

117902-8  
SS-8  
90-19668DECLARATION ESTABLISHING 2 COUNTRY MALL

and subjecting property therein to certain covenants, restrictions, assessments, fines, penalties.

By instrument dated December 29, 1985, and recorded on January 3, 1986, in Volume 113 of the Official Records of Deschutes County, Oregon, at page 1158, SUNRIVER PROPERTIES OREGON LTD., an Oregon limited partnership has established The Consolidated Plan of Sunriver.

The Consolidated Plan of Sunriver contemplates that there will be established within Sunriver a number of commercial areas. Each commercial area is to have its own development plan and own restrictions as to the use of the property within the area.

The undersigned owner has determined upon a development plan for a commercial area at Sunriver. The plan for Sunriver contemplates that commercial areas at Sunriver will contain a diverse number of uses, and facilities commonly associated with resort commercial areas.

The Administrator proposes to establish and maintain a high standard for the improvement of the commercial areas within Sunriver to the end that property within the commercial areas will have a maximum value and be a positive influence upon the Sunriver community.

The undersigned owner plans to subject to the Consolidated Plan of Sunriver the areas which constitute 2 Country Mall in several stages. Developer now wishes to subject the property described in Exhibit "A" to the Consolidated Plan of Sunriver and to make provision for the conditions upon which the commercial areas may be used.

Now, therefore, the undersigned and the Administrator do hereby declare and provide as follows:

SECTION 1  
Definitions

When used herein the terms referred to below shall have the following meanings:

1.1 Incorporation by Reference. Each of the terms defined in Section 1 of the Consolidated Plan of Sunriver shall have the meanings set forth in such Section 1.

1.2 "Improvement" shall mean every building or structure of any kind, fence, wall, driveway, or utility facility.

1.3 "2 Country Mall" shall mean that property described in Exhibit "A" together with any other areas which may be annexed to 2 Country Mall at Sunriver by virtue of a Sunriver declaration.

1.4 "Consolidated Plan of Sunriver" shall mean the instrument dated December 29, 1985, and recorded on January 3, 1986, in Volume 113 of the Official Records of Deschutes County, Oregon, at page 1158.

## SECTION 2

### Establishment of 2 Country Mall at Sunriver

The undersigned hereby establishes 2 Country Mall at Sunriver, which will constitute a commercial area as described in Section 3.06 of the Consolidated Plan of Sunriver. All property within 2 Country Mall shall be subject to and entitled to all of the terms, benefits, covenants, conditions and restrictions applicable to commercial areas as contained in the Consolidated Plan of Sunriver. 2 Country Mall shall initially consist of the property described in Exhibit "A" attached hereto. The undersigned may from time to time in conformance with the Consolidated Plan of Sunriver, annex to 2 Country Mall at Sunriver any real property within Sunriver designated as a commercial area in the Consolidated Plan of Sunriver. The annexation shall be accompanied by the undersigned stating in the Sunriver Declaration pursuant to which any such area is subjected to the Consolidated Plan of Sunriver that such area is to be a part of 2 Country Mall. In any such declaration the undersigned shall state the extent to which such additional area shall be subject to the covenants and restrictions herein set forth and shall set forth any additional covenants and restrictions applicable to such additional area.

## SECTION 3

### Subjection of 2 Country Mall to the Consolidated Plan of Sunriver, and Declaration as to Restrictions on Use of Commercial Areas and Annexation to 2 Country Mall

3.1 The Consolidated Plan of Sunriver. Pursuant to Section 2.01 of the Consolidated Plan of Sunriver, the undersigned and Administrator do hereby declare that 2 Country Mall shall be subject to the Consolidated Plan of Sunriver on the following terms and conditions:

(a) 2 Country Mall shall constitute a commercial area for purposes of the Consolidated Plan of Sunriver. The owner of the property shall be an "owner" within the meaning of Section 1.14 of the Consolidated Plan of Sunriver.

(b) Areas designed as "common areas" shall be common areas for all purposes of the Consolidated Plan of Sunriver.

(c) All property within 2 Country Mall shall be subject to and entitled to the benefits of all of the terms, benefits, covenants, conditions, and restrictions contained in the Consolidated Plan of Sunriver. Among other things, each owner shall enjoy the easements set forth in Sections 3.03 and 3.04 thereof and will be required to pay the maintenance assessments for which provisions are made in Section 7 thereof.

