

STATE OF OREGON } ss.
County of Lincoln

14 Pages

I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon. WITNESS my hand and seal of said office affixed.

After recording return to:

DAVID MONSCHKE
PO BOX 282
YACHTS, OR 97498


DANA W. JENKINS, Lincoln County Clerk



Doc : 200800170
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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
OF THE VILLAGE AT YACHTS**



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE VILLAGE AT YACHATS**

This Declaration of Covenants, Conditions and Restrictions ("Declaration"), to be effective upon its recording in Lincoln County, Oregon is made effective the 14th day of DECEMBER, 2007 by The Village at Yachats, LLC ("Declarant").

RECITALS

Declarant is the owner of certain real property in Lincoln County, Oregon known as The Village at Yachats, the plat of which has been recorded with the Lincoln County Recorder as BOOK 1 PAGES 193, 193 A-B, and which is incorporated herein by this reference (the "Property").

Declarant proposes to create a Class I planned community pursuant to Oregon Revised Statutes ("ORS") 94.550 to 94.783 (the "Act") to be known as The Village at Yachats (the "Subdivision") which includes the Property and may include other contiguous real property owned by Declarant that is subjected to this Declaration by a subsequent declaration recorded by Declarant for that purpose, which property may or may not be called "The Village at Yachats," at Declarant's sole discretion.

For the orderly and uniform development of the Subdivision, Declarant desires to subject the Property to a common scheme of development, and to convey the Property and the individual lots thereof subject to certain protective covenants, conditions, and restrictions in order to enhance and protect the value and desirability thereof for the ultimate occupants of the structures to be constructed on each such lot or lots.

NOW, THEREFORE, Declarant hereby declares that all of the Property is and shall be held, sold, or conveyed subject to these protective covenants, conditions, and restrictions, which shall run with the land, and which shall be binding on all persons having any right, title, or interest in the Property or any part thereof, and on such persons' heirs, successors, and assigns, and shall inure to the benefit of all such persons.

I. DEFINITIONS

"Assessments" shall mean any charge imposed or levied by the HOA against an Owner or Lot pursuant to this Declaration, the Bylaws of the HOA or the Act.

"Board" shall mean Declarant or persons who maintain administrative control over the HOA pursuant to this Declaration.

"Building" shall mean each structure on the Property.

"Burdened Property" shall mean the Property.

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14
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“Common Area” shall mean that portion of the Property designated on the recorded plat of the Subdivision or that is subsequently added by Declarant and any improvements thereon, which areas and improvements are intended for the common use and enjoyment of the Owners.

“Contract of Sale” shall mean the agreement and its related documents setting out the terms and conditions for the sale or purchase of the Lot.

“Declarant” shall mean The Village at Yachats, LLC, an Oregon limited liability company, and any successor or assign thereof specified as a successor Declarant in a written agreement.

“Exteriors” shall mean all exterior parts of a Building, including exterior wall, roofs, gutters, and downspouts; windows and doors; and other exterior architectural features.

“HOA” shall mean the homeowners association formed in accordance with this Declaration.

“Landscaping” shall mean and include staking, clearing, or grading a Lot, planting or removing vegetation; fencing; and installation of an irrigation system for vegetation.

“Lot” shall mean one or more of the planned parcels comprising the Property.

“Owner” shall mean each of the owner(s) of all or any part of the Property, whether one or more parties or entities, and includes the vendee under a real estate sale contract, but shall exclude those persons having an interest merely as a lien against such property, whether such lien is public, private, judicial, or as a secured party. However, as to any one Lot, Building, or other divisible or separately held portion of the Property which shall be held by more than one legal entity or natural individual, such persons shall be deemed to act in concert and shall constitute one Owner.

“Streams” shall mean the areas described as streams or stream easements on the Plat or subsequently designated by Declarant or the HOA as streams.

“Property” means the real property in Lincoln County, Oregon legally described on the Plat as The Village at Yachats and any property added to the Property pursuant to Section II.A herein.

“Reserve Account” shall mean an account maintained by the HOA to hold those portions of assessments collected as reserves for the construction, improvement, deferred maintenance and replacement of capital improvements to be maintained by the HOA.

“Subdivision” shall mean The Village at Yachats and any property added to the planned unit development and subjected to this Declaration by annexation by Declarant and recording of a supplemental declaration hereto, whether or not the annexed property is known as “The Village at Yachats.”

“Trail” or “Trails” shall mean those areas designated as trails or trail easements on the Plat or subsequently designated by Declarant or the HOA as trails.

“Turnover Date” shall mean that date not later than 90 days after all (100%) of the Lots, have been conveyed to Owners other than Declarant or such earlier date chosen by Declarant on which Declarant turns over the administrative responsibilities of the HOA to the Owners.

II. GENERAL DEVELOPMENT PLAN

A. Addition of Property and Phased Development. Declarant reserves as a special Declarant right the right to (a) add to the Property all or a portion of any real property adjacent to the Property and (b) develop and plat the Subdivision in several phases. This special Declarant right shall terminate on the Turnover Date; provided, however, Declarant shall be entitled to retain this special Declarant right if Declarant has not completed its development of Lots or Common Areas in the Subdivision on the Turnover Date, as determined by Declarant in its sole discretion. Upon recordation of a supplemental declaration identifying any such adjacent property to be added, all provisions of this Declaration shall apply to such additional property in the same manner as if it were originally covered by this Declaration. As each phase is developed, Declarant will record a plat of that phase, which plat will identify the number of Lots and Common Area included in that phase. There is no limitation (either maximum or minimum) on the number of Lots or Common Area Declarant may add to the Property or to the phases that may be included in the Subdivision. Nothing contained herein shall be deemed to obligate Declarant to add to the Subdivision any real property adjacent to the Property and developed by Declarant. The addition of any real property to the Subdivision shall only be accomplished by Declarant’s recordation of a supplemental declaration annexing such property and a plat of such property designating the property as a phase of the Subdivision, and identifying the Lots and Common Area included in that Phase. Declarant shall have the unilateral right to transfer to any other person the right, privilege, and option that is herein reserved to Declarant to annex such adjacent property, provided that such transferee or assignee shall be the developer of at least a portion of the Property or such adjacent property and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

B. Fire Protection Measures. Owners are responsible for ensuring that their Buildings comply with the Oregon Fire Code and Lincoln County rules and regulations, all as amended from time to time.

C. Trails and Streams. Trails and Streams shall be for the use of Owners and their invitees for the purposes of hiking, walking and exercising household pets and other HOA-approved uses, provided that such uses do not damage the Property beyond normal wear and tear. No motorized vehicles, other than emergency vehicles, shall be allowed on the Trails. Trails shall be maintained by the HOA to the extent deemed necessary by the Board.

D. Private Roadways. All tracts designated on the recorded plat for the Subdivision as Private Roadways will be owned and maintained by the HOA in accordance with the applicable Lincoln County Code for the benefit and use of Owners and their invitees subject to any easements shown on the Plat or set forth in this Declaration and any rules and regulations established by the HOA or governmental agencies.

E. Lot Division. No Lot in the Subdivision shall be further divided or partitioned other than as platted by Declarant.

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F. Lot Use. Lots may be used for residential or commercial properties.

III. EASEMENTS

A. Easements. The Property shall be conveyed with and shall be subject to all easements as shown on the recorded plat for the Subdivision. The Property shall also be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Property, including any additional property or additional phases of the Subdivision added to the Property as described in Section II.A, hereof. Declarant is hereby appointed as each Owner's agent and authorized to grant all easements required, in Declarant's sole discretion, for installation and maintenance of such utilities and drainage facilities. Such easements shall be located as determined by Declarant, in Declarant's reasonable discretion.

