

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**FOR**

**LAND & SEA ADDITION**

**WALDPORT, OREGON**

THIS DECLARATION is made this 29<sup>TH</sup> day of June, 2005, by RICHARD G. MURRY, an individual ("Declarant").

**RECITALS:**

Declarant is the owner of certain real property in Lincoln County, Oregon more particularly described on the attached Exhibit A (the "Property"). Declarant proposes to develop the Property as a planned development for manufactured homes to be known as "Land & Sea Addition". Declarant hopes to create in Waldport, Oregon, a carefully planned community that will provide a unique and attractive place to live.

On June 29, 2005, Declarant recorded a Subdivision Plat of the Property in Book 16, pages 17 and 17A, Records of Lincoln County, Oregon (the "Plat"). Declarant desires to subject the conditions, restrictions, and charges set forth in this Declaration for the benefit of such Property and its present and subsequent owners.

Declarant owns property adjoining the Property and may desire to subject all or a portion of the adjoining property to the easements, covenants, conditions, restrictions, and charges set forth in this Declaration for the benefit of such adjoining property and its present and subsequent owners.

The Property or the adjoining property may include common areas as may hereafter be designated by the Declarant.

**DECLARATION:**

NOW, THEREFORE, Declarant hereby declares that the property described in the Plat shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part hereof and shall inure to the benefit of each owner thereof.

## ARTICLE 1

### DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

- 1.1 “Association” means the incorporated association to be formed to serve as the Owners’ association as provided in Article 6.
- 1.2 “Architectural Review Committee” or “Committee” means the committee appointed pursuant to Article 5.
- 1.3 “Board” means the Board of Directors of the Association.
- 1.4 “Bylaws” means the Bylaws of the Association.
- 1.5 “City” means the City of Waldport, Oregon.
- 1.6 “Common Areas” Means any real property and any Improvements thereon now or hereafter owned by Declarant, to the extent, if any, designated for the common use and enjoyment of the Owners by the Declarant in a deed granting ownership of any such real property and Improvements to the Association at any time after the Association is formed pursuant to Article 6.
- 1.7 “County” means Lincoln County, Oregon.
- 1.8 “Declarant” means Richard G. Murry and his successors and assigns if such successor or assignee should acquire (i) Declarant’s interest in the Property or (ii) all the Declarant’s rights under this Declaration pursuant to a recorded instrument executed by Declarant.
- 1.9 “Improvement” means every structure or improvement of any kind, including but not limited to landscaping and any fence, wall, driveway, swimming pool, tennis court, light fixture, entry gate, storage shelter, or other product of construction efforts on or in respect to the Property.
- 1.10 “Living Unit” means a manufactured home constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is designed and intended to be connected to public and private utilities on a permanent basis, that is constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

- 1.11 "Lot" means a platted or partitioned lot or tract within the Property.
- 1.12 "Mortgage" means a mortgage or trust deed; "mortgagee" means a mortgagee or a beneficiary of a trust deed; "mortgagor" means a mortgagor or a grantor of a trust deed.
- 1.13 "Owner" means the person or persons, including Declarant, owning any Lot (including the holder of a vendee's interest under a land sale contract), but does not include a tenant or a holder of a leasehold interest or a person holding only a security interest in a Lot (including the holder of a vendor's interest under a land sale contract). The rights, obligations, and other entitlements granted to or imposed upon an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.
- 1.14 "Plat" shall have the meaning given in the Recitals to this Declaration.
- 1.15 "Property" means the real property described on Exhibit A hereto and in the Plat.
- 1.16 "Rules and Regulations" means rules and regulations adopted by the Board from time to time pursuant to Section 6.7.
- 1.17 "Sold" means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.
- 1.18 "This Declaration" means all of the easements, covenants, conditions, restrictions, and charges set forth herein, together with any Rules or Regulations promulgated hereunder, as the same may be amended from time to time in accordance with the provisions hereof.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration:

