

VOL: 2000 PAGE: 47308
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES



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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: Nov. 20, 2000; 3:50 p.m.

RECEIPT NO: 28764

DOCUMENT TYPE: Planned Community
 Subdivision Declaration

FEE PAID: \$76.00

NUMBER OF PAGES: 10

A handwritten signature in cursive script, reading "Mary Sue Penhollow".

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

76
2000-47308-1

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

FAIRVIEW ACRES

These Covenants, Conditions and Restrictions are made this 1st day of DECEMBER, 2000, by GMK DEVELOPMENTS, hereinafter referred to as "Declarant", as owner of the real property in the City of Bend, County of Deschutes, State of Oregon, described in Exhibit "A" attached hereto and incorporated herein by reference.

The property described on Exhibit "A" is hereby subject to these Covenants, Conditions and Restrictions and will be known as and hereinafter referred to as "Fairview Acres".

Fairview Acres is being developed as a residential community. Except where this Declaration for Fairview Acres conflicts with any applicable government municipal regulations, this Declaration shall be binding upon all subject to this Declaration and their successors in interest as set forth herein. In the event 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 Fairview Acres: The term "Fairview Acres" shall mean all of the real property now or hereafter made subject to this Declaration.

1.2 Declarant: The term "Declarant" shall mean GMK Developments, or its successors in interest.

1.3 Block: The term "block" shall mean those areas designated as blocks on subdivision or partition maps according to the records of Deschutes County.

1.4 Lot: The term "lot" shall mean each lot described on a subdivision plat or partition map to 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 Fairview Acres.

1.6 Homesite: "Homesite" shall mean a lot as defined herein.

Libby
1 - Declaration of Covenants, Conditions and Restrictions (RSL:GMK.001)

After recording, return to
AmeriTitle
15 OREGON AVENUE, BEND

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1.7 Owner: "Owner" shall mean and refer to either all holders of fee title to any lot, or any other person or persons entitled to possession of the lot pursuant to a contract or lease.

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, 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 Fairview Acres and shown on any recorded subdivision or partition map, or survey map of record, whether designated thereon as street, boulevard, place, drive, road, terrace, way, land, circle or otherwise.

Section 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR FAIRVIEW ACRES.

2.1 General Declaration Creating Fairview Acres: 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 Fairview Acres 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 as set forth in this Declaration.

2.2 Addition of Other Real Property by Grantor:

(a) Declarant may, at any time during the term of this Declaration, add all or a portion of any land now or hereafter owned by Declarant to the property which is covered by this Declaration, and upon recording of a notice of addition of real property, as set forth below, the provisions of this Declaration specified in said notice shall apply to such added land in the same manner as if it were originally covered by this Declaration. Thereafter, to the extent this Declaration is made applicable thereto, the rights, powers and responsibilities of Declarant and owners of parcels within such added land shall be the same as in the case of the land described on Exhibit "A".

(b) The notice of addition of real property referred to above shall contain at least the following provisions:

(1) A reference to this Declaration stating the date of recording and the recording information where the Declaration is recorded.

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(2) A statement that the provisions of this Declaration or some specified part thereof shall apply to such added real property.

(3) A legal description of such added real property.

(4) Such other or different covenants, conditions and restrictions as Declarant shall, in his discretion, specify to regulate and control the use, occupancy and improvement of such added real property.

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 Declarant. All approvals shall be in conformance with the building site established on each lot by the Declarant for Fairview Acres. Building sites for Fairview Acres will be within the setbacks established in the Architectural Rules and Guidelines.

3.2 Procedure. Any owner proposing to construct any improvements within Fairview Acres (including any exterior alteration, addition, destructions or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by Paragraphs 3.3 and 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 a breach of this Declaration.

3.3 Required Documents. Any owner proposing to utilize, improve or develop real property within Fairview Acres shall submit the following items for review:

(a) A professionally prepared 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, fences and vehicular and pedestrian traffic and circulation.

(b) Professionally prepared 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 one inch = 20 feet or larger.

(c) A landscape plan professional in appearance showing the nature, type, size, location and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

3.4 Review. All plans and drawings identified in Paragraph 3.3 above, shall be submitted to Declarant for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied with a check payable to Declarant in an amount to be determined by Declarant from time to time. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this Section are submitted. Within 30 days following receipt of such plans and drawings and the full amount of the architectural review fee, Declarant shall review the plans and shall inform the owner in writing whether the plans conform to the development concept for Fairview Acres. In the event the owner is not notified as to the conformity of the plans within the 30-day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the Fairview Acres 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 Declarant. Any site plans, construction plans or similar plans and drawings submitted to the City of Bend in connection with the construction of any improvement in Fairview Acres must bear the prior written approval of Declarant.