B. Easements Reserved by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, over, in, upon, under, and across the Common Area and all unimproved Lots and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvement upon the Property in such a way as not to interfere unreasonably with the occupancy, use, enjoyment, or access to an Owner's Lot by such Owner or such Owner's family, tenants, employees, guests, or invitees.

C. HOA's Easements. Declarant grants to the HOA and its duly authorized agents, representatives and assigns (i) such easements over the Lots and Common Area as are necessary to perform the duties and obligations of the HOA, as set forth in this Declaration, the Bylaws of the HOA and any rules or regulations promulgated thereunder, as they may be amended; (ii) an easement across the Common Area for installation of utilities and drainage facilities, and the HOA may assign, in whole or in part, the right to use such easement to any entity providing such services or facilities or services that benefit more than one Owner; and (iii) an easement across the Common Area for Trails and Streams. The HOA's ownership of the Common Areas shall not create a merger extinguishing any easement granted to the HOA. The transfer of any Common Area by the HOA (including any transfer of roadways to the State of Oregon, Lincoln County, or any agency thereon shall be subject to any easement affecting the Common Area, including the foregoing easements granted to the HOA).

IV. ARCHITECTURAL DESIGN STANDARDS

No structure shall be erected, constructed, maintained, or permitted upon any Lot or any other part of the Property except in accordance with applicable zoning, land use, and building ordinances and regulations. Further, each such structure shall only be erected, constructed, placed, located, or maintained in accordance with the following:

A. Prior to the Turnover date, Declarant reserves the right to add improvements to the Subdivision, at its sole discretion.

B. Structures Allowed. No building or structure shall be erected, constructed, maintained, or permitted on a Lot other than a single Building, which shall be erected within the design and building limits as agreed to in the Contract of Sale and set by law.

C. Temporary Structures. Registered builders shall be permitted to place or erect sanitary facilities, or temporary or portable sheds as tool houses and for other uses common to construction, on a Lot during construction of a Building on that Lot but such builders shall maintain all such structures in a good state of repair until the Building is completed. Thereafter, within 30 days following completion of the Building, all such temporary construction structures and any other debris or construction material shall be fully removed from any such Lot.

D. Exterior Transmission Receptors. Exterior antennas, aerials, satellite signal receivers, or any other type of structure for the transmission or reception of electromagnetic signals of any type shall only be permitted as specified in the Contract of Sale.

E. Exterior Lighting. Type and placement of exterior lighting devices must be approved by the Board and must be designed to eliminate glare and annoyance to adjacent Owners and passersby.

F. Noncompliance of Owner. If the Board determines that an Owner has not constructed an improvement consistent with the specifications agreed upon in the Contract of Sale, has constructed an improvement without obtaining Board approval or has violated some other provision of this Declaration, and the Board sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5:00 p.m. on the tenth business day after issuance of such notice, the Board shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than 30 days from the date on which the notice of noncompliance was issued. At the hearing, if the Board finds that there is no valid reason for the continuing noncompliance, the Board shall determine the estimated costs of achieving compliance and may issue a fine against the noncomplying Owner for such amount in addition to the noncompliance fine set by the Board. The Board also shall require the Owner to remedy such noncompliance within 30 business days after the date of the determination. If the Owner does not comply with the determination within such period or any extension thereof granted, the Board may remove the noncomplying improvement, remedy the noncompliance, and record a notice of noncompliance in the county deed records. The costs of any such action and any fine issued shall be assessed against the Owner as an Individual Assessment either before or after any remedial action is taken and shall be collectible as a lien under the provisions of ORS 94.709, et seq., and any subsequent amendments thereof. The notice and hearing requirements described with respect to Individual Assessments shall be deemed satisfied by the Board's compliance with the notice and hearing requirements described in this paragraph. Any Owner adversely affected by the Board's action may appeal such action to the Board. Appeals shall be made in writing within ten days of the determination and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board within 30 working days of receipt of such notification.

G. Nonwaiver and Enforcement. The Board shall have the authority and power to prosecute any proceedings at law or in equity (including, but not limited to, seeking injunctive relief) against the person or persons violating or attempting to violate any of the provisions of this Section and to recover damages sustained by reason of such violation. Should the Board employ legal counsel to enforce any of the provisions of this Section, all reasonable fees and

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costs incurred by the Board shall be paid by the Owner at issue and the Board shall have a lien upon such Owner's Lot or Lots to secure payment of all such expenses.

V. MAINTENANCE AND USE

A. Interior Maintenance. It shall be the duty of the Owner to maintain all interior portions of the Building in good and clean condition, in compliance with Fire Codes and free of hazards at all times.

B. Garbage and Green Waste. All garbage, trash, green waste and recycling shall be placed in HOA supplied receptacles.

C. Pets. Other than for up to two dogs and two cats maintained as household pets, no animals, livestock or fowl shall be kept or allowed to be kept on any Lot. However, aquatic or avian pets kept and maintained solely within a Building are not limited as to number, subject to the other requirements of this Declaration. No allowed pets may be kept or bred for commercial purposes provided, however, that this provision shall not apply to nonroutine sale of a litter of dogs or cats. All such pets shall be housed and maintained as required by applicable zoning, land use, and animal control ordinances and regulations. Further, allowed pets shall not be permitted to run free, or otherwise be or become a nuisance or source of annoyance to the residents of adjoining properties.

D. Vehicle Restrictions. No trucks larger than a typical "1-ton" model and no travel or other trailer, pickup camper, motor home or coach, tent, boat, or motor vehicle other than a passenger automobile or pickup with or without a canopy shall be parked or permitted to remain on the Property, unless in an area specifically created for such storage and approved by the Board. Any storage facility approved by the Board for vehicles described herein must screen the vehicle from view from any Building or road.

The HOA may assign reserved parking spaces to each Lot. No vehicle of any kind shall remain parked for more than 48 hours in the Subdivision, except in an enclosed structure or in a secured parking space. No vehicle shall be repaired in the Subdivision, except in an enclosed structure.

E. Offensive Activities. No noxious or offensive activity may occur on the Property or any part thereof, nor shall anything be done thereon which may be or may become a danger, annoyance or nuisance to the residents of adjoining properties as determined by the HOA in its sole discretion.

F. Damage by Owners. Owners shall be responsible for any damage caused by such Owners, or their family members or invitees, to streets, curbs, Exteriors or Common Area. If damages occur to any such property and if repairs are not immediately effected to the satisfaction of the Declarant or Board, the Board or Declarant may make necessary repairs and any costs incurred shall be assessed against the Lot owned by the responsible Owner.

P L A N C O V E N A N T S

VI. DECLARANT'S RIGHTS

Declarant shall have the right to maintain a Sales Office, Model Unit(s), HOA office, and maintenance office on one or more of its Lots, Declarant, its employees and agents, and prospective purchasers and their agents shall have the right to use and occupy the Sales Office, Model Units, HOA office, and maintenance office during reasonable hours any day of the week. Further, Declarant reserves the right to locate and maintain on the Property a sign or signs with a description of the Subdivision and sales information.

VII. HOMEOWNER'S ASSOCIATION

A. Establishment of the Homeowners Association. Following recording of the Subdivision plat and this Declaration and prior to the date on which the first Lot is conveyed, Declarant shall establish an association of all of the Owners which shall have the powers and obligations set forth in this Declaration for the benefit of the Property. Such association shall be known as the "The Village at Yachats Homeowners Association" or a name similar thereto (the "HOA"). Declarant shall organize the HOA as a nonprofit corporation in accordance with ORS 94.625 under ORS Chapter 65 and shall adopt the initial Bylaws thereof and the same shall be recorded in the records of Lincoln County, Oregon.

