

90-18643

DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
MAGILL'S LANDING

These Covenants, Conditions and Restrictions are made this 21st day of June, 1990, by PAUL H. ALTROCCHI, JAMES C. JARVIS and LARRY GOEDECK, as tenants in common, hereinafter referred to as "Declarant", as owner of the real property in the City of Bend, Deschutes County, State of Oregon, described in Exhibit "A", attached hereto and incorporated by reference herein.

The property described in Exhibit "A" is hereby subject to these Covenants, Conditions and Restrictions and will be known as Magill's Landing, Phase I, hereinafter referred to as Magill's Landing.

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

1.2 Declarant: The term "Declarant" shall mean A. J. G., INC., an Oregon Corporation, 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 or 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 Magill's Landing.

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Attorneys At Law

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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 Magill's Landing 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, lane, circle or otherwise.

Section 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR MAGILL'S LANDING

2.1 General Declaration Creating Magill's Landing: 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 Magill's Landing 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.

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.

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3.2 Procedure. Any owner proposing to construct any improvements within Magill's Landing (including any exterior alteration, addition, destruction, or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by paragraphs 3.3 through 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 Magill's Landing 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 not to exceed \$500.00. 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 Magill's Landing. 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 Magill's Landing development concept, the owner shall resubmit those non-conforming portions of the plans for review in accordance with the procedures outlined in

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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 Magill's Landing must bear the prior written approval of Declarant.

3.5 Architectural Guidelines. The development concept for Magill's Landing shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guideline 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 Magill's Landing 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, it 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 standards for Magill's Landing. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under paragraphs 3.2 through 3.6. The

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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 McGill's Landing 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 without 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 ten 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

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which would result in ownership of such lot being held by more than ten 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 View. The height of improvements or 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.

4.14 Parking. A minimum of two enclosed garage parking places and two exterior open guest parking places must be provided for each lot and must meet the standards set by the Declarant. 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 Magill's Landing 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 Magill's Landing 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 to be located on any lot 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.

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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 Magill's Landing, 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 Magill's Landing. 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 CVARC.

(a) Upon formal termination of Declarant's control, Declarant shall form an Oregon non-profit organization called the Magill's Landing Architectural Review Committee (MGARC). The MGARC shall be governed by a five person board of directors. MGARC 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 days after the commencement date of MGARC, the initial board of directors shall be elected. Persons eligible for the initial CVARC shall be limited to owners of any lot within Magill's Landing. Declarant shall solicit from and circulate to all lot owners a list of nominees for the initial board of directors positions within the thirty day CVARC 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 Magill's Landing. Each lot owner shall have the right to cast one vote for each lot owned. The initial board of directors shall meet within ten days after their election and may at that time adopt any governing documents including by-laws, guidelines, procedures, rules and regulations, relating to the architectural, landscaping, signing and lighting controls within Magill's Landing.

5.3 Failure to Organize. In the event Declarant is unsuccessful in organizing the board of directors of CVARC within

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the thirty day organizational period specified above, Declarant shall have no further responsibilities relating to CVARC and the CVARC board of directors shall be organized exclusively by the owners of lots within Magill's Landing. Such failure of organization of the CVARC board of directors shall not affect the existence of CVARC or the effectiveness of this Declaration.

Section 7. DURATION AND AMENDMENT OF THIS DECLARATION

7.1 Duration. The Covenants, Conditions and Restrictions of Magill's Landing 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 Magill's Landing are terminated as set forth above in this section.

7.2 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.

7.3 Any amendment, deletion or repeal of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

Section 8. ENFORCEMENT

8.1 This Declaration shall be specifically enforceable by Declarant or by any owner of any lot in Magill's Landing. Any

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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.

8.2 In the event that legal suit or legal 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 9. EFFECT OF DECLARATION

The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in Magill's Landing and shall bind, benefit and burden each lot in Magill's Landing, 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 Magill's Landing, 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 Magill's Landing. The use restrictions and regulations set forth in Section 4 and Section 5 of this Declaration shall be binding upon all Owners, lessees, licensees, occupants and users of the property known as Magill's Landing 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.

Paul H. Altrocchi, M.D.
PAUL H. ALTROCCHI

James C. Jarvis
JAMES C. JARVIS

Larry Goedeck
LARRY GOEDECK

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212 - 1143

STATE OF OREGON, County of Deschutes, ss:

The foregoing instrument was acknowledged before me this
22nd day of June, 1990, by PAUL H. ALTROCCHI.

[Signature]
Notary Public for Oregon
My Commission Expires 11-16-92

STATE OF OREGON, County of Deschutes, ss:

The foregoing instrument was acknowledged before me this
22nd day of June, 1990, by JAMES C. JARVIS.

[Signature]
Notary Public for Oregon
My Commission Expires 11-16-92

STATE OF OREGON, County of Crook, ss:

The foregoing instrument was acknowledged before me this
21st day of June, 1990, by LARRY GOEDECK.

[Signature]
LOIS GERETY
NOTARY PUBLIC - OREGON
My Commission Expires 9-4-92

[Signature]
Notary Public for Oregon
My Commission Expires 2-4-92

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PARCEL 1:

Lots Eighteen (18) and Nineteen (19), together with that portion of vacated Lakeside Place and vacated Division Street in Block Seven (7), of OROKLA ADDITION, City of Bend, Deschutes County, Oregon.

PARCEL 2:

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Lots One (1) and Two (2), Block Nine (9), OROKLA ADDITION, City of Bend, Deschutes County, Oregon.

PARCEL 3:

A portion of the Northeast Quarter (NE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty-nine (29), Township Seventeen (17) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon, being adjacent to the South line of Block Nine (9), OROKLA ADDITION, City of Bend, described as follows:

Beginning at a point on the North line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 29, Township 17 South, Range 12 East of the Willamette Meridian, said point being located North 89°52'57" East a distance of 96.00 feet from the Northwest corner of said NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence South 34°13' East a distance of 26.27 feet; thence North 55°47' East a distance of 38.80 feet; thence South 89°52'57" West a distance of 46.86 feet to the point of beginning.

PARCEL 4:

The unplatted portion of the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) Section Twenty-nine (29), Township Seventeen (17) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon, lying between the high water line at the East bank of the Deschutes River and the street, now known as Lakeside Place, and bounded on the South by the center line of Minor Avenue when projected Southwesterly to the brink of the cliff above the Deschutes River, as shown on the Plat of Riverside as same appears on said plat on file in the office of the County Clerk in and for Deschutes County, Oregon.

PARCEL 5:

That portion of the Southwest Quarter (SW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$), Section Twenty-nine (29), Township Seventeen (17) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon, lying East of the Deschutes River.

PARCEL 6:

Blocks Three (3) and Four (4), RIVERSIDE ADDITION, City of Bend, 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 JUN 28 PM 2:49

MARY SUE PENHOLLOW
COUNTY CLERK

DEPUTY

BY  90 JUN 28 1964 3

NO

FEL

DESCHUTES COUNTY OFFICIAL RECORDS