3.5 Architectural Guidelines. The development concept for Fairview Acres shall be determined by Declarant 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 Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind or amend any published guidelines without prior notice to any 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 Fairview Acres shall be performed in strict conformity with the plans and drawings approved under Paragraph 3.4 above. Declarant shall have the right to inspect any such work to determine its conformity with the approved plans and drawings and reserves the right to order a stop to all work, if, in good faith, Declarant believes that any such work is non-conforming. In the event that it is determined in good faith by Declarant 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 Declarant or officer, director, employee, agent or servant of Declarant 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 Paragraphs 3.2 through 3.6 above, may be waived by Declarant in its exclusive discretion. Any waiver shall be in general conformity with the

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development concept and development standard for Fairview Acres. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedure 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 Declarant and delivered by certified mail to the party claiming the benefit of such waiver.

Section 4. RESTRICTIONS ON USE OF PROPERTY.

4.1 Occupancy. 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, his family or his guests, except that each owner shall be permitted to rent the unit when he is not in occupancy.

4.2 Improvements. Each lot within Fairview Acres shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.

4.3 Appearance. All garbage, trash, cuttings, refuse, garbage and refuse containers, clothes drying apparatus and other service facilities located on the lot shall be screened from view in a manner approved by Declarant.

4.4 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a lot except with the prior written consent of Declarant.

4.5 Offensive or Commercial Activity. No offensive or commercial activity shall be carried on nor shall anything be done which may be or become an annoyance or nuisance to the other owners.

4.6 Signs. No sign of any kind shall be displayed to public view on or from any lot within the Declarant's prior written consent; provided, however, that an owner may display not more than one (1) "for sale" sign per lot which has a maximum area not to exceed 600 square inches, the longest dimension being not greater than 25 inches placed not closer than three (3) feet from front property line.

4.7 Exterior lighting or Noise Making Device. No exterior lighting or noise making device shall be placed on a lot or any portion thereof without the Declarant's prior written consent.

4.8 Antennas. No television antenna, radio antenna, satellite antenna, or other receiving device shall be placed on any lot without the Declarant's prior written consent.

4.9 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.

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4.10 Mobile Homes. No house trailer, mobile home, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any lot.

4.11 Single Family Residences. No more than one single family residence shall be erected or placed on any lot, unless otherwise authorized by City of Bend Zoning Ordinance.

4.12 Utilities. No above-ground utilities, pipes, or wires shall be used to connect improvements with supplying facilities.

4.13 View. The height of vegetation and trees on a lot shall not materially restrict the view of other lot owners. The Declarant shall be the sole judge of the suitability of such heights. If the Declarant determines there is such restriction in the view of the other lot owners, written notice shall be delivered to the offending lot owner. If after 30 days the improvement, vegetation or trees are not removed or reduced in height as directed by the Declarant, the Declarant shall enter the offending lot, complete the removal or reduction, charging the owner of the lot the reasonable costs for the work done. This section is not to be read as justification to create views not present when the lot was originally purchased. Each lot owner does acknowledge that every lot owner has the right to build a home not exceeding 30 feet in height and that their views may be affected in the future.

4.14 Parking. A minimum of two enclosed garage parking places and one exterior open guest parking spaces must be provided for each lot in Fairview Acres. No extended parking on any street shall be allowed by any house trailer, travel trailer, boat trailer, camper or incapacitated motor vehicle. Camping trailers, trucks, motorhomes, campers, boats, cars under repair and boat trailers may not be parked or placed on any lot for any extended period over three days outside of an enclosed area.

4.15 Transient Rental Use. No owner or owners of any unit within Fairview Acres shall be permitted to rent their unit to any person or persons for transient occupancy which shall be for a period of 30 days or less. A rental shall be defined as the use or possession or the right to use or possess for lodging or sleeping purposes any unit in Fairview Acres and rent shall mean the consideration charged whether or not received by the owner, for the occupancy of the unit any money, goods, labor, credits, property or other consideration valued in money without any deduction. Transient use shall not include a rental of any unit for a period of in excess of 30 consecutive calendar days.

4.16 Square Footage Minimum. Any single-family residence shall be a minimum of 1,500 square feet in size with a minimum of 1,000 square feet being on the first floor, not including any garage.

4.17 Open Burning. No open burning of any type shall be allowed, except warming fires during initial construction of single-family residences.

4.18 Colors. House body colors shall be earth tones, as approved by Declarant.

4.19 Sewer. One pressure sewer pump shall be added to the sewer connection by Owner. The pump is to become part of the City of Bend sewer system and shall be maintained by the City of Bend.