B. Membership and Voting Rights. Each Owner, including Owners of a Lot within property annexed pursuant to Section II.A herein, shall be a member of the HOA and shall be entitled to one vote per Lot owned by the Owner (and only one vote, regardless of whether the Owner consists of one or more entities) except that, prior to the Turnover Date, Declarant shall be entitled to a weighted vote of three votes per Lot owned by Declarant. Following the Turnover Date, such entitlement shall revert to one vote per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the HOA. Ownership of such Lot shall be the sole qualification for membership.

C. Control of the Affairs of the HOA. Declarant reserves administrative control of the HOA until the Turnover Date. While Declarant retains administrative control of the HOA, Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim Board consisting of up to three Board members. On a date not later than 60 days following after the date on which 50 percent of the Lots then in existence have been conveyed to Owners other than Declarant, Declarant shall call a meeting for the purpose of selecting a transitional advisory committee. The transitional advisory committee shall consist of three members, at least two of which shall be selected by Owners other than Declarant. The transitional advisory committee shall serve until the control of the HOA is turned over to the Owners as set forth below.

On the Turnover Date Declarant shall call a meeting and at such meeting shall turn over administrative responsibility and deliver documents and funds to the Owners in accordance with ORS 94.616. Declarant shall, at that meeting, relinquish administrative control of the HOA including any interim Board appointed by Declarant, the interim Board member(s) shall resign, and the Owners shall elect Directors to the Board, as provided in the Bylaws, increasing the number of Directors to three. Thereafter, the Board shall be selected at the Annual Meeting of the HOA, which shall be held in accordance with the Bylaws.

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D. Title to and Maintenance of Common Areas. On or before the Turnover Date, Declarant shall convey to the HOA fee simple title to any Common Areas. The HOA shall maintain the Common Area as reasonably determined by the Board. The HOA shall not sell, convey or otherwise encumber any portion of the common property.

E. Exterior and Landscaping Maintenance. The HOA shall be responsible to keep and maintain all Exteriors in proper condition and repair. Such maintenance shall include, without limitation, periodic painting or staining of the exterior; periodic maintenance, repair, and replacement of roofs, gutters, and downspouts; and maintenance, repair, repainting of windows and doors and other architectural features; and maintenance of all exterior landscaping. The cost of such maintenance shall be included in the General Assessments described in Section VII.G, below.

F. Trails and Streams Maintenance. The HOA shall be responsible for maintaining the Trails and Streams. The cost of such maintenance shall be included in the General Assessments described in Section VII.G, below.

G. Assessments. Assessments of the HOA shall be of four types: (1) "General Assessments", which shall be for the operation of the HOA, including required insurance, payment of real property taxes for Common Areas, Trails and Streams, and the operation and maintenance of the Exteriors, Common Areas, Trails and Streams; (2) "Reserve Assessments," which shall fund the Reserve Account and (3) "Individual Assessments," which shall be against an individual Owner for damage or extraordinary wear and tear to private street or pedestrianways or any Common Area or easement owned or maintained by the HOA, or for any costs or expenses, including reasonable attorney fees, incurred by the HOA due to the enforcement of any covenant, condition, or restriction herein against any one Lot or Owner, and (4) "Special Assessments," which shall be for necessary repair or renovation of Common Area or HOA maintained property if sufficient funds are not available from the operating budget or Reserve Account. Assessments shall be established as follows:

a. Declarant shall not at any time be subject to assessment on Lots owned by Declarant, except for the accrual of reserves for any Reserve Account. The amount and date of commencement of the initial annual assessment of General and Reserve Assessments to Owners other than Declarant shall be determined by Declarant if Declarant elects to impose such assessments prior to the Turnover Date. In the sole and unfettered discretion of Declarant, Declarant may defer payment of reserves for a Lot, if any Reserve Assessment has been imposed, until the date the Lot is conveyed to a third party other than a successor Declarant; however, Declarant may not defer payment of accrued reserves beyond the Turnover Date. If Declarant has not imposed the initial annual assessment of the General and Reserve Assessments prior to the Turnover Date, then the imposition of such assessments by the Board shall be established at a meeting of the Board following the Turnover Date.

b. The meeting to impose the initial annual General and Reserve Assessments and any Special Assessment and each annual meeting thereafter to impose each subsequent year's General and Reserve Assessments and any Special Assessment shall be held after not less than 60 days' notice to all Owners of the date, time, and place of such meeting, the Board shall

meet and establish the amount of the General and Reserve Assessments and any Special Assessment and shall apportion and collect the same as follows:

i. General, Reserve and Special Assessments shall be equally apportioned and assessed against the Owners of each and every one of the Lots without regard to location, area or frontage.

ii. General Assessments shall be in an amount sufficient to operate and administer the Association for the following fiscal year and to pay for the maintenance and operation of the Common Area and HOA maintained property as set forth herein, including the costs of required landscaping and irrigation, the repair or replacement of routine elements of the stormwater facilities in accordance with applicable laws and regulations.

iii. As to Reserve Assessments, the Declarant shall conduct the initial reserve study for the HOA, and the Board shall thereafter annually conduct a reserve study, or review and update an existing study, of the Common Area and HOA maintained property, to determine the Reserve Account requirements. A Reserve Account shall be established for those such items all or part of which will normally require replacement in more than three (3) and less than thirty (30) years, and for the maintenance, repair, or replacement of other items as may be required under the Declaration or Bylaws or that the Board of Directors, in its discretion, may deem appropriate. The reserve study need not include items that could reasonably be funded from the General Assessments. The reserve study shall include: (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and (d) a 30 year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule. The reserve study shall be appropriate for the size and complexity of the Common Area and HOA maintained property, and shall address issues that include but are not limited to warranties and the useful life of the Common Area and the HOA maintained property. Within 30 days after conducting the reserve study, the Board shall provide a written summary of the reserve study and any revisions to the 30-year plan to each Owner.

iv. Special Assessments shall be in an amount established by the Board at a special or annual meeting held after notice to Owners of time, place and purpose in accordance with the Bylaws.

v. Within 30 days after establishment of the annual amounts of the assessments, and effective as of the first day of the following calendar year, the Board shall deliver to the individual Owners a statement of the assessment(s), showing the amount(s) of the General and Reserve Assessments or the amount of a Special Assessment. Such amount(s) shall be due and owing 30 days after the date of delivery of the statement to each Owner. The Board reserves the right to bill such assessments on a monthly, quarterly or annual basis as deemed necessary, in its sole discretion, to carry out the purposes of the HOA.

vi. If additional Lots are annexed to the Property, then commencing on the effective date of such annexation ("Change Date") and continuing thereafter, all General and

Reserve Assessments shall be allocated based on the number of Lots, including the annexed Lots then existing and subject to the terms of this Declaration, and all Lots shall be assessed a pro rata share of all common expenses represented by the General and Reserve Assessments commencing with any Change Date. If prior to any Change Date, General or Reserve Assessments have been paid for such common expenses which are, in Declarant's reasonable judgment, properly chargeable to the period prior to a Change Date but for which benefits will accrue to Owners after that Change Date, then each Owner of any annexed Lot shall pay its pro rata share to the HOA for such amounts within 30 days after receipt of written demand therefor, which demand shall be accompanied by reasonable supporting documentation. Adjustments to General and Reserve Assessments paid by all other Owners of Lots prior to that Change Date shall be adjusted for the next calendar year for which billings of common expenses are rendered by the HOA.

c. As to Individual Assessments, the HOA may impose an Individual Assessment against any Owner and such Owner's Lot:

i. To remedy any damage caused by an Owner, or the Owner's family members or invitees, to streets, curbs, Exteriors or Common Area as further described in Section VII.G, which Individual Assessments may be imposed without notice and opportunity for a hearing;

ii. To reimburse the HOA for any costs incurred in bringing an Owner or an Owner's Lot into compliance with the provision of this Declaration, the Bylaws, or any rules or regulations of the HOA and to collect any fine issued by the Board of the HOA for such violation of this Declaration, the Bylaws or any rules and regulations of the HOA; or

iii. To pay any costs of achieving compliance with the requirements of the Board and as a fine for an Owner's failure to comply with the requirements of the Board, as described in Section VII.G.