All that certain real property located in the  
City of Waldport, Lincoln County, Oregon,  
Described in Exhibit A hereto and in  
Subdivision Plat recorded June 20, 2005



## occupant of any Lot.

- (b) The Association shall retain the right to suspend an Owner's voting rights and/or right to use any of the Common Areas for any period during which any assessment against such Owner's Lot remains unpaid or, for a period not to exceed thirty (30) days, for each material infraction by such Owner of the Rules and Regulations;
  - (c) The Association shall retain the right to borrow money for the purpose of improving the Common Areas and , in connection therewith, to mortgage or otherwise encumber such Common Areas, provided that such actions are taken in accordance with the Bylaws, and provided further that any such mortgage or encumbrance shall be subordinate to the rights of the Owners set forth in this Section 3.3;
  - (d) The Association shall retain the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purpose and subject to no such dedication or transfer shall be effective unless an instrument signed by a majority of the Owners entitled to vote thereon has been recorded in the deed records of the County, agreeing to such dedication or transfer, and unless written notice of the proposed dedication or transfer is send to every Owner not less than thirty (30) days or more than ninety (90) days prior to such dedication or transfer.
- 3.4 Access through Common Areas. Each Owner shall have a nonexclusive right of ingress and egress over, across, and on any walkway, driveway, parking area, or other passageway located in the Common Areas.
- 3.5 Delegation of Use. An Owner may delegate such Owner's right of enjoyment of the Common Areas to his or her immediate family members, tenants, or contract purchaser, provided that such delegation is done in accordance with any applicable Rules and Regulations and provided that such family member, tenant, or contract purchaser resides in the Owner's Living Unit.
- 3.6 Title to Common Areas. Declarant hereby covenants for himself and his successors and assigns to convey fee simple title to all Common Areas to the Association upon the earlier of (a) sale of a total of 15 Lots to third Parties, or (b) five (5) years from the date this Declaration is Recorded in the deed records of the County.



on any Lot. The foregoing provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool, structure for the storage of a boat and/or camping trailer for personal use, or other outbuilding, provided such improvement (a) is in conformance with the other provisions of this Declaration and applicable City and County regulations, agreements, or land use approvals, (b) is compatible in design and decoration with the Living Unit constructed on such Lot, (c) does not obstruct or infringe on the view from or privacy or solar access of any Living Unit located on another Lot and (d) has been approved by the Architectural Review Committee. No structure of any type shall be located within five (5) feet of any boundary of the Lot on which that structure is located.

4.4 Residential Use. Lots shall be used only for residential purposes in accordance with, and subject to, the other provisions of this Declaration, including without limitation Section 4.4. Except with the consent of the Board, and allowed by applicable City and County ordinances, agreements, or land use approvals, no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business be kept or stored on any Lot. Nothing in this Section 4.4 shall be deemed to prohibit:

(a) Activities relating to the rental or sale of Living Units;

(b) The right of Declarant or any contractor or homebuilder to construct Living Units on any Lot and to store construction materials and equipment on such Lots in the normal course of construction in accordance with the other provisions of this Declaration; or

(c) The right of an Owner to maintain his or her professional personal library, keep his or her personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associate, clients, or customers, in his or her Living Unit.

4.5 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done or placed on any Lot that interferes with or jeopardized the enjoyment of other Lots, or that is a source of annoyance to residents of the Property. Without limitation of the foregoing, no noxious or offensive odors shall be permitted to emanate from a Lot or other Lots. No unlawful use shall be made of a Lot or any part thereof, and all laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Without limiting the generality of the foregoing, no heat pump

or other heating, ventilation, or air conditioning equipment, the operation of which produces noise at a level higher than 80 decibels, shall be allowed on or in any Lot or Living Unit.