Section 5. DETERMINATION OF DECLARANT'S ROLE

5.1 Declarant's Control. At such time as the Declarant shall no longer desire to exercise the architectural, landscaping, signing and lighting controls over any lots within Fairview Acres, Declarant shall cause to be recorded in the Official Records of Deschutes County, Oregon, a declaration stating that Declarant no longer desires to exercise any further controls over development in Fairview Acres. Recordation of such a declaration shall formally terminate Declarant's interest and all rights of architectural landscaping, signing and lighting controls, as well as any other duties of Declarant under this Declaration.

5.2 Formation of CPARC

(a) Upon formal termination of Declarant's control, Declarant shall form an Oregon nonprofit organization called the Fairview Acres Architectural Review Committee (FAARC). The FAARC shall be governed by a five-person board of directors. FAARC shall succeed to all powers, responsibilities and rights of Declarant under this Declaration with respect to the exercise of architectural, landscaping, signing and lighting controls.

(b) Within thirty (30) days after the commencement date of FAARC, the initial board of directors shall be elected. Persons eligible for the initial FAARC shall be limited to owners of any lot within Fairview Acres. Declarant shall solicit from and circulate to all lot owners a list of nominees for the initial board of directors positions within the 30-day FAARC organizational period. Declarant shall then conduct an election of the initial board of directors. The five nominees obtaining the five highest vote totals shall constitute the initial board of directors.

(c) The total number of votes entitled to be cast for each director's position shall be based upon the total number of lots within Fairview Acres. Each lot owner shall have the right to cast one vote for each lot owned. The initial board of directors shall meet ten (10) days after their election and may, at that time, adopt any governing documents, including bylaws, guidelines, procedures, rules and regulations, relating to the architectural, landscaping, signing and lighting controls within Fairview Acres.

5.3 Failure to Organize. In the event Declarant is unsuccessful in organizing the board of directors of FAARC within the 30-day organizational period specified above, Declarant shall have no further responsibilities relating to FAARC and the FAARC board of directors shall be organized exclusively by the owners of lots within Fairview Acres. Such failure of organization of the FAARC board of directors shall not affect the existence of FAARC or the effectiveness of this Declaration.

Section 6. DURATION AND AMENDMENT OF THIS DECLARATION

6.1 **Duration.** The Covenants, Conditions and Restrictions of Fairview Acres shall continue to remain in full force and effect at all times within 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 years from the date this Declaration is recorded. However, unless within one year from the date of said termination, there shall be recorded an instrument directing the termination of this Declaration signed by owners of not less than two-thirds 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 years and thereafter for successive periods of ten years unless within one year prior to the expiration of such period the Covenants, Conditions and Restrictions for Fairview Acres 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 a written consent of the owners of fifty-one percent (51%) of the lots subject to these Restrictions; provided, that the provisions of Article 4 hereof shall inure to the benefit of and be enforceable solely by Declarant, shall be capable of being amended by Declarant without the consent of any other owner, person or entity and shall not give any third party any right or cause of action on account of the terms of this Declaration, and further provided that no amendment which enlarges or diminishes the powers and responsibilities of the Declarant shall be effective without the written consent of the Declarant.

6.3 **Recording.** 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 This Declaration shall be specifically enforceable by Declarant or by any owner of any lot in Fairview Acres. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement or condition.

7.2 In the event that legal suit or action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney fees incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.

Section 8. EFFECT OF DECLARATION

The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in Fairview Acres and shall bind, benefit and burden each lot in Fairview Acres, including any

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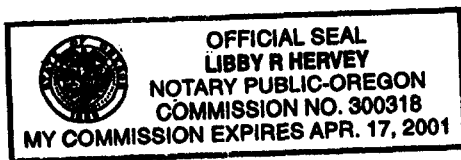
additions thereto. The terms of this Declaration shall inure to the benefit and shall bind Declarant, all successors and assigns of Declarant and all owners of any lot in Fairview Acres, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving any right, title or interest or use in or to any real property in Fairview Acres. The use restrictions and regulations set forth in Sections 4 and 5 of this Declaration shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as Fairview Acres and their successors in interest as set forth in this Declaration, including any person who holds such interests as security for the payment of an 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.

GMK DEVELOPMENTS

By: Glenn M Kotum
Its: _____

STATE OF OREGON, County of Deschutes) ss.

The foregoing instrument was acknowledged before me this 20 day of Nov., 2000, by
Glenn M Kotum, for GMK Developments, Declarant.



[Signature]
Notary Public for Oregon
My Commission Expires: 4-17-01

EXHIBIT A

2000-47308-10

LOTS ONE THROUGH EIGHT IN BLOCK ONE (1) FAIRVIEW ACRES AND LOTS ONE THROUGH SIX IN BLOCK TWO (2) OF FAIRVIEW ACRES AND LOTS ONE THROUGH THREE AND LOT FIVE IN BLOCK THREE (3) OF FAIRVIEW ACRES, DESCHUTES COUNTY, OREGON.