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Other than those Individual Assessments issued by the Board for noncompliance (for which the notice and hearing requirements are described in Section IV.F) or by the Board for damage to streets, curbs, Exteriors or Common Area (for which no notice or hearing is required), the Board shall give the Owner(s) not less than 30 days' notice of the Board meeting at which the actions which might necessitate such an assessment are to be reviewed. The potentially affected Owner(s) shall have the right to address the Board as to such actions and the amount of the proposed assessment. The Board may determine whether an assessment should be imposed and the amount of the proposed assessment whether the potentially affected Owner(s) attend the hearing or not. If the Board determines, by majority vote of the members of the Board present at the meeting, that an Individual Assessment should be imposed, it may impose the Individual Assessment in an amount that the Board determines in its reasonable discretion; provided, however, that any fine imposed as part of the Individual Assessment shall be based on the schedule for such fines that has been adopted by the Board as described in the Bylaws of the HOA.

Individual Assessments shall be due and owing when the Board delivers notice to the affected Owner stating the amount of the Individual Assessment imposed against the Owner and the Owner's Lot.

d. Any assessment not paid when due as set forth above shall (i) bear interest from the due date at the rate of 12% per annum; (ii) be subject to reasonable late charges imposed by the HOA, acting through the Board, against all like unpaid assessments by a resolution of the Board to compensate for the administrative and processing costs of late payments, and (iii) be collectible as a lien under the provisions of ORS 94.709, et seq., and any subsequent amendments thereof; and foreclosable as described therein. The lien includes interest, late charges, attorney fees, costs and other amounts imposed under this Declaration or the Bylaws of the HOA. Recording of this Declaration constitutes record notice and perfection of the lien under ORS 94.709, and such lien shall accumulate all future assessments, interest, late fees, fines, attorney fees and administrative costs properly chargeable to the Owner by the HOA, until such amounts are fully paid.

e. No Owner may waive or otherwise escape liability for any assessment by non-use of the HOA Common Area or abandonment of the Owner's Lot. All assessments imposed against an Owner's Lot shall be joint and several personal obligations against all Owners of the Lot assessed.

H. Reserve Accounts: Assessments paid into the Reserve Account are the property of the HOA and are not refundable to sellers of Lots or Owners. Sellers of Lots or Owners may treat their outstanding share of the Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their Lot. Investment of and loans from the Reserve Account shall be governed by the Board of Directors, the Bylaws and any Rules and Regulations established therefor.

VIII. GENERAL PROVISIONS

A. Notice: Any notice required to be given under this Declaration shall be in writing and shall be effective either when personally delivered to the person to whom notice is to be given, or three days following deposit with the U.S. Postal Service by postage paid first class mail, addressed either to the street address of the Lot or to such other address as an Owner may have designated by written notice to the Association.

B. Assignment: Any or all rights and powers of the Declarant herein contained may be assigned to any other individual, partnership, corporation, or association which is now organized, or which may hereafter be organized, and which will assume the duties of the Declarant hereunder pertaining to the particular rights and powers assigned; and upon any such individual, partnership, corporation, or association evidencing its intent in writing to accept such assignment, such assuming successor shall have the same rights and powers, and be subject to the same obligations and duties, as are given to and assumed by the Declarant alone.

C. Enforcement By Arbitration: The HOA, any Owner, or any secured party shall have the right, but not the duty, to enforce the provisions of this Declaration, and all covenants, conditions, and restrictions now or hereafter imposed by the provisions of this Declaration, or

any amendment hereto, but enforcement of the same, or resolution of any dispute regarding the same, shall be adjudicated only through an arbitration proceeding as is provided for as follows:

In the event of any dispute arising under any provision of this Declaration or any amendment hereto, including any dispute as to the necessity of any maintenance or repair of any improvement in or upon any Lot and any dispute as to the interpretation of a provision of this Declaration, such dispute shall be arbitrated by an arbitrator to be mutually agreed upon by the parties or, if the parties are unable to agree, then as appointed by the Circuit Court of Lincoln County. The decision of the arbitrator shall be final and shall be binding upon all parties to the dispute and may be enforced by a court of law as allowed by Oregon law. The arbitrator shall be entitled to reasonable compensation for the arbitrator's services, which cost shall be shared equally between and shall be an obligation of all parties to the arbitration. Further, each party to any such arbitration shall be responsible for each such party's own attorney fees and other costs, if any, and whether or not such party or any other party shall prevail in any such arbitration.

This arbitration provision shall not apply to any enforcement action commenced, filed or instituted by Declarant or the HOA against any Owner.

D. Attorney Fees: In the event a civil action is instituted to decide any dispute over the interpretation of the provisions of this Declaration, the prevailing party shall be entitled to recover from the other party such sums as any court may deem reasonable as attorney fees following the trial of such action or any appeal thereof. Such sums shall be in addition to all other recoverable sums otherwise provided for by law.

E. Indemnification. Neither the Board, any member thereof, nor the officers of the HOA shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Board, a member thereof or any officer of the HOA, in accordance with this Declaration except for actions of willful misconduct or bad faith. The Board members and officers of the HOA shall be indemnified by the Owners against all expenses and liabilities, including attorneys fees, reasonably incurred or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been a member of the Board or an officer of the HOA; provided, however, there shall be no indemnity if a Board or officer of the HOA is adjudged guilty of willful nonfeasance, misfeasance, or malfeasance in the performance of his/her duties.

F. No Right of Reversion: Nothing contained in this Declaration, nor in any form of deed which may be used by the Declarant or the Declarant's successors and assigns in selling the Property or any part thereof, shall be deemed to vest or reserve in the Declarant any right of reversion or re-entry for breach or violation of any one or more of the provisions of this Declaration.

G. Severability: Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no wise affect the other provisions, which shall remain of full force and effect.

H. Amendment: Any of the provisions of this Declaration may be amended by an instrument signed by the Owners of not less than seventy five percent (75%) of the Lots, but no

such amendment shall be effective until recorded in the appropriate county records. The forgoing notwithstanding, however, no such amendment shall be effective prior to the Turnover Date without the Declarant's assent thereto and in no event shall any amendment reduce Declarant's rights herein. In addition, Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed or sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee, or provide financing in connection with development of the Property and sale of the Lots. Before the Turnover Date, no such amendment shall require notice to or approval by any Owner other than Declarant.

I. Duration: The provisions of this Declaration shall run with, inure to the benefit of, and bind the land and be enforceable for a term of 20 years from the date this Declaration is first recorded, after which time this Declaration shall be automatically extended for successive periods of 10 years each unless prior to the initial or any subsequent expiration of this Declaration, not less than a two-thirds majority of the Owners shall have first agreed in writing to terminate this Declaration and subsequent amendments thereto, if any, and notice of such termination is recorded in the records of Lincoln County, Oregon.

SIGNED AND ACKNOWLEDGED on the date set forth below.

DECLARANT:
The Village at Yachats, LLC

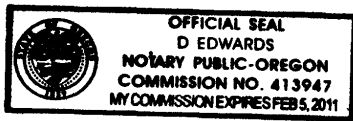
Date: 12-14-2007

By: [Signature]
Its: Managing member

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledge before me on December 14, 2007, by DAVID MENSCHKE in his capacity as managing member of The Village at Yachats, LLC.

