

96-13883

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOMESITES AT THE SUMMIT

These Covenants, Conditions, and Restrictions are made this 18th day of April, 1996, by Patrick M. Gisler, Joel T. Gisler, and Steven A. Trono, hereinafter referred to as "Declarant", as owner of the real property in Deschutes County, State of Oregon, described as "The Summit - Phase I", attached hereto, and incorporated by reference herein.

The property described as "The Summit - Phase I" is hereby subject to these Covenants, Conditions, and Restrictions and will be known as The Summit Homesites.

### Section 1. Definitions

- 1.1 The Summit Homesites: The term "The Summit Homesites" shall mean all of the real property now or hereafter made subject to this declaration.
- 1.2 Declarant: The Term "declarant" shall mean Patrick M. Gisler, Joel T. Gisler, and Steven A. Trono, or their successors in interest.
- 1.3 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.
- 1.4 Declaration: The Term "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions for The Summit Homesites.
- 1.5 Homesites: The term "Homesite(s)" shall mean a lot as defined herein.
- 1.6 Owner: The term "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.
- 1.7 Improvements: The term "improvement" shall include, but not 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.
- 1.8 Streets: The term "streets" shall mean any street, highway or other thoroughfare within or adjacent to The Summit Homesites 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.

After Recording, Return To: ☒ GISLER MANAGEMENT, INC.  
1470 N.E. First Street, Suite 100  
Bend, Oregon 97701

**Section 2. Property Subject to the Covenants, conditions, and Restrictions for The Summit Homesites**

- 2.1 General Declaration Creating The Summit Homesites: All of the Covenants, Conditions, and Restrictions of The Summit Homesites run with all of said real property for all purposes and shall be binding upon and insure 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, 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 attached hereto.

**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.
- 3.2 Procedure.  
Any owner proposing to construct any improvements within The Summit Homesites (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 The Summit Homesites, shall submit the following items for review:
- (a) A 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) 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, material types, colors, and appearance. The scale of plans shall be 1" = 10' or larger.

(c) A landscape plan showing the nature, type, size, location, and layout of all landscaping, egetation 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 The Summit Homesites. 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 Summit Homesites development concept, the owner shall resubmit those 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 application to the City of Redmond in connection with the construction of any improvement in The Summit Homesites must bear the prior written approval of Declarant.

#### 3.5 Architectural Guidelines.

The development concept for The Summit Homesites 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 other improvements within The Summit Homesites 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 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 of 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 The Summit Homesites. 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 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 The Summit Homesites 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 on 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 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 "for sale" sign per lot which has a maximum area not to exceed 600 sq. inches.



- 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 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 persons.
- 4.9 Mobile Homes.  
No house trailer, mobile home, tent, shack, shed, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any lot.
- 4.10 Single Family Residences.  
No more than one single family residence shall be erected or placed on any lot.
- 4.11 Utilities.  
No above-ground utilities, pipes or wires shall be used to connect improvements with supplying facilities.
- 4.12 View.  
The height of improvements or vegetation and trees on a lot shall not materially restrict all view corridors of other lot owners. The Declarant shall be the sole judge of the suitability of such heights. If the Declarant determines there is such unreasonable restriction in the view corridors 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.
- 4.13 Parking.  
A minimum of two 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.

## **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 The Summit Homesites, 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 Recordation of such a declaration shall formally terminate signing and lighting controls, as well as any other duties of Declarant under this declaration.

- 5.2 Formation of The Summit Architectural Review Committee.  
 (a) Upon formal termination of Declarant's control, Declarant shall form an Oregon non-profit organization called The Summit Architectural Review Committee (TSARC). The TSARC shall be governed by a five person board of directors. TSARC 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 TSARC, the initial board of directors shall be elected. Persons eligible for the initial TSARC shall be limited to owners of any lot within The Summit Homesites. 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 TSARC 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 The Summit Homesite section. 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 bylaws, guidelines, procedures, rules and regulations, relating to the architectural, landscaping, signing, and lighting, controls within The Summit Homesites.

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

## **Section 6. Duration and Amendment of this Declaration**

- 6.1 Duration.  
 The Covenants, Conditions, and Restrictions of The Summit Homesites shall continue to remain in full force and effect at all times with 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 the Covenants, Conditions, and Restrictions for The Summit Homesites 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 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 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 The Summit Homesites. 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 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.

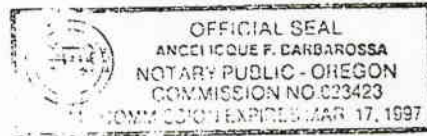
**Section 8. Effect of Declaration**

The Covenants, Conditions, and Restrictions of this Declaration shall run with the land included in The Summit Homesites and shall bind, benefit, and burden each lot in The Summit Homesites, 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 The Summit Homesites, 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 The Summit Homesites and their successors in the 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.



STATE OF OREGON, County of Deschutes:  
ss. The foregoing instrument was  
acknowledged before me this 18<sup>th</sup> day of  
April, 1996, by PATRICK  
M. GISLER, individually.

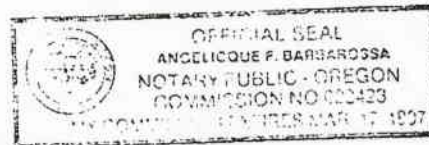
Angelique F. Barbarossa  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: March 17, 1997



By Patrick M. Gisler  
PATRICK M. GISLER

STATE OF OREGON, County of Deschutes:  
ss. The foregoing instrument was  
acknowledged before me this 18<sup>th</sup> day of  
April, 1996, by JOEL T. GISLER,  
individually.

Angelique F. Barbarossa  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: March 17, 1997

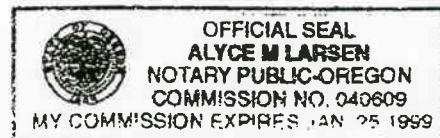


By Joel T. Gisler  
JOEL T. GISLER

STATE OF OREGON, County of Deschutes:  
ss. The foregoing instrument was  
acknowledged before me this 18<sup>th</sup> day of  
April, 1996, by STEVEN A.  
TRONO, individually.

Alyce M. Larsen  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 01-25-99

By Steven A. Trono  
STEVEN A. TRONO



After recording, return to:

GISLER MANAGEMENT, INC.  
1470 N.E. First Street, Suite 100  
Bend, Oregon 97701

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:

96 APR 18 PM 2:47

NOTARY PUBLIC  
COUNTY OF DESCHUTES

DEPUTY  
BY Alyce M. Larsen  
NO. 96-13853 FEE 16  
DESCHUTES COUNTY OFFICIAL RECORDS