- 4.6 Maintenance of Improvements. Each owner shall maintain the Improvements located on that Owner's Lot in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement, and care for roofs, gutters, downspouts, exterior building surfaces, driveways, walks, and other exterior improvements and glass surfaces. Each Owner shall also be responsible for installing, maintaining, repairing, and replacing the sidewalk in front of the Owner's Living Unit. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each owner and shall be restored within a reasonable period of time.
- 4.7 Parking. No inoperable vehicles, or trailers, campers, RVs, motorcycles, boats, or other recreational vehicles or equipment shall be parked in the driveway of any Living Unit, or on any street within the Property. All vehicles and recreational equipment on a Lot shall be parked in the garage so as not to be visible from Living Units located on other Lots.
- 4.8 Vehicles in Disrepair. No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot, driveway, or street for a period in excess of 48 hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the occupants of adjoining Lots. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to such owner by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.
- 4.9 Signs. No signs shall be erected or maintained on any Lot except signs that are approved as to appearance and location by the Architectural Review Committee. No more than one sign giving the name of the Owner and the street number of the Living Unit shall be permitted per Lot. The restrictions contained in this Section 4.9 shall not apply to:
- (a) Political Signs. The temporary placement of "political" signs on any Lot by the Owner thereof, provided such signs are promptly removed after the election or campaign to which the sign pertains;



(b) Security System Signs. Security systems signs not exceeding one (1) square foot in size and mounted on a wall, fence, or structure;

(c) For Sale Signs. One (1) "for sale" sign, not exceeding four (4) square feet in area, placed on a Lot or Living Unit on behalf of its Owner, provided such sign is promptly removed after the Lot or Living Unit has been sold; or

(d) Sold Signs. The placement by Declarant, and only by Declarant of a "sold" sign on any Lot for a reasonable period following the sale of such Lot.

- 4.10 Rubbish and Trash. No Lot shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. If any default under this Section 4.10 exists for a period longer than ten (10) days after written notice of such default is mailed to the responsible Owner by the Association, the Association shall have, in addition to any other rights under this Declaration, or at law or in equity, the remedies specified in Section 9.1.
- 4.11 Construction of Improvements. The construction of an Owner's Living Unit or any other building, including painting and all exterior finish, shall be completed within six (6) months from the beginning of construction so as to present a finished appearance when viewed from any angle. Any driveway or other access road serving a Lot may not be more than 24 feet in width and must be paved or covered with gravel in a workmanlike manner within one (1) year after Owner's purchase of his or her Lot. In the event of undue hardship due to weather conditions, these periods may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period. All construction activities shall be in conformance with all applicable laws, ordinances, and regulations, and all construction rules that may be adopted from time to time by the Architectural Review Committee.
- 4.12 Landscape Completion. All landscaping must be completed within six (6) months from the date of occupancy of the Living Unit constructed on the Lot. In the event of undue hardship due to weather conditions, this period may be extended for a reasonable length of time upon written approval of the Architectural Review Committee. No landscaping shall be permitted on a Lot that obstructs or infringes on the view from any Living Unit located on any other Lot.