D. Edwards
Notary Public for Oregon
My Commission Expires:



STATE OF OREGON } ss.
County of Lincoln

14 Pages

I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon. WITNESS my hand and seal of said office affixed.

After recording return to:

DAVID MONSCHKE
PO BOX 282
YACHTS, OR 97498


DANA W. JENKINS, Lincoln County Clerk



Doc : 200800170
Rect: 800135 91.00
01/08/2008 11:05:15am

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
OF THE VILLAGE AT YACHTS**



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE VILLAGE AT YACHATS**

This Declaration of Covenants, Conditions and Restrictions ("Declaration"), to be effective upon its recording in Lincoln County, Oregon is made effective the 14th day of DECEMBER, 2007 by The Village at Yachats, LLC ("Declarant").

RECITALS

Declarant is the owner of certain real property in Lincoln County, Oregon known as The Village at Yachats, the plat of which has been recorded with the Lincoln County Recorder as BOOK 1 PAGES 193, 193 A-B, and which is incorporated herein by this reference (the "Property").

Declarant proposes to create a Class I planned community pursuant to Oregon Revised Statutes ("ORS") 94.550 to 94.783 (the "Act") to be known as The Village at Yachats (the "Subdivision") which includes the Property and may include other contiguous real property owned by Declarant that is subjected to this Declaration by a subsequent declaration recorded by Declarant for that purpose, which property may or may not be called "The Village at Yachats," at Declarant's sole discretion.

For the orderly and uniform development of the Subdivision, Declarant desires to subject the Property to a common scheme of development, and to convey the Property and the individual lots thereof subject to certain protective covenants, conditions, and restrictions in order to enhance and protect the value and desirability thereof for the ultimate occupants of the structures to be constructed on each such lot or lots.

NOW, THEREFORE, Declarant hereby declares that all of the Property is and shall be held, sold, or conveyed subject to these protective covenants, conditions, and restrictions, which shall run with the land, and which shall be binding on all persons having any right, title, or interest in the Property or any part thereof, and on such persons' heirs, successors, and assigns, and shall inure to the benefit of all such persons.

I. DEFINITIONS

"Assessments" shall mean any charge imposed or levied by the HOA against an Owner or Lot pursuant to this Declaration, the Bylaws of the HOA or the Act.

"Board" shall mean Declarant or persons who maintain administrative control over the HOA pursuant to this Declaration.

"Building" shall mean each structure on the Property.

"Burdened Property" shall mean the Property.

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pages

“Common Area” shall mean that portion of the Property designated on the recorded plat of the Subdivision or that is subsequently added by Declarant and any improvements thereon, which areas and improvements are intended for the common use and enjoyment of the Owners.

“Contract of Sale” shall mean the agreement and its related documents setting out the terms and conditions for the sale or purchase of the Lot.

“Declarant” shall mean The Village at Yachats, LLC, an Oregon limited liability company, and any successor or assign thereof specified as a successor Declarant in a written agreement.

“Exteriors” shall mean all exterior parts of a Building, including exterior wall, roofs, gutters, and downspouts; windows and doors; and other exterior architectural features.

“HOA” shall mean the homeowners association formed in accordance with this Declaration.

“Landscaping” shall mean and include staking, clearing, or grading a Lot, planting or removing vegetation; fencing; and installation of an irrigation system for vegetation.

“Lot” shall mean one or more of the planned parcels comprising the Property.

“Owner” shall mean each of the owner(s) of all or any part of the Property, whether one or more parties or entities, and includes the vendee under a real estate sale contract, but shall exclude those persons having an interest merely as a lien against such property, whether such lien is public, private, judicial, or as a secured party. However, as to any one Lot, Building, or other divisible or separately held portion of the Property which shall be held by more than one legal entity or natural individual, such persons shall be deemed to act in concert and shall constitute one Owner.

“Streams” shall mean the areas described as streams or stream easements on the Plat or subsequently designated by Declarant or the HOA as streams.

“Property” means the real property in Lincoln County, Oregon legally described on the Plat as The Village at Yachats and any property added to the Property pursuant to Section II.A herein.

“Reserve Account” shall mean an account maintained by the HOA to hold those portions of assessments collected as reserves for the construction, improvement, deferred maintenance and replacement of capital improvements to be maintained by the HOA.

“Subdivision” shall mean The Village at Yachats and any property added to the planned unit development and subjected to this Declaration by annexation by Declarant and recording of a supplemental declaration hereto, whether or not the annexed property is known as “The Village at Yachats.”

“Trail” or “Trails” shall mean those areas designated as trails or trail easements on the Plat or subsequently designated by Declarant or the HOA as trails.

“Turnover Date” shall mean that date not later than 90 days after all (100%) of the Lots, have been conveyed to Owners other than Declarant or such earlier date chosen by Declarant on which Declarant turns over the administrative responsibilities of the HOA to the Owners.

II. GENERAL DEVELOPMENT PLAN

A. Addition of Property and Phased Development. Declarant reserves as a special Declarant right the right to (a) add to the Property all or a portion of any real property adjacent to the Property and (b) develop and plat the Subdivision in several phases. This special Declarant right shall terminate on the Turnover Date; provided, however, Declarant shall be entitled to retain this special Declarant right if Declarant has not completed its development of Lots or Common Areas in the Subdivision on the Turnover Date, as determined by Declarant in its sole discretion. Upon recordation of a supplemental declaration identifying any such adjacent property to be added, all provisions of this Declaration shall apply to such additional property in the same manner as if it were originally covered by this Declaration. As each phase is developed, Declarant will record a plat of that phase, which plat will identify the number of Lots and Common Area included in that phase. There is no limitation (either maximum or minimum) on the number of Lots or Common Area Declarant may add to the Property or to the phases that may be included in the Subdivision. Nothing contained herein shall be deemed to obligate Declarant to add to the Subdivision any real property adjacent to the Property and developed by Declarant. The addition of any real property to the Subdivision shall only be accomplished by Declarant’s recordation of a supplemental declaration annexing such property and a plat of such property designating the property as a phase of the Subdivision, and identifying the Lots and Common Area included in that Phase. Declarant shall have the unilateral right to transfer to any other person the right, privilege, and option that is herein reserved to Declarant to annex such adjacent property, provided that such transferee or assignee shall be the developer of at least a portion of the Property or such adjacent property and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

B. Fire Protection Measures. Owners are responsible for ensuring that their Buildings comply with the Oregon Fire Code and Lincoln County rules and regulations, all as amended from time to time.

C. Trails and Streams. Trails and Streams shall be for the use of Owners and their invitees for the purposes of hiking, walking and exercising household pets and other HOA-approved uses, provided that such uses do not damage the Property beyond normal wear and tear. No motorized vehicles, other than emergency vehicles, shall be allowed on the Trails. Trails shall be maintained by the HOA to the extent deemed necessary by the Board.

D. Private Roadways. All tracts designated on the recorded plat for the Subdivision as Private Roadways will be owned and maintained by the HOA in accordance with the applicable Lincoln County Code for the benefit and use of Owners and their invitees subject to any easements shown on the Plat or set forth in this Declaration and any rules and regulations established by the HOA or governmental agencies.

E. Lot Division. No Lot in the Subdivision shall be further divided or partitioned other than as platted by Declarant.

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F. Lot Use. Lots may be used for residential or commercial properties.

III. EASEMENTS

A. Easements. The Property shall be conveyed with and shall be subject to all easements as shown on the recorded plat for the Subdivision. The Property shall also be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Property, including any additional property or additional phases of the Subdivision added to the Property as described in Section II.A, hereof. Declarant is hereby appointed as each Owner's agent and authorized to grant all easements required, in Declarant's sole discretion, for installation and maintenance of such utilities and drainage facilities. Such easements shall be located as determined by Declarant, in Declarant's reasonable discretion.

