

**Mail Tax Statements To:**

Attn: Don James  
The Gleanns at Barberrry I, LLC  
P.O. Box 968  
Dallas, OR 97338

**After Recording Return To:**

Attn: Don James  
The Gleanns at Barberrry I, LLC  
P.O. Box 968  
Dallas, OR 97338

RECORDED IN POLK COUNTY	<b>2017-005719</b>
Valerie Unger, County Clerk	05/15/2017 02:07:13 PM
REC-C&R      Cnt=1 Stn=0 K. WILLIAMS	\$106.00
\$60.00 \$11.00 \$10.00 \$20.00 \$5.00	

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
GLEANNS AT BARBERRY PHASE 4**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GLEANNS AT BARBERRY PHASE 4, A SUBDIVISION (the "**Declaration**"), is made on June 20, 2016, by **THE GLEANNS AT BARBERRY I, LLC**, an Oregon limited liability company ("**Declarant**") effective upon the date of recordation of this instrument in the real property records of Polk County, Oregon.

**RECITALS:**

- A. Declarant is the owner of certain real property located in Polk County, Oregon, as more particularly described in "**Exhibit A**", which is attached hereto and incorporated by this reference herein.
- B. Declarant proposes to create a subdivision to be known as Gleanns at Barberrry Phase 4 (the "**Subdivision**"), composed of the property described in Exhibit A, to be subject to this Declaration and recorded by Declarant for that purpose. A plat of the Subdivision is to be recorded in the real property records of Polk County, Oregon.
- C. Declarant has deemed it desirable for the preservation of the value and desirability of the real property in the Subdivision to subject the real property in the Subdivision to the following covenants, conditions and restrictions to promote the enjoyment, safety and welfare of the Subdivision.

NOW, THEREFORE, Declarant hereby declares that each parcel of real property in the Subdivision shall be sold, conveyed, owned and occupied subject to the provisions of this Declaration. Each person or entity, upon acceptance of a deed or land sale contract to purchase, covenants and agrees to comply with said provisions of this Declaration.

**1. Recitals**

The recitals set forth above are incorporated herein by this reference.

NOTE: FIRST AMERICAN TITLE IS RECORDING THIS DOCUMENT AS AN ACCOMMODATION TO CLIENT ONLY AND WILL NOT ASSUME ANY RESPONSIBILITY AS TO IT'S VALIDITY.

## 2. Covenants with the Land

All of the Covenants contained in this instrument shall run with the land described in the recitals as the Subdivision. No land, parcel or lot within the Subdivision shall be conveyed, except subject to this Declaration. The Declaration is declared inserted by reference in any and all deeds to any part of the Subdivision. The Declaration is for the benefit of the owners of land within the Subdivision (each an "*Owner*" or collectively the "*Owners*").

## 3. Governing Law

The Gleanns at Barberrry Phase 4 is not a "planned community" under Oregon Law and, therefore, is not subject to the Oregon Planned Community Act.

## 4. Use Restrictions and Obligations

### 4.1 Residential Use

All lots in the Subdivision (each a "*Lot*" or collectively the "*Lots*") shall be used for single family dwellings and buildings directly related to single family dwellings only. No commercial activities of any kind shall be carried on in any Lot or in any portion of the Subdivision. This provision, however, shall not be construed so as to prevent or prohibit an Owner of a Lot from activities which may be allowed as a Home Occupation as defined below, from maintaining the Owner's professional personal library, keeping personal business or professional records or accounts, handling professional business or professional telephone calls or occasionally conferring with business or professional associates in the Owner's single family dwelling unit. This provision shall also not prohibit Declarant, its agents or representations, from operating a model home or sales office on any Lot or within any building in the Subdivision.

### 4.2 Home Occupation

"*Home Occupation*" means any business or professional activity by an Owner as a subordinate use of a single family dwelling unit. No non-resident employees are permitted to work within the Subdivision. No sign shall be displayed and no accessory building shall be used. No structural alterations shall be made to the single family dwelling unit that would be inconsistent with future and continued use of the building exclusively as a single family dwelling. There shall be no outside storage or display of materials, equipment or merchandise used or produced in connection with the Home Occupation. A Home Occupation shall not involve on-site retail sales and is restricted to offices or the providing of services such as arts or crafts. A Home Occupation specifically excludes rental of rooms, residential care facilities, foster homes or group homes.

