

96-347

96-17936

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

GREYHAWK

These Covenants, Conditions and Restrictions are made this 17th day of May, 1996, by CHARLES CUSHMAN, 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 Greyhawk.

Greyhawk is being developed as a residential community. Except where this Declaration for Greyhawk 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 Greyhawk: The term "Greyhawk" shall mean all of the real property now or hereafter made subject to this Declaration.

1.2 Declarant: The term "Declarant" shall mean Charles Cushman, or his 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 Greyhawk.

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

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 Greyhawk 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 GREY HAW

2.1 General Declaration Creating Greyhawk: 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 Greyhawk 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.

(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 Greyhawk. Building sites for Greyhawk will be within the setbacks established in the Architectural Rules and Guidelines.

3.2 Procedure. Any owner proposing to construct any improvements within Greyhawk (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 Greyhawk 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-quarter inch = 1 foot 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 Greyhawk. 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 Greyhawk 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 Greyhawk must bear the prior written approval of Declarant.

3.5 Architectural Guidelines. The development concept for Greyhawk 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 Greyhawk 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

development concept and development standard for Greyhawk. 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 Greyhawk 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.

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.

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

4.13 Height. 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 Greyhawk. 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 garage.

4.15 Transient Rental Use. No owner or owners of any unit within Greyhawk 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 Greyhawk 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 1,700 square feet in size with a minimum of 1,200 square feet being on the first floor, not including any garage.

4.17 Open Burning. No open burning of any type shall be allowed.

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 Greyhawk, 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 Greyhawk. 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.

Section 6. DURATION AND AMENDMENT OF THIS DECLARATION

6.1 Duration. The Covenants, Conditions and Restrictions of Greyhawk 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 Greyhawk 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 Greyhawk. 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 Greyhawk and shall bind, benefit and burden each lot in Greyhawk, including any 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 Greyhawk, 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 Greyhawk. 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 Greyhawk 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.

Charles Cushman
CHARLES CUSHMAN, Declarant

STATE OF OREGON, County of Deschutes) ss.

The foregoing instrument was acknowledged before me this 17th day of May, 1996, by Charles Cushman, Declarant of Greyhawk.



Sharon Kunkel
Notary Public for Oregon
My Commission Expires: 2/28/98

STATE OF OREGON) ss.
COUNTY OF DESCHUTES)

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:

96 MAY 17 AM 11: 58

MARY SUE PENHOLLOW
COUNTY CLERK

BY: *T. Moore* DEPUTY

NO. 96-17936 FEE 40.00

DESCHUTES COUNTY OFFICIAL RECORDS