3.2 Declaration of Restrictions. All commercial areas within 2 Country Mall are held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved only in accordance with the provisions made in this instrument and in the Consolidated Plan of Sunriver.

3.3 Annexation to 2 Country Mall. The undersigned and the Administrator declares that the property described in Exhibit "A" shall be part of Sunriver, and accordingly is hereby annexed to Sunriver and subjected to the Consolidated Plan of Sunriver.

#### SECTION 4

##### Use and Occupancy of Commercial Areas

Each owner of 2 Country Mall shall be entitled to the exclusive use and benefit of the property owned by him, except as otherwise expressly provided herein and in the Consolidated Plan of Sunriver.

#### SECTION 5

##### Provisions Affecting Construction and Alteration of Improvements in Commercial Areas

No person shall construct or reconstruct any improvement, or alter or refinish the exterior of any improvement on any improvement, make any change in the natural or existing surface drainage of any property or install a utility line, outside antenna or other outside wire on the property unless such person has first obtained the consent thereto of the Design Committee.

SECTION 6  
General Provisions for and Restrictions  
on Use of Commercial Areas

6.1 Maintenance. The grounds of and improvements of commercial areas shall be maintained in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard.

6.2 Temporary Structures. Temporary structures which have been approved by the Design Committee shall be permitted on a commercial area during the period of construction of an improvement. However, any such temporary structure shall be removed within thirty (30) days after completion of the improvement or within one year after the date upon which the temporary structure was erected, whichever period first expires.

6.3 Appearance. All garbage, trash, cuttings, refuse, garbage and refuse containers, oil tanks, clothes lines and other service facilities shall be screened from view from neighboring properties and common areas in a manner approved by the Design Committee.

6.4 View. In some cases it will be important that commercial area owners restrict the height of vegetation and trees growing thereon to the end that the view of other unit owners shall be preserved to the greatest extent possible. Limitation as to the height of improvements will be accomplished through the provisions contained in Section 5. The Design Committee shall have the responsibility for determining what trees or other vegetation in a commercial area unreasonably interfere with the view of other unit owners. In any case in which the Design Committee shall determine that there is such interference it shall send a notice in writing to the commercial area owner on whose property the offending trees or vegetation are located, which notice shall set forth the extent to which trees or vegetation shall be pruned or removed. If within thirty (30) days of receipt of such notice the owner has not caused the trees or other vegetation to be pruned or removed to the extent required by the Design Committee, the Administrator of Sunriver at its expense may do such work, provided that the Administrator of Sunriver, if it desires, may charge the cost of such work, to the owner who has requested the pruning or removal of such trees or other vegetation.

6.5 Permitted Activities. No activity shall be carried on in the commercial area nor shall anything be done or placed upon any commercial area except as permitted by the Sunriver Master Plan as the same may be amended from time to time by Deschutes County.

6.6 The foregoing provisions are in addition to not in lieu of any other terms or provisions of the Consolidated Plan of Sunriver and Design Manual as they currently exist or may be amended from time to time.

#### SECTION 7

##### Uses Prohibited Without the Consent of the Administrator

Except with the consent of the Administrator of Sunriver no property in 2 Country Mall shall be used in any of the following ways:

(a) No domestic animals of any kind shall be raised or permitted on the property other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance to other units.

(b) No exterior fire shall be permitted on any property other than barbeque or trash disposal fires contained within receptacles therefor.

(c) No use shall be permitted which is contrary to the use restrictions set forth in the Consolidated Plan of Sunriver or any other use restriction adopted pursuant to the Consolidated Plan of Sunriver.

#### SECTION 8

##### Design Committee Consent

In all cases in which Design Committee consent is required hereunder, the following provisions together with the provisions contained in the Consolidated Plan of Sunriver and Design Committee Manual, as they may be hereafter modified or amended, shall apply:

8.1 Major Construction. In the case of initial or substantial additional construction of an improvement, the owner shall first give the Design Committee notice of his intentions and obtain from the Design Committee any site studies it has made of the owner's parcel. Thereafter the owner shall proceed to prepare and submit to the Design Committee such plans and specifications for the proposed work as the Committee may require. Material required by the Committee may include, but not necessarily be limited to, the following:

(a) A plot plan including contours, location of existing trees, plants and other significant natural features, grading and drainage plan, proposed removal of trees, landscaping

plan, location of utility installations and location of all improvements.