### 4.3 Vehicles

No trucks (except pickups one (1) ton weight or less), campers, motor homes, trailers, boats, golf carts, motorcycles, 4-wheelers or similar recreational vehicles of any kind shall be parked on any Lot or street other than temporarily (in no case in excess of seventy-two (72) hours) and then only for the purpose of loading or unloading or a service call, provided, however, that such vehicle may be kept within an Owner's enclosed garage or a rear yard screened from view by a fence. No vehicles of any kind shall be parked on any portion of the

Subdivision while such vehicles are in a state of disrepair or while being repaired. Should any Owner fail to remove the Owner's or Owner's guest's or invitee's vehicle in disrepair from a street or Lot within twenty-four (24) hours following the date on which notice is mailed to such, the vehicle may be removed and Owner charged for the cost of removal. All vehicles shall be garaged or parked in a driveway, except for temporary visitors, loading and unloading (not to exceed seventy-two (72) hours). Vehicles parked on roadways shall be subject to the City of Dallas standards for such vehicles. No tricycles or bicycles shall be left on the street or in front of a single family dwelling.

#### **4.4 Signs**

No commercial signs shall be erected or displayed on any Lot, single family dwelling unit or any other portion of the Subdivision except "for sale" signs of not more than four (4) square feet advertising property within the Subdivision for sale, and "for rent" signs, so long as only one "for rent" sign is placed on any Lot and placed inside a house visible through a window. Except as provided above, signs shall not be attached to any single family dwelling unit or displayed in windows. This provision shall not apply to Declarant.

#### **4.5 Sheds, Poles, Antennas, Etc.**

No sheds or outbuildings larger than two hundred (200) square feet or taller than ten (10) feet in height shall be permitted in the Subdivision unless approved in advance by the City of Dallas in accordance with the City of Dallas Development Code. No basketball hoops shall be permanently installed or maintained on any portion of a Lot. No flag poles, exterior mounted television or radio antenna shall be installed or maintained on any Lot or any other portion of the Subdivision. Satellite dishes (no larger than twenty-four (24) inches in diameter) shall be allowed; however, they shall be mounted on the living unit and, if possible, located in such a way as to not be seen from the street. In cases where there are no alternatives for location because of signal availability, then the Owner shall provide screening to comply with this section. A flag of the United States of America shall be permitted to be displayed on any Lot or living unit and shall not exceed three (3) feet by five (5) feet in size. Flags or banners not exceeding three (3) feet by five (5) feet in size that represent seasonal (holidays) or sporting events shall be permitted to be displayed on any Lot or living unit for a period not to exceed seventy-two (72) hours. No exterior machinery or equipment for cooling or heating shall be installed or maintained on any portion of the property that may be seen from the street. No exterior lighting shall be placed or operated upon or within any Lot which shall cast excessive or unreasonable amounts of light or glare on adjacent Lots or the Subdivision. Approved installation locations shall in no way violate current Federal Communications Commission ("FCC") rules or regulations concerning said installation locations.

#### **4.6 Trash/Recycling**

All trash and recycling shall be deposited in closed containers to be picked up by the sanitary service crew with whom the Owner contracts. Trash and recycling cans shall be stored within an Owner's enclosed garage or outside such garage in a storage area screened from other Lots at all times except the night before collection and the day of collection.

#### **4.7 Underground Utilities**

Other than temporary above-ground wiring for construction or emergencies, no outdoor overhead wire or service drop for the distribution of electrical energy or for telecommunication purposes nor any pole, tower or other structure for independent transmission or support of said outdoor wire shall be erected, placed or maintained on any portion of the Subdivision. All such installations shall be underground.

#### **4.8 Lot Maintenance**

Except during periods of construction of any improvements thereon, all portions of each Lot shall be kept entirely free of trash. Should any Owner fail to remove any trash, yard debris or other similar material from such Owner's Lot or the street abutting the same within three (3) days following the date on which notice regarding the same is mailed to the Owner by the City of Dallas, the City of Dallas may have such materials removed and charge the Owner for the cost of removal. No Owner shall take any action on any Lot, which shall have the effect of causing substantial erosion of the soil on such Lot or any adjacent Lot.