- 4.13 Temporary Structures. No structure of a temporary character, trailer, basement, ten, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently; provided, however, that prior to or during the construction of an Owner's Living Unit, an Owner may place and use a motor home or similar temporary structure on that Owner's Lot, provided the location and use of such structure is in conformance with the other provisions of this Declaration and all applicable City and County regulations, agreements, and land use approvals.
- 4.14 Service Yards. Service yards (garbage, fuel tanks, clotheslines, and the like) located on a Lot shall be completely screened such that the elements screened are not visible at any time from any Living Unit located on any other Lot.
- 4.15 Setback; Maximum Height and Minimum Yard Requirements. Each Lot shall be subject to (a) any setback, maximum height, and/or minimum yard requirements shown on the Plat or established by the County or other governmental entity with jurisdiction over the subject Lot, and (b) any land use review procedure established by the City or other governmental entity with jurisdiction over such Lot for review and approval of variance from such requirements. In addition, all Lots are subject to any more restrictive setback, maximum height, or minimum yard requirements as are established in this Declaration or from time to time by the Architectural Review Committee. No Improvement shall be constructed or maintained in violation of any setback, maximum height, or minimum yard requirement, except with the written consent of the Architectural Review Committee and any applicable City and County approval.
- 4.16 Lighting. No lighting fixtures (other than those located within a Living Unit) shall be permitted on a Lot without the approval of the Architectural Review Committee. All lighting located on a Lot that is visible from another Lot shall (a) utilize lighting fixtures containing an indirect lighting source. (b) be screened to the extent practicable to minimize visibility from other Lots, and (c) be operated at such times and in such a manner so as not to interfere unreasonably with the enjoyment of other Lots by the Owners thereof.
- 4.17 Fencing and Gates. No fencing or entry gates shall be permitted on a Lot without the approval of the Architectural Review Committee. Chain-link fencing shall not be permitted on a Lot unless completely screened from view. All front fencing shall have at least a ten (10) foot set back from the Lot line. Private entry gates are permitted on a Lot if these are consistent in style and use of material with the Living Unit Located on that Lot.

- 4.18 Solar Systems. Solar panels are permitted on a Lot if these are integrated into the structure on which they are located so as not to be visible from another lot.
- 4.19 Building Walls. Building walls of structures on a Lot that are visible from another Lot must be constructed to extend to the grade of the Lot or must otherwise be screened so that no building underside is visible from any Lot.
- 4.20 Reflective Surfaces. Reflective surfaces or mirrored glass windows shall not be permitted within a Lot if these are visible from another Lot.
- 4.21 Tree Removal. Removal of any tree greater than 10 inches in diameter on any Lot shall require the prior approval of the Architectural Review Committee. No tree, shrub, plant, or other vegetation or Improvement in any Common Area shall be removed or otherwise altered without the prior approval of the Committee
- 4.22 Animals and Related Improvements. No animals of any kind shall be raised, bred, kept, or permitted within any Lot without the prior written approval of the Board other than a reasonable number of household pets that are reasonably controlled so as not to be a nuisance and are kept subject to the provisions of section 4.5. Any inconvenience, damage, or unpleasantness caused by such animals shall be the responsibility of the respective owners thereof. An Owner or the resident may be required to remove an animal upon receipt of the third (3<sup>rd</sup>) notice in writing from the Board of violations of any Rule or Regulation governing animals within the Property.
- 4.23 Utility Installations. All utility installation on the Property shall, to the extent practicable, be located underground.

## ARTICLE 5

### ARCHITECTURAL REVIEW COMMITTEE

- 5.1 Architectural Review. No Improvement shall be commenced, erected, placed, altered, or maintained on any Lot until the plans and specification (including without limitation site plans, and color and material samples) showing the nature, shape, height, materials, color, and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials and to assure harmony of external design with existing Improvements and location with respect to topography and finished grade



elevations.

- 5.2 Procedure. In all cases that require Architectural Review Committee approval or consent pursuant to this Declaration, the provisions of this Article 5 shall apply. The procedure and specific requirements for Architectural Review Committee approval or consent may be set forth in Design Guidelines adopted from time to time by the Committee. The Committee may charge a reasonable fee to cover the cost of processing an application for its approval.
- 5.3 Committee Decision. The Architectural Review Committee shall render its decision on an application for approval of the design of an Improvement or any other proposal submitted to it for approval or consent within fifteen (15) business days after it has received a complete written application therefore. A complete application shall specify the approval or consent requested and be accompanied by all material reasonable required or desired by the Committee to make and informed decision on such application. If the Committee fails to render approval or disapproval of such application within thirty (30) business days after it has received a complete application, or if no suit to enforce the terms of this Declaration has been commenced within one (1) year after completion of construction of the Improvement, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully satisfied.
- 5.4 Committee Discretion. The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed Improvement if the Committee finds the proposed Improvement would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for the Property. Consideration of sitting, shape, size, color, design, height, solar access, impairment of the view from other Lots within the Property, effect on the enjoyment of other Lots, disturbance of existing terrain and vegetation, and any other factors that the Committee reasonably believes to be relevant may be taken into account by the Committee in determining whether or not to approve or condition the approval of any proposed Improvement.
- 5.5 Membership. Until such time as each of the Lots has been sold to a third party, the Architectural Review Committee shall consist of one (1) person, who shall be Declarant or his designee. Upon sale of the final Lot to a third party, the Board shall appoint a committee of three (3) Owners to serve on the Architectural Review Committee, which Owners may include one or more members of the board. Thereafter, membership on the Architectural Review Committee and the appointment and/or removal of the Committee members shall be as determined by the Board, subject to any applicable provisions of this Declaration.