B. Easements Reserved by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, over, in, upon, under, and across the Common Area and all unimproved Lots and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvement upon the Property in such a way as not to interfere unreasonably with the occupancy, use, enjoyment, or access to an Owner's Lot by such Owner or such Owner's family, tenants, employees, guests, or invitees.

C. HOA's Easements. Declarant grants to the HOA and its duly authorized agents, representatives and assigns (i) such easements over the Lots and Common Area as are necessary to perform the duties and obligations of the HOA, as set forth in this Declaration, the Bylaws of the HOA and any rules or regulations promulgated thereunder, as they may be amended; (ii) an easement across the Common Area for installation of utilities and drainage facilities, and the HOA may assign, in whole or in part, the right to use such easement to any entity providing such services or facilities or services that benefit more than one Owner; and (iii) an easement across the Common Area for Trails and Streams. The HOA's ownership of the Common Areas shall not create a merger extinguishing any easement granted to the HOA. The transfer of any Common Area by the HOA (including any transfer of roadways to the State of Oregon, Lincoln County, or any agency thereon shall be subject to any easement affecting the Common Area, including the foregoing easements granted to the HOA).

IV. ARCHITECTURAL DESIGN STANDARDS

No structure shall be erected, constructed, maintained, or permitted upon any Lot or any other part of the Property except in accordance with applicable zoning, land use, and building ordinances and regulations. Further, each such structure shall only be erected, constructed, placed, located, or maintained in accordance with the following:

A. Prior to the Turnover date, Declarant reserves the right to add improvements to the Subdivision, at its sole discretion.

B. Structures Allowed. No building or structure shall be erected, constructed, maintained, or permitted on a Lot other than a single Building, which shall be erected within the design and building limits as agreed to in the Contract of Sale and set by law.

C. Temporary Structures. Registered builders shall be permitted to place or erect sanitary facilities, or temporary or portable sheds as tool houses and for other uses common to construction, on a Lot during construction of a Building on that Lot but such builders shall maintain all such structures in a good state of repair until the Building is completed. Thereafter, within 30 days following completion of the Building, all such temporary construction structures and any other debris or construction material shall be fully removed from any such Lot.

D. Exterior Transmission Receptors. Exterior antennas, aerials, satellite signal receivers, or any other type of structure for the transmission or reception of electromagnetic signals of any type shall only be permitted as specified in the Contract of Sale.

E. Exterior Lighting. Type and placement of exterior lighting devices must be approved by the Board and must be designed to eliminate glare and annoyance to adjacent Owners and passersby.

F. Noncompliance of Owner. If the Board determines that an Owner has not constructed an improvement consistent with the specifications agreed upon in the Contract of Sale, has constructed an improvement without obtaining Board approval or has violated some other provision of this Declaration, and the Board sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5:00 p.m. on the tenth business day after issuance of such notice, the Board shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than 30 days from the date on which the notice of noncompliance was issued. At the hearing, if the Board finds that there is no valid reason for the continuing noncompliance, the Board shall determine the estimated costs of achieving compliance and may issue a fine against the noncomplying Owner for such amount in addition to the noncompliance fine set by the Board. The Board also shall require the Owner to remedy such noncompliance within 30 business days after the date of the determination. If the Owner does not comply with the determination within such period or any extension thereof granted, the Board may remove the noncomplying improvement, remedy the noncompliance, and record a notice of noncompliance in the county deed records. The costs of any such action and any fine issued shall be assessed against the Owner as an Individual Assessment either before or after any remedial action is taken and shall be collectible as a lien under the provisions of ORS 94.709, et seq., and any subsequent amendments thereof. The notice and hearing requirements described with respect to Individual Assessments shall be deemed satisfied by the Board's compliance with the notice and hearing requirements described in this paragraph. Any Owner adversely affected by the Board's action may appeal such action to the Board. Appeals shall be made in writing within ten days of the determination and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board within 30 working days of receipt of such notification.

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G. Nonwaiver and Enforcement. The Board shall have the authority and power to prosecute any proceedings at law or in equity (including, but not limited to, seeking injunctive relief) against the person or persons violating or attempting to violate any of the provisions of this Section and to recover damages sustained by reason of such violation. Should the Board employ legal counsel to enforce any of the provisions of this Section, all reasonable fees and

costs incurred by the Board shall be paid by the Owner at issue and the Board shall have a lien upon such Owner's Lot or Lots to secure payment of all such expenses.

V. MAINTENANCE AND USE

A. Interior Maintenance. It shall be the duty of the Owner to maintain all interior portions of the Building in good and clean condition, in compliance with Fire Codes and free of hazards at all times.

B. Garbage and Green Waste. All garbage, trash, green waste and recycling shall be placed in HOA supplied receptacles.

C. Pets. Other than for up to two dogs and two cats maintained as household pets, no animals, livestock or fowl shall be kept or allowed to be kept on any Lot. However, aquatic or avian pets kept and maintained solely within a Building are not limited as to number, subject to the other requirements of this Declaration. No allowed pets may be kept or bred for commercial purposes provided, however, that this provision shall not apply to nonroutine sale of a litter of dogs or cats. All such pets shall be housed and maintained as required by applicable zoning, land use, and animal control ordinances and regulations. Further, allowed pets shall not be permitted to run free, or otherwise be or become a nuisance or source of annoyance to the residents of adjoining properties.

D. Vehicle Restrictions. No trucks larger than a typical "1-ton" model and no travel or other trailer, pickup camper, motor home or coach, tent, boat, or motor vehicle other than a passenger automobile or pickup with or without a canopy shall be parked or permitted to remain on the Property, unless in an area specifically created for such storage and approved by the Board. Any storage facility approved by the Board for vehicles described herein must screen the vehicle from view from any Building or road.

The HOA may assign reserved parking spaces to each Lot. No vehicle of any kind shall remain parked for more than 48 hours in the Subdivision, except in an enclosed structure or in a secured parking space. No vehicle shall be repaired in the Subdivision, except in an enclosed structure.

E. Offensive Activities. No noxious or offensive activity may occur on the Property or any part thereof, nor shall anything be done thereon which may be or may become a danger, annoyance or nuisance to the residents of adjoining properties as determined by the HOA in its sole discretion.

F. Damage by Owners. Owners shall be responsible for any damage caused by such Owners, or their family members or invitees, to streets, curbs, Exteriors or Common Area. If damages occur to any such property and if repairs are not immediately effected to the satisfaction of the Declarant or Board, the Board or Declarant may make necessary repairs and any costs incurred shall be assessed against the Lot owned by the responsible Owner.

DECLARATION

VI. DECLARANT'S RIGHTS

Declarant shall have the right to maintain a Sales Office, Model Unit(s), HOA office, and maintenance office on one or more of its Lots, Declarant, its employees and agents, and prospective purchasers and their agents shall have the right to use and occupy the Sales Office, Model Units, HOA office, and maintenance office during reasonable hours any day of the week. Further, Declarant reserves the right to locate and maintain on the Property a sign or signs with a description of the Subdivision and sales information.

VII. HOMEOWNER'S ASSOCIATION

A. Establishment of the Homeowners Association. Following recording of the Subdivision plat and this Declaration and prior to the date on which the first Lot is conveyed, Declarant shall establish an association of all of the Owners which shall have the powers and obligations set forth in this Declaration for the benefit of the Property. Such association shall be known as the "The Village at Yachats Homeowners Association" or a name similar thereto (the "HOA"). Declarant shall organize the HOA as a nonprofit corporation in accordance with ORS 94.625 under ORS Chapter 65 and shall adopt the initial Bylaws thereof and the same shall be recorded in the records of Lincoln County, Oregon.