#### **4.9 Landscapes**

All landscaping, including hardscapes, shall be completed within forty-five (45) days from commencement. All lawns which are visible from beyond any boundary of a Lot shall be regularly cut and edged, so as not to permit the grass to attain a height greater than six inches, and shall be regularly fertilized, weeded and watered. All other landscaped areas which are visible from beyond any boundary of the Lot shall be regularly and carefully maintained, including but not limited to watering, fertilizing, weeding, bark dusting, pruning and trimming, and the Owner or Owners thereof shall remove and dispose of noxious weeds, downed trees and limbs therefrom on a regular basis. Each Lot shall be kept free of trash and rubbish.

#### **4.10 No Animals**

No animals or fowl of any kind shall be raised, bred or kept in the Subdivision, except household pets and chickens may be kept so long as they are not bred, maintained or kept for commercial purposes. No more than two (2) dogs and two (2) cats shall be kept on any Lot at any one time. No more than three (3) chickens, or any fewer number permitted by the City of Dallas, shall be kept on any lot at any time. No animal of any kind, including dogs and cats, shall be allowed to interfere with the quiet enjoyment of the other residents in the Subdivision, or permitted to run at large or untended in the Subdivision. No dog shall be restrained outside of a dwelling unless the dog is accompanied by the dog's owner or handler. All owners of pets will abide by municipal sanitary regulations promulgated by the City of Dallas.

#### **4.11 Building Materials**

The following materials and standards shall be required on structures within the Subdivision:

4.11.1 All roofing materials and standards shall be of wood (shake or shingle), tile or architectural composition shake with ridge caps, which provides a three-dimensional sculptured appearance through the use of varying thickness and shadowing.

4.11.2 All siding materials shall be concrete board (such as Hardi-Plank) siding or natural wood, brick or stone. Siding material must be nailed on sixteen (16) inch centers. No T1-11 or similar type siding is permitted.

4.11.3 Driveways shall be of concrete slab construction only. The driveway surface and all flatwork on site shall have some broom finish or exposed aggregate or other decorative finish.

4.11.4 Bright colors of paint are not permitted. All exterior finishes must be of earth tones, neutral tones or subdued substantially similar colors, with monochromatic or analogous color schemes.

#### **4.12 Completion of Improvements**

All structures (including flat work and landscaping) constructed within the Subdivision shall be erected and completed within one (1) year after the commencement of construction. All remodeling, reconstruction or enhancement of structures shall be completed within one (1) year of the commencement of construction. Commencement of construction shall be deemed to be the date upon which a building permit was first issued for the construction, or, if no building permit was obtained, the date on which Lot clearing, demolition or remodeling commenced.

#### **4.13 Size of Structures**

4.13.1 All buildings within the Subdivision shall be single family residences, attached or detached, or ancillary structures customarily constructed in conjunction with a single family residence.

4.13.2 No dwelling house shall be commenced, erected or completed which occupies fewer than one thousand (1,000) square feet of livable floor area. A garage containing parking spaces for not less than two (2) or more than four (4) motor vehicles shall be constructed in connection with each single family dwelling. One of the spaces within each garage may be a space for storage of a recreational vehicle. Each garage must be fitted with doors covering the entrance to each parking space therein. No such living unit shall exceed the lesser of two and one-half (2½) stories or thirty-five (35) feet in height, measured from the highest adjacent ground surface within a five (5) foot horizontal distance of the building foundation. All setbacks are to comply with applicable government laws and rules.

4.13.3 No structure of a temporary character, trailer, motor home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence.

#### **4.14 Interference with Other Lots**

Owners or occupants within the Subdivision shall not engage in nor continue uses that unreasonably interfere with the use of other Lots within the Subdivision. Such interference can be monitored or enforced by any Owner.