- 5.6 Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting, provided that all members of the Committee have received prior notice of the proposed action. Notwithstanding the foregoing, for so long as the Architectural Review Committee is comprised solely of Declarant or his designee, Declarant or such designee shall have the sole authority, subject to the other provisions of this Declaration (including without limitation Article 4 and Section 5.4), to (a) review plans and specifications submitted to the Committee, and (b) bind the Committee in connection therewith. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.
- 5.7 Liability. The scope of the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, or other similar considerations. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, or builder for any damage, loss or prejudice suffered or claimed as a result of any action or failure to act of the Committee or a member thereof, provided only that the member has, in accordance with the actual knowledge possessed by the Committee or by such member, acted in good faith.
- 5.8 Nonwaiver. Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.
- 5.9 Effective Period of Consent. The Architectural Review Committee's consent to any proposed Improvement shall automatically be revoked one (1) year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Committee.
- 5.10 Bond. The manufacturer, dealer, or other person responsible for siting the Living Unit shall post a performance bond in the amount of \$25,000 with the Architectural Review Committee to ensure that the Living Unit is sited according to the approved plans and specifications, that all Improvements, including utilities, are properly installed and connected, and that all required landscaping is completed. The Committee may waive this bond requirement if equivalent, alternative security satisfactory to the Committee is provided, or if the Committee determines there are circumstances that assure that the Lot and Living Unit will be developed and completed according to the approved plans and specifications.

## ARTICLE 6

### ASSOCIATION

Declarant shall organize an unincorporated association of all the Owners within the property. Such Association shall be organized under the name "Land and Sea Addition" or such similar name as Declarant shall designate, and shall have such powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

- 6.1 Organization. Declarant shall, within thirty (30) days after a majority of the Lots have been conveyed to Owners by Declarant, organize the Association by adopting Bylaws in conformance with this Declaration with the concurrence of all Owners.
- 6.2 Membership. Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Association. Such membership shall commence, exist, and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.
- 6.3 Voting Rights. Voting rights within the Association shall be allocated one vote per Lot. The vote applicable to any Lot being sold under a contract of sale shall be exercised by the contract seller unless the contract expressly provides otherwise.
- 6.4 Powers and Obligations. The Association shall have, exercise, and perform all of the powers, duties, and obligation, and only the powers, duties, and obligations, specifically conferred on it pursuant to this Declaration or the Bylaws or reasonably necessary to implement specific provisions of this Declaration or the Bylaws.
- 6.5 Liability. Neither the Association nor any officer or member of the Board shall be liable to any Owner for any damages, loss, or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers, or any member of the Board, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him or her.
- 6.6 Board of Directors. The Board shall be composed of owners of Lots who are selected by the Owners in accordance with the terms and conditions set forth in the Bylaws.



- 6.7 Rules and Regulations. The Board from time to time may adopt, modify, or revoke such Rules and Regulations governing the conduct of persons and activities on Lots and within the Property as it may reasonably deem necessary to implement specific provisions of this Declaration. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modifications, or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The Association may suspend an Owner's rights and/or right to use any of the Common Areas for a period not to exceed thirty (30) days for each material infraction by such Owner of the Rules and Regulations.