B. Membership and Voting Rights. Each Owner, including Owners of a Lot within property annexed pursuant to Section II.A herein, shall be a member of the HOA and shall be entitled to one vote per Lot owned by the Owner (and only one vote, regardless of whether the Owner consists of one or more entities) except that, prior to the Turnover Date, Declarant shall be entitled to a weighted vote of three votes per Lot owned by Declarant. Following the Turnover Date, such entitlement shall revert to one vote per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the HOA. Ownership of such Lot shall be the sole qualification for membership.

C. Control of the Affairs of the HOA. Declarant reserves administrative control of the HOA until the Turnover Date. While Declarant retains administrative control of the HOA, Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim Board consisting of up to three Board members. On a date not later than 60 days following after the date on which 50 percent of the Lots then in existence have been conveyed to Owners other than Declarant, Declarant shall call a meeting for the purpose of selecting a transitional advisory committee. The transitional advisory committee shall consist of three members, at least two of which shall be selected by Owners other than Declarant. The transitional advisory committee shall serve until the control of the HOA is turned over to the Owners as set forth below.

On the Turnover Date Declarant shall call a meeting and at such meeting shall turn over administrative responsibility and deliver documents and funds to the Owners in accordance with ORS 94.616. Declarant shall, at that meeting, relinquish administrative control of the HOA including any interim Board appointed by Declarant, the interim Board member(s) shall resign, and the Owners shall elect Directors to the Board, as provided in the Bylaws, increasing the number of Directors to three. Thereafter, the Board shall be selected at the Annual Meeting of the HOA, which shall be held in accordance with the Bylaws.

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D. Title to and Maintenance of Common Areas. On or before the Turnover Date, Declarant shall convey to the HOA fee simple title to any Common Areas. The HOA shall maintain the Common Area as reasonably determined by the Board. The HOA shall not sell, convey or otherwise encumber any portion of the common property.

E. Exterior and Landscaping Maintenance. The HOA shall be responsible to keep and maintain all Exteriors in proper condition and repair. Such maintenance shall include, without limitation, periodic painting or staining of the exterior; periodic maintenance, repair, and replacement of roofs, gutters, and downspouts; and maintenance, repair, repainting of windows and doors and other architectural features; and maintenance of all exterior landscaping. The cost of such maintenance shall be included in the General Assessments described in Section VII.G, below.

F. Trails and Streams Maintenance. The HOA shall be responsible for maintaining the Trails and Streams. The cost of such maintenance shall be included in the General Assessments described in Section VII.G, below.

G. Assessments. Assessments of the HOA shall be of four types: (1) "General Assessments", which shall be for the operation of the HOA, including required insurance, payment of real property taxes for Common Areas, Trails and Streams, and the operation and maintenance of the Exteriors, Common Areas, Trails and Streams; (2) "Reserve Assessments," which shall fund the Reserve Account and (3) "Individual Assessments," which shall be against an individual Owner for damage or extraordinary wear and tear to private street or pedestrianways or any Common Area or easement owned or maintained by the HOA, or for any costs or expenses, including reasonable attorney fees, incurred by the HOA due to the enforcement of any covenant, condition, or restriction herein against any one Lot or Owner, and (4) "Special Assessments," which shall be for necessary repair or renovation of Common Area or HOA maintained property if sufficient funds are not available from the operating budget or Reserve Account. Assessments shall be established as follows:

a. Declarant shall not at any time be subject to assessment on Lots owned by Declarant, except for the accrual of reserves for any Reserve Account. The amount and date of commencement of the initial annual assessment of General and Reserve Assessments to Owners other than Declarant shall be determined by Declarant if Declarant elects to impose such assessments prior to the Turnover Date. In the sole and unfettered discretion of Declarant, Declarant may defer payment of reserves for a Lot, if any Reserve Assessment has been imposed, until the date the Lot is conveyed to a third party other than a successor Declarant; however, Declarant may not defer payment of accrued reserves beyond the Turnover Date. If Declarant has not imposed the initial annual assessment of the General and Reserve Assessments prior to the Turnover Date, then the imposition of such assessments by the Board shall be established at a meeting of the Board following the Turnover Date.

b. The meeting to impose the initial annual General and Reserve Assessments and any Special Assessment and each annual meeting thereafter to impose each subsequent year's General and Reserve Assessments and any Special Assessment shall be held after not less than 60 days' notice to all Owners of the date, time, and place of such meeting, the Board shall

meet and establish the amount of the General and Reserve Assessments and any Special Assessment and shall apportion and collect the same as follows:

i. General, Reserve and Special Assessments shall be equally apportioned and assessed against the Owners of each and every one of the Lots without regard to location, area or frontage.

ii. General Assessments shall be in an amount sufficient to operate and administer the Association for the following fiscal year and to pay for the maintenance and operation of the Common Area and HOA maintained property as set forth herein, including the costs of required landscaping and irrigation, the repair or replacement of routine elements of the stormwater facilities in accordance with applicable laws and regulations.

iii. As to Reserve Assessments, the Declarant shall conduct the initial reserve study for the HOA, and the Board shall thereafter annually conduct a reserve study, or review and update an existing study, of the Common Area and HOA maintained property, to determine the Reserve Account requirements. A Reserve Account shall be established for those such items all or part of which will normally require replacement in more than three (3) and less than thirty (30) years, and for the maintenance, repair, or replacement of other items as may be required under the Declaration or Bylaws or that the Board of Directors, in its discretion, may deem appropriate. The reserve study need not include items that could reasonably be funded from the General Assessments. The reserve study shall include: (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and (d) a 30 year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule. The reserve study shall be appropriate for the size and complexity of the Common Area and HOA maintained property, and shall address issues that include but are not limited to warranties and the useful life of the Common Area and the HOA maintained property. Within 30 days after conducting the reserve study, the Board shall provide a written summary of the reserve study and any revisions to the 30-year plan to each Owner.

iv. Special Assessments shall be in an amount established by the Board at a special or annual meeting held after notice to Owners of time, place and purpose in accordance with the Bylaws.

v. Within 30 days after establishment of the annual amounts of the assessments, and effective as of the first day of the following calendar year, the Board shall deliver to the individual Owners a statement of the assessment(s), showing the amount(s) of the General and Reserve Assessments or the amount of a Special Assessment. Such amount(s) shall be due and owing 30 days after the date of delivery of the statement to each Owner. The Board reserves the right to bill such assessments on a monthly, quarterly or annual basis as deemed necessary, in its sole discretion, to carry out the purposes of the HOA.

vi. If additional Lots are annexed to the Property, then commencing on the effective date of such annexation ("Change Date") and continuing thereafter, all General and

Reserve Assessments shall be allocated based on the number of Lots, including the annexed Lots then existing and subject to the terms of this Declaration, and all Lots shall be assessed a pro rata share of all common expenses represented by the General and Reserve Assessments commencing with any Change Date. If prior to any Change Date, General or Reserve Assessments have been paid for such common expenses which are, in Declarant's reasonable judgment, properly chargeable to the period prior to a Change Date but for which benefits will accrue to Owners after that Change Date, then each Owner of any annexed Lot shall pay its pro rata share to the HOA for such amounts within 30 days after receipt of written demand therefor, which demand shall be accompanied by reasonable supporting documentation. Adjustments to General and Reserve Assessments paid by all other Owners of Lots prior to that Change Date shall be adjusted for the next calendar year for which billings of common expenses are rendered by the HOA.

c. As to Individual Assessments, the HOA may impose an Individual Assessment against any Owner and such Owner's Lot:

i. To remedy any damage caused by an Owner, or the Owner's family members or invitees, to streets, curbs, Exteriors or Common Area as further described in Section VII.G, which Individual Assessments may be imposed without notice and opportunity for a hearing;

ii. To reimburse the HOA for any costs incurred in bringing an Owner or an Owner's Lot into compliance with the provision of this Declaration, the Bylaws, or any rules or regulations of the HOA and to collect any fine issued by the Board of the HOA for such violation of this Declaration, the Bylaws or any rules and regulations of the HOA; or

iii. To pay any costs of achieving compliance with the requirements of the Board and as a fine for an Owner's failure to comply with the requirements of the Board, as described in Section VII.G.