#### **4.15 Hedges, Drainage and Fences**

No Lot may be altered which would result in blocking the flow of water across that Lot and/or affecting the drainage on other Lot. Roof gutters shall be required on all structures and must be properly drained to direct all water into the City of Dallas' storm drainage system. Subject to location standards set out in any governmental code or rule, fences shall not exceed six (6) feet in height, provided, however, that any fencing closer to the street than the garage shall not exceed four (4) feet in height and, in addition, shall comply with "clear vision area" requirements of any applicable governmental code or rule. Fences shall be well constructed of wood materials, brick, stone, wrought iron, ornamental metal, vinyl or similar. A combination of these materials may also be utilized and shall not detract from the appearance of the adjacent structures and buildings. Wood fence style shall be Good Neighbor, Window or Alternate Panel. Maximum spacing between fence posts shall be eight (8) feet and shall not be taller than that allowed by the City of Dallas. No hurricane fencing is allowed within the subdivision.

#### **4.16 Stormwater Drainage Facilities**

Each Owner shall maintain and repair the stormwater drainage facility and system on such Owner's Lot and within the adjacent right-of-way to ensure free flow of stormwater and compliance with any requirements of the City of Dallas found in City Code Section 4.354.

#### **4.17 General Restrictions**

No offensive or noxious activity, including but not limited to any excessive or offensive noise from musical instruments, broadcasting equipment, social activities or the like, or any activity not permitted by the applicable provisions of the Dallas Municipal Code, shall be carried out on any Lot, nor shall anything be done thereon which might be or become a nuisance or annoyance to adjacent Owners, or which might detract from the value of the Lots as a residential development. No use of any Lot or Lots will be allowed that in any manner infringes on the rights of the Owner of any abutting Lot, including but not limited to, reflections from solar heating systems or other equipment or fixtures. No garments, rugs, rags, bed sheets, laundry or other clothing or materials shall be allowed to hang from windows or from any other facade or extension of an improvement on a Lot where the same would be visible from any boundary of the Lot. No reflective material such as tin, tin foil or aluminum shall be used as a window covering or awning if the same would be visible from beyond any boundary of the Lot.

#### **4.18 No Rezoning or Redivision**

No Lot within the Subdivision may be rezoned or re-divided, nor may a Lot line or boundary line of a Lot be altered.

### **5. Declarant's Easements**

Easements for the installation and maintenance of utilities, drainage facilities, and other facilities are reserved for Declarant or the City of Dallas, as shown on the plat of the Subdivision. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the purpose of the easement, or obstruct the flow of waters in any drainage channel or pipeline. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority may be responsible.

## **6. General Provisions**

### **6.1 No Homeowners' Association**

As provided in Section 3, the Subdivision is not governed by the Oregon Planned Community Act, and therefore a homeowners' association shall not be created to govern the Subdivision and/or administer this Declaration.

### **6.2 Enforcement**

Declarant, the Owners of Lots within the Subdivision, and/or the holder of any recorded mortgage on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to said bodies or Owners by any proceeding at law or in equity. Failure by any of them to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorneys' fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees, to be set by the appellate court.

### **6.3 Joint Owners**

In any case in which two or more persons share the ownership of any unit, regardless of the form of ownership, the responsibility of such persons to comply with the provisions of this Declaration shall be a joint and several responsibility. The act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest provided, however, that in the event that such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to Declarant, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

### **6.4 Waiver**

Election by Declarant to pursue any remedy provided for the violation of any provision of the Declarations of the Subdivision shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder or which is permitted by law. The remedies provided in this Declaration are not intended to be exclusive but shall be in addition to all other remedies, including actions for damages or suits for injunctions or for specific performance available under applicable law.

### **6.5 Notices**

Any notice permitted or required by the Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed to have been accomplished forty-eight (48) hours after the notice has been deposited as certified or registered mail in the United States mail, with the postage prepaid, addressed as follows:

6.5.1 If to Declarant of Gleanns at Barberrry Phase 4 Subdivision:

Attn: The Gleanns at Barberrry I, LLC  
P.O. Box 968  
Dallas, OR 97338

6.5.2 If to a unit Owner, at the address given by the Owner at the time of the Owner's purchase of a unit or at the address of the Owner's unit within the Subdivision, at the option of the person giving the notice.

6.5.3 The address of any person may be changed by that person at any time by notice in writing delivered as provided herein.

**6.6 Severability**

Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

**6.7 Term**

These covenants are to run with the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they automatically extend for successive periods of ten (10) years each unless terminated by a vote of at least seventy-five percent (75%) of the Owners. This Declaration shall be binding on all parties and all persons coming under them from the date this Declaration is recorded.