(b) Working drawings and specifications for all construction.

(c) Drawings showing elevations, exterior materials and exterior color scheme of all improvements.

The Design Committee shall render its decision with respect to the proposal in accordance with the provisions of The Consolidated Plan of Sunriver and Design Committee rules and regulations.

8.2 Minor Work. In the case of minor additions or remodeling, change of existing exterior color scheme or exterior material, removal or planting of trees, shrubs or other vegetation, or any work not referred to in Section 8.1 above, the owner shall submit to the Design Committee such plans and specifications for the proposed work as the Committee determines to be necessary to enable it to evaluate the proposal. The Design Committee shall render its decision with respect to the proposal as quickly as is reasonably possible in accordance with the provisions of the Consolidated Plan of Sunriver and Design Committee rules and regulations.

8.3 Design Committee Discretion. The Design Committee may withhold consent to any proposed work if the Committee finds that the proposed work would be inappropriate for the particular structure, not in conformity with the rules reasonably promulgated by the Design Committee or not in reasonable conformity with the design standards prevalent within 2 Country Mall. Considerations such as siting, shape, size, color, design, cost effectiveness, height, impairment of the view from other parcels within Sunriver or other effect on the enjoyment of other parcels or common areas, disturbance of existing terrain and vegetation, and any other factors which the Design Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work.

8.4 Design Committee's Failure to Act. In the event the Design Committee fails to render its decision with respect to any proposed work within the prescribed time limits, the applicant may request a decision pursuant to Section 8.05 of The Consolidated Plan of Sunriver.

8.5 Effective Period of Consent. Design Committee consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been

commenced or the owner has applied for and received an extension of time from the Design Committee.

8.6 Completion of Authorized Work. Unless the consent of the Design Committee has first been obtained, any improvement on any commercial area must be completed within a period of one year from the date upon which construction of the same was commenced.

8.7 Notices Upon Completion. Promptly after completion of any work covered herein the owner shall give written notice of completion to the Design Committee. Within thirty (30) days after receipt of such notice the Committee shall inspect the completed work and give written notice to the owner of any respects in which the completed work fails to conform to the plans and specifications therefor as consented to by the Design Committee and is found objectionable by the Design Committee. The Design Committee shall specify in such notice a reasonable period, not less than thirty (30) days, in which the owner may remedy the nonconformance.

In the event a notice of nonconformance and requirement of cure is not given within the prescribed period, the applicant may request action pursuant to Section 3.06 of The Consolidated Plan of Sunriver.

## SECTION 9 Sunriver Rules and Regulations

9.1 All rules and regulations adopted, amended or repealed pursuant to Section 6.01 of the Consolidated Plan of Sunriver shall apply to Sunriver Country Mall and to all owners, guests and invitees and others who shall use said area.

9.2 Establishment of Fines. A violation of any rule set forth herein shall be punishable by a fine payable as established by The Sunriver Owners Association, from time to time, for each class of infraction identified herein in accordance with Section 6 of the Consolidated Plan of Sunriver.

9.3 Enforcement. The rules and regulations set forth herein shall be enforced by the Administrator in accordance with Section 6 of the Consolidated Plan of Sunriver.

## SECTION 10 Miscellaneous

10.1 Amendment and Repeal. Any provision of this Sunriver declaration may at any time be amended or repealed or provisions may be added by the following method:

Owners owning seventy-five percent (75%) of the property within Sunriver Country Mall and the Administrator of Sunriver may consent in writing to the amendment or repeal of a provision or to the addition of new provisions.

Any amendment or repeal of a provision of this Sunriver declaration or additional provision shall become effective only upon the filing in the records of deeds of Deschutes County, Oregon, the consents of the Administrator of Sunriver and of owners owning seventy-five percent (75%) of the property within 2 Country Mall approving and setting forth in full the amendment, amendments, additional provision or repeal approved as provided in this section and certifying that said amendment, amendments, additional provision or repeal have been approved in the manner required therefor herein.