## ARTICLE 7

### AUTHORITIES AND RESPONSIBILITIES REGARDING COMMON AREAS

The Association shall have the authority to maintain, improve, repair, replace, and renovate the Common Areas, any Improvements thereon, and any service and facilities associated therewithin, including without limitation arranging for lighting, procuring liability insurance, and paying applicable taxes (collectively, "Common Area Maintenance"), all for the purpose of promoting the enjoyment and safety of the residents of the Property.

## ARTICLE 8

### ASSESSMENTS

- 8.1 Annual Budgets. The Board shall from time to time, and at least annually, prepare and operating budget for Common Area Maintenance, taking into account the current costs of maintenance and services and future needs of the Association, and previous overassessment, and any common profits of the Association. The budget shall provide for such reverse or contingency funds as the Board deems necessary.
- 8.2 Assessment Formula. Except as otherwise provided in this Declaration, the Board shall have the authority to impose assessments against Lots only in order to fund the matters described in Article 7. Except as provided in this Section 8.2, all Lots shall be assessed equally. The amount of an assessment shall be determined by dividing the amount of the annual budget by the total number of Lots. Any common profits of the Association shall be allocated in the same manner as applied to assessments. The Board may also assess a Lot for the full amount of any expense pertaining to Common Area Maintenance, the incurring of which is unquestionably and solely attributable to the negligence or willful misconduct of the Owner of such Lot or his or her family members of invitees.



- 8.3 Payment of Assessments. The Association shall, not less than annually, provide notice to the Owner of each Lot of the amount of the assessments for such Lot Calculated in accordance with Section 8.2. Assessments shall be due and payable on or before a date set forth in the notice, which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws.
- 8.4 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by him within that Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant, to pay to the Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Bylaws. Such assessments and charges, together with any interest, expenses, or attorney fees imposed pursuant to Section 9.5, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. Such Liens and personal obligations shall be enforced in the manner set forth in Article 9.

## ARTICLE 9

### ENFORCEMENT

- 9.1 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot and Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition, or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association, acting through the Board, may notify the Owner in writing of any such specific violation(s) of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the Improvements thereon, and the Owner's use thereof into conformance with this Declaration. If the Owner is unable or unwilling to comply with the Association's specific directives for remedy or abatement, or if the Owner and the Association cannot agree on a mutually acceptable solution within the framework and intent of this Declaration, in either case after the Owner had been afforded notice, and opportunity to be heard within sixty (60) days after such notice, then the Association, acting through the Board, shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do

any or all of the following:

- (a) Remove Cause of Violation: Enter the offending Lot (which entry shall not subject the Association, the members of the Board or any agent or representative thereof to liability for trespass, conversion, or any other claim for damages) and remove the cause of such violation, or alter, repair, or change the item that is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be applied to defray the cost of such work, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings; and/or
- (b) Suit or Action. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

9.2 Default in Payment of Assessments; Enforcement of Lien. If an assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth in Section 9.5, and, in addition, the Association may exercise any or all of the following remedies:

- (a) Lien. The Association shall have a lien against each Lot for any assessment levied against such Lot and any other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.382 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.
- (b) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in Section 9.2(a). Recovery on any such action

however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(c) Suspension of Voting Rights. The Association may suspend the Owner's voting rights and/or right to use any of the Common Areas until the unpaid assessment and all interest and late charges thereon have been paid in full.

(d) Other Remedies. The Association shall have any other remedy available to it by law or in equity.