**7. Amendments to Declaration**

**7.1 Amendment by Owners**

The Declaration may be amended by affirmative vote of not less than seventy-five percent (75%) of all Owners; provided, however, that until such time as all of the Lots have been sold to someone other than Declarant, no amendment shall be effective without the approval of Declarant.

**7.2 Declarant's Right to Amend**

Notwithstanding the provisions of Section 7.1, Declarant may amend the Declaration in order to comply with requirements of any department, bureau, board, commission or agency of the United States or the State of Oregon.

**7.3 Recordation of Amendments**

Amendments to the Declaration shall be executed by all of the Owners approving such amendments and recorded in the deed records of Polk County.



8. Voting

For the purpose of voting on any change in these covenants or termination of this Declaration, there shall be one vote for each Lot, and a person who is the record Owner of more than one Lot may cast one vote for each such Lot. The buyer under a land sale contract shall be deemed the record Owner rather than the seller if the contract or a memorandum thereof is recorded.

IN WITNESS WHEREOF Declarant has signed this instrument on the date first set forth above and arranged for its recordation in the real property records of Polk County, Oregon.

THE GLEANNs AT BARBERRY I, LLC

By: \_\_\_\_\_

Its: MANAGER

STATE OF OREGON )  
 ) ss.  
County of Polk )

On this 10 day of May, 2016, personally appeared JAMES W. FOWLER of The Gleanns at Barberrry I, LLC, an Oregon limited liability company, and acknowledged the foregoing instrument to be its voluntary act and deed.

Before me:

Shannon J. Vaughan  
Notary Public for Oregon  
My Commission Expires: 9-23-17



**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

SUBDIVISION BOUNDARY DESCRIPTION

A PORTION OF LOT 32 "GLEANN'S AT BARBERRY 3", A SUBDIVISION RECORDED IN POLK COUNTY BOOK OF TOWN PLATS, VOLUME 15, PAGE 10, LOCATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 7 SOUTH, RANGE 5 WEST, WILLAMETTE MERIDIAN, CITY OF DALLAS, POLK COUNTY, OREGON AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "P D GROUP LLC" MARKING THE NORTHWEST CORNER OF LOT 31 "GLEANN'S AT BARBERRY 3";

THENCE SOUTH 02° 11' 27" WEST, 79.29 FEET;

THENCE NORTH 87° 48' 33" WEST, 5.90 FEET;

THENCE SOUTH 02° 11' 27" WEST, 325.72 FEET;

THENCE SOUTH 21° 38' 19" EAST, 70.00 FEET;

THENCE SOUTH 68° 21' 41" WEST, 163.92 FEET;

THENCE NORTH 21° 38' 18" WEST, 71.91 FEET TO A POINT OF NON-TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS NORTH 44°11'16" EAST;

THENCE ALONG 25.00 FEET RADIUS NON-TANGENT CURVE TO THE LEFT, (THE CHORD OF WHICH BEARS NORTH 14°15'58" EAST, 26.16 FEET), AN ARC DISTANCE OF 27.53 FEET TO A POINT OF REVERSE CURVE;

THENCE ALONG THE ARC OF A 125.00 FEET RADIUS CURVE TO THE RIGHT (THE CHORD OF WHICH BEARS NORTH 07°32'40" WEST, 42.28 FEET), AN ARC DISTANCE OF 42.48 FEET;

THENCE NORTH 02° 11' 27" EAST, 67.95 FEET;

THENCE NORTH 87° 48' 33" WEST, 100.00 FEET;

THENCE NORTH 02° 11' 27" EAST, 255.00 FEET;

THENCE SOUTH 87° 48' 33" EAST, 51.93 FEET;

THENCE NORTH 01° 30' 28" EAST, 78.96 FEET TO THE NORTH LINE OF SAID LOT 32;

THENCE SOUTH 87° 54' 08" EAST ALONG THE NORTH LINE OF SAID LOT 32, 207.30 FEET TO THE INITIAL POINT.

