the lot and/or the exterior of the building or any other improvements erected thereon to the condition appropriate to remedy the violation.

Section 5. Legal Enforcement. After the procedure set forth in Section 3 above, or after Sections 3 and 4 have been followed where Section 4 is applied, the Developer, or any owner shall have the right to enforce, by any proceeding available, at law or in equity, or otherwise, all C C and Rs, reservations and liens now or hereafter imposed by reason of this Declaration or
Section 6. Attorney Fees. In the event any suit, action, arbitration, mediation or other proceeding is brought to enforce the provisions of this Declaration or any lien filed pursuant hereto, or on account of any violation hereof, the prevailing party shall be entitled to recover, as a part of the costs and disbursements incurred in such suit, action or other proceeding, the reasonable pre-litigation costs of enforcing these C C and Rs and a reasonable attorney's fee as may be fixed by the court, arbitrator, or mediator at such trial or other proceeding and on appeal for attorney's fees incurred both prior to and in said litigation. Proceedings to enforce or restrain a violation may be legal or equitable or otherwise. All charges and attorney fees shall constitute a lien on the whole building site with respect to which they were incurred and to all improvements thereon. However, nothing contained in this Declaration shall be deemed to vest or reserve in the Developer, or lot owner any right of reversion or re-entry for breach or violation of any one or more of the provisions hereof.

ARTICLE VI
GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of or part of these C C and Rs by judgment or court order shall in no way affect the validity or enforcement of any of the other provisions, which shall remain in full force and effect.

Section 2. Amendment. The C C and Rs of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically extend for successive periods of ten (10) years, unless terminated as provided herein. This Declaration may be amended or terminated as provided herein. This Declaration may be amended or terminated at any time upon the written approval signed by the owners of 60% of the lots. Such properly signed amendment, repeal or addition shall become effective only upon its being recorded in the Records of Deeds of Yamhill County, Oregon.

Section 3. Construction. In construing this Declaration, or any part thereof, stipulations which are necessary to make this Declaration, or any of its terms or provisions reasonable, are implied.

Section 4. Termination of Developer's Interest. Unless otherwise specified herein, once seventy percent (70%) of all lots have been sold, Developer shall be relieved of all responsibility under these Declarations, except it shall retain its rights and obligations as a lot owner for any lots which Developer may thereafter own.

Section 5. Limitation of Liability of Developer. Developer shall not be liable to any owner on account of any action or failure to act of Developer in performing his duties or rights hereunder, provided that Developer, in accordance with the actual knowledge possessed by him, acted in good faith.
IN WITNESS WHEREOF, Developers have executed these CC and Rs this 20th day of Oct., 1999.

Anthony E. Bell, Developer

Lilian A. Bell, Developer

Subscribed and sworn to before me this 20th day of Oct., 1999

Deborah L. Clark
Notary Public for Oregon
My Commission Expires: 1-24-2003