- 9.3 Notification of First Mortgagee. The Board shall notify any first mortgagee of any individual Lot of any default in performance of the terms of this Declaration by the Owner of such Lot that is not cured within sixty (60) days.
- 9.4 Subordination of Lien to Mortgages. The lien for the assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage on such lot that was made in good faith and for value and that was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the assessment lien, provided that the sale or transfer of any Lot that is subject to a mortgage pursuant to a decree of foreclosure thereunder or pursuant to a proceeding, deed, or assignment in lieu of foreclosure shall extinguish the lien of an assessment, notice of which was recorded after the recording of the mortgage. Any such sale or transfer, however, shall not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such subsequent assessment.
- 9.5 Interest, Late Charge, Expenses, and Attorney Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prime rate as of the due date therefore, or at such other rate as may be established by the law of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board not to exceed 30% of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien as established from time to time by resolution of the Board. In the event the Association shall bring any suit or action to enforce this Declaration or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by the Association in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall



recover such amount as the court may determine to be reasonable as attorney fees and expenses of litigation at trial and upon any appeal or petition for review thereof.

- 9.6 Nonexclusiveness and Accumulation of Remedies. An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of any other remedy permitted hereunder. The remedies provided in this Declaration are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits and injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceeding and my recover attorney fees and expenses of litigation in the manner described in Section 9.5.

## ARTICLE 10

### MISCELLANEOUS PROVISIONS

- 10.1 Amendment and Repeal.
- (a) This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of all, but not less than all, of the Owners entitled to vote thereon
  - (b) Any such amendment or repeal shall become effective only upon recordation in the deed records of the County of a certificate of the president or secretary of the Association setting forth in full the amendment or repeal so approved and certifying that such amendment or repeal has been approved in the manner required by this Declaration.
- 10.2 Regulatory Amendments. Notwithstanding the provisions of Section 10.1, until the conveyance of each of the Lots by Declarant to a third party, Declarant shall have the right to amend this Declaration or the Bylaws in order to comply with the requirements relating to the development of single-family structures of any applicable statute, ordinance, regulation, or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that

insures, guarantees, or provides financing for a single-family residential development or lots in a single-family residential development.

- 10.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for a initial period of thirty (30) years commencing with the date on which this Declaration is recorded in the deed records of the County. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within periods of ten (10) years each. The continuation from the initial or any additional period into the next following period shall be automatic and shall not require any notice, consent, or other action whatsoever, provided, however that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six(6) months prior to the intended termination date by the vote or written consent of all Owners entitled to vote thereon. Any such termination shall become effective only if a certificate of the president or secretary of the Association, certifying that termination as of a required herein, is duly acknowledged and recorded in the deed records of the County. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such lot have consented in writing to the termination.
- 10.4 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the from of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility, and 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 such persons disagree among themselves as to the manner in which any vote or right of consent hold by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, 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.
- 10.5 Lessees and Other Invitees. Lessees, invitees, contractors, family members, and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.



- 10.6 Nonwaiver. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.
- 10.7 Severability. Each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity of enforceability of the remaining part of that or any other provision.
- 10.8 Number. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires.
- 10.9 Captions. All captions used in this Declaration are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.
- 10.10 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the date of delivery when delivered by personal services, or three (3) business days after delivery to the United States mails, certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 10.10.
- (a) Addresses. All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:
- If to an Owner, to:
- The last address fro such Owner shown in the Association's records.
- If to Declarant, to:
- Richard G. Murry  
PO BOX 1050  
Newport, OR 97365
- (c) Change of Address. Any party hereto may change the address to which notices shall be directed by given ten (10) days written notice of such change delivered as provided herein.
- 10.11 Annexation of Additional Property. Additional residential Lots and Common Areas may be annexed to the Property and made subject to this

Declaration with the consent of a majority of the Owners entitled to vote thereon, provided that additional Lots and/or Common Areas approved by the Declarant in the Tentative Subdivision Plat for Land & Sea Addition LLC Phases IV and V (adjoining property owned by Declarant as of the date hereof) may be annexed to the Property in phases or all at once within 5 years of the date this Declaration is recorded, without the consent of the Owners. Any annexation of additional property shall be