No amendment or repeal of any provision of this Sunriver declaration or additional provision shall become effective without the prior written consent of the Administrator of Sunriver as defined in Section 1.01 of the Consolidated Plan of Sunriver.

10.2 Duration. The covenants and provisions contained herein shall run with the land affected thereby and shall be and remain in full force and effect at all times with respect to all property included within 2 Country Mall and the owners thereof for an initial period of 45 years commencing with the date on which this declaration is recorded. Thereafter such provisions and covenants shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in 2 Country Mall affected thereby and the owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period to the next subsequent period shall be automatic and without the necessity of any notice or consent what-ever, provided, however, that such provisions and covenants may be terminated at the end of the initial or any additional period by the method provided in Section 10.1 for the amendment, repeal or addition of a provision to this Sunriver declaration. Any such termination shall become effective upon the filing in the records of deeds of Deschutes County, Oregon, of a certificate of the secretary or assistant secretary of the Administrator of Sunriver certifying that termination as of a specified termination date has been approved in the manner required therefor herein not less than one year prior to the intended termination date.

10.3 Construction; Severability; Number; Captions. This Sunriver declaration shall be construed as an entire document to accomplish the purposes stated in the introductory paragraphs of



this declaration. Nevertheless, each provision of this Sunriver declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

The Consolidated Plan of Sunriver, including any modifications or amendments thereto, shall control in the event of a conflict with the terms and provisions of this Sunriver declaration.

As used herein the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience or reference and shall in no way limit any of the provisions of this Sunriver declaration.

IN WITNESS WHEREOF, the undersigned have executed this declaration the 26th day of June, 1990.

THE SUNRIVER OWNERS ASSOCIATION

By: *[Signature]*  
President

2 COUNTRY MALL, a partnership  
L & H Lumber Co., an Oregon  
Corporation

By: *[Signature]*  
Sidney Leiken, President

*[Signature]*  
STEPHEN WHYBRA

*[Signature]*  
GORDON L. AVERY

State of Oregon )

County of Deschutes)

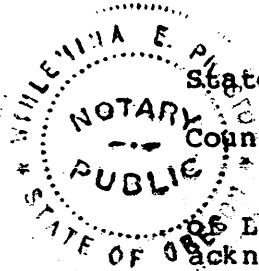
July 13, 1990

Personally appeared JACK SAGESER,  
who, being duly sworn, did say that he is the President of the  
SUNRIVER OWNERS ASSOCIATION, and that said instrument was signed  
on behalf of said corporation by authority of the Board of  
Directors; and acknowledges said instrument to be said  
corporation's voluntary act and deed.

Before me:

*[Signature]*  
Notary Public for Oregon  
My Commission expires: 11/1/93

213 - 0260



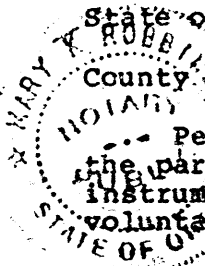
State of Oregon )  
County of Deschutes ) : ss.

June 26, , 1990

Personally appeared the above named Sidney Leiken, President of L & H Lumber Company, a partner of 2 Country Mall, and acknowledged that said instrument was signed by authority of the Board of Directors of said corporation on behalf of said partnership.

Before me:

Willemina E. Leiken  
Notary Public for Oregon  
My Commission Expires: 1/29/94



State of Oregon )  
County of Douglas ) : ss.

June 29 , 1990

Personally appeared the above named Gordon L. Avery, one of the partners of 2 Country Mall, and acknowledged the foregoing instrument signed on behalf of said partnership, to be his voluntary act and deed.

Before me:

Mary K. Robbins  
Notary Public for Oregon  
My Commission Expires: 5-22-92

State of Oregon )  
County of Deschutes ) : ss.

JUNE 13 , 1990

Personally appeared the above named Stephen Whybra, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Phyllis G. Luff  
Notary Public for Oregon  
My Commission Expires: 11/23/90

213 - 0261

Exhibit "A"

Lot Two (2), SUNRIVER COUNTRY MALL, Deschutes County, Oregon

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:

90 JUL -6 PM 4:06

MARY SUE PENHOLLOW  
COUNTY CLERK

BY.  DEPUTY

NO. 90-19668

FEE 55

DESCHUTES COUNTY OFFICIAL RECORDS