CONTAINING 2.48 ACRES MORE OR LESS.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

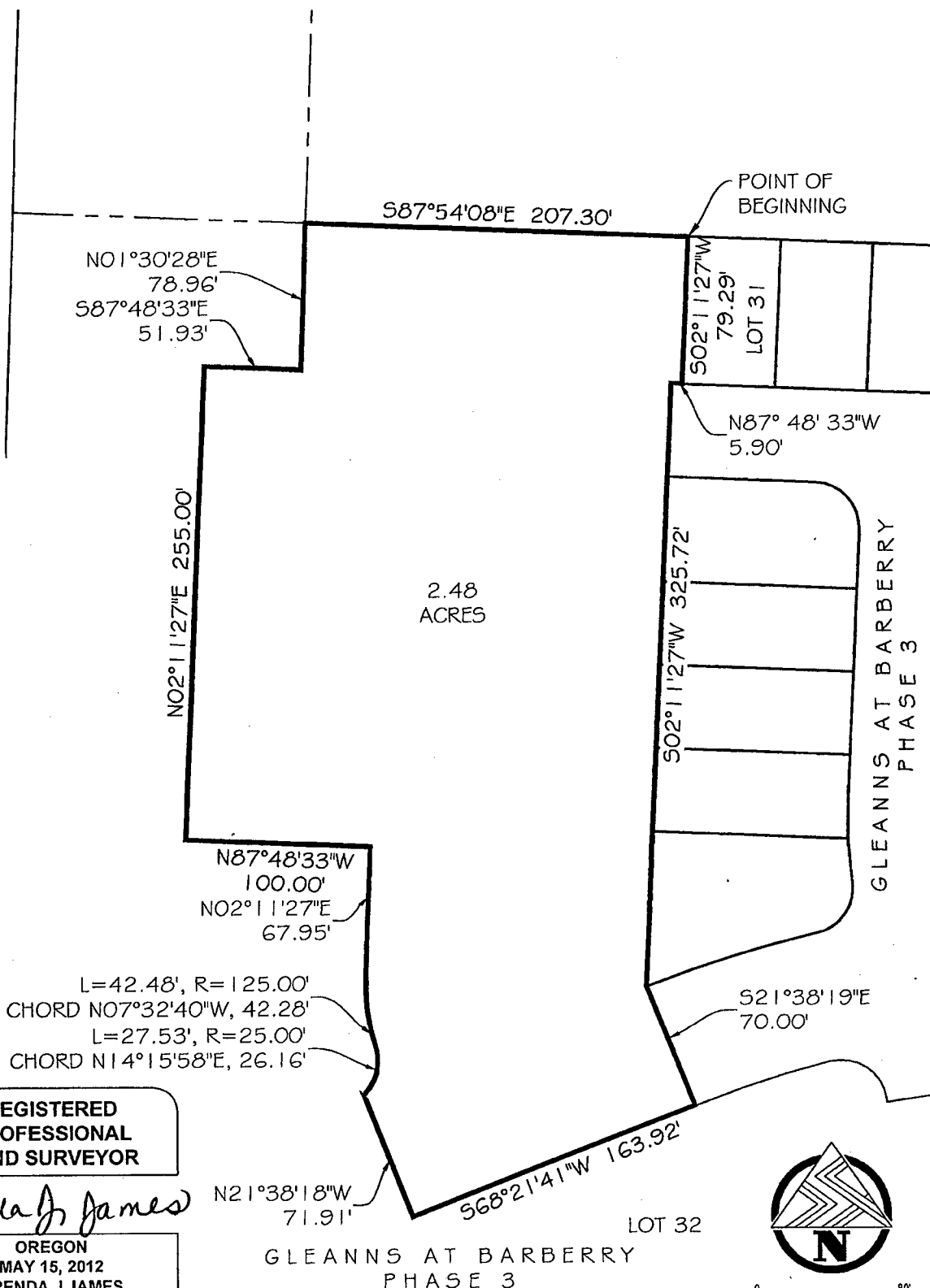
*Brenda J James*

OREGON  
MAY 15, 2012  
BRENDA J JAMES  
77593PLS

RENEWS 6/30/2017

PLOT DATE/TIME: 8/3/2016 - 4:24pm

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**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**

*Brenda J. James*

OREGON  
MAY 15, 2012  
BRENDA J JAMES  
77593

RENEWAL DATE: 6/30/2017



GLEANN'S AT BARBERRY PHASE 4  
BOUNDARY EXHIBIT