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Other than those Individual Assessments issued by the Board for noncompliance (for which the notice and hearing requirements are described in Section IV.F) or by the Board for damage to streets, curbs, Exteriors or Common Area (for which no notice or hearing is required), the Board shall give the Owner(s) not less than 30 days' notice of the Board meeting at which the actions which might necessitate such an assessment are to be reviewed. The potentially affected Owner(s) shall have the right to address the Board as to such actions and the amount of the proposed assessment. The Board may determine whether an assessment should be imposed and the amount of the proposed assessment whether the potentially affected Owner(s) attend the hearing or not. If the Board determines, by majority vote of the members of the Board present at the meeting, that an Individual Assessment should be imposed, it may impose the Individual Assessment in an amount that the Board determines in its reasonable discretion; provided, however, that any fine imposed as part of the Individual Assessment shall be based on the schedule for such fines that has been adopted by the Board as described in the Bylaws of the HOA.

Individual Assessments shall be due and owing when the Board delivers notice to the affected Owner stating the amount of the Individual Assessment imposed against the Owner and the Owner's Lot.

d. Any assessment not paid when due as set forth above shall (i) bear interest from the due date at the rate of 12% per annum; (ii) be subject to reasonable late charges imposed by the HOA, acting through the Board, against all like unpaid assessments by a resolution of the Board to compensate for the administrative and processing costs of late payments, and (iii) be collectible as a lien under the provisions of ORS 94.709, et seq., and any subsequent amendments thereof; and foreclosable as described therein. The lien includes interest, late charges, attorney fees, costs and other amounts imposed under this Declaration or the Bylaws of the HOA. Recording of this Declaration constitutes record notice and perfection of the lien under ORS 94.709, and such lien shall accumulate all future assessments, interest, late fees, fines, attorney fees and administrative costs properly chargeable to the Owner by the HOA, until such amounts are fully paid.

e. No Owner may waive or otherwise escape liability for any assessment by non-use of the HOA Common Area or abandonment of the Owner's Lot. All assessments imposed against an Owner's Lot shall be joint and several personal obligations against all Owners of the Lot assessed.

H. Reserve Accounts: Assessments paid into the Reserve Account are the property of the HOA and are not refundable to sellers of Lots or Owners. Sellers of Lots or Owners may treat their outstanding share of the Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their Lot. Investment of and loans from the Reserve Account shall be governed by the Board of Directors, the Bylaws and any Rules and Regulations established therefor.

VIII. GENERAL PROVISIONS

A. Notice: Any notice required to be given under this Declaration shall be in writing and shall be effective either when personally delivered to the person to whom notice is to be given, or three days following deposit with the U.S. Postal Service by postage paid first class mail, addressed either to the street address of the Lot or to such other address as an Owner may have designated by written notice to the Association.

B. Assignment: Any or all rights and powers of the Declarant herein contained may be assigned to any other individual, partnership, corporation, or association which is now organized, or which may hereafter be organized, and which will assume the duties of the Declarant hereunder pertaining to the particular rights and powers assigned; and upon any such individual, partnership, corporation, or association evidencing its intent in writing to accept such assignment, such assuming successor shall have the same rights and powers, and be subject to the same obligations and duties, as are given to and assumed by the Declarant alone.

C. Enforcement By Arbitration: The HOA, any Owner, or any secured party shall have the right, but not the duty, to enforce the provisions of this Declaration, and all covenants, conditions, and restrictions now or hereafter imposed by the provisions of this Declaration, or

any amendment hereto, but enforcement of the same, or resolution of any dispute regarding the same, shall be adjudicated only through an arbitration proceeding as is provided for as follows:

In the event of any dispute arising under any provision of this Declaration or any amendment hereto, including any dispute as to the necessity of any maintenance or repair of any improvement in or upon any Lot and any dispute as to the interpretation of a provision of this Declaration, such dispute shall be arbitrated by an arbitrator to be mutually agreed upon by the parties or, if the parties are unable to agree, then as appointed by the Circuit Court of Lincoln County. The decision of the arbitrator shall be final and shall be binding upon all parties to the dispute and may be enforced by a court of law as allowed by Oregon law. The arbitrator shall be entitled to reasonable compensation for the arbitrator's services, which cost shall be shared equally between and shall be an obligation of all parties to the arbitration. Further, each party to any such arbitration shall be responsible for each such party's own attorney fees and other costs, if any, and whether or not such party or any other party shall prevail in any such arbitration.

This arbitration provision shall not apply to any enforcement action commenced, filed or instituted by Declarant or the HOA against any Owner.

D. Attorney Fees: In the event a civil action is instituted to decide any dispute over the interpretation of the provisions of this Declaration, the prevailing party shall be entitled to recover from the other party such sums as any court may deem reasonable as attorney fees following the trial of such action or any appeal thereof. Such sums shall be in addition to all other recoverable sums otherwise provided for by law.

E. Indemnification. Neither the Board, any member thereof, nor the officers of the HOA shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Board, a member thereof or any officer of the HOA, in accordance with this Declaration except for actions of willful misconduct or bad faith. The Board members and officers of the HOA shall be indemnified by the Owners against all expenses and liabilities, including attorneys fees, reasonably incurred or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been a member of the Board or an officer of the HOA; provided, however, there shall be no indemnity if a Board or officer of the HOA is adjudged guilty of willful nonfeasance, misfeasance, or malfeasance in the performance of his/her duties.

F. No Right of Reversion: Nothing contained in this Declaration, nor in any form of deed which may be used by the Declarant or the Declarant's successors and assigns in selling the Property or any part thereof, shall be deemed to vest or reserve in the Declarant any right of reversion or re-entry for breach or violation of any one or more of the provisions of this Declaration.

G. Severability: Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no wise affect the other provisions, which shall remain of full force and effect.

H. Amendment: Any of the provisions of this Declaration may be amended by an instrument signed by the Owners of not less than seventy five percent (75%) of the Lots, but no

such amendment shall be effective until recorded in the appropriate county records. The forgoing notwithstanding, however, no such amendment shall be effective prior to the Turnover Date without the Declarant's assent thereto and in no event shall any amendment reduce Declarant's rights herein. In addition, Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed or sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee, or provide financing in connection with development of the Property and sale of the Lots. Before the Turnover Date, no such amendment shall require notice to or approval by any Owner other than Declarant.

I. Duration: The provisions of this Declaration shall run with, inure to the benefit of, and bind the land and be enforceable for a term of 20 years from the date this Declaration is first recorded, after which time this Declaration shall be automatically extended for successive periods of 10 years each unless prior to the initial or any subsequent expiration of this Declaration, not less than a two-thirds majority of the Owners shall have first agreed in writing to terminate this Declaration and subsequent amendments thereto, if any, and notice of such termination is recorded in the records of Lincoln County, Oregon.

SIGNED AND ACKNOWLEDGED on the date set forth below.

DECLARANT:
The Village at Yachats, LLC

Date: 12-14-2007

By: [Signature]
Its: Managing member

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledge before me on December 14, 2007, by DAVID MENSCHKE in his capacity as managing member of The Village at Yachats, LLC.

D. Edwards
Notary Public for Oregon
My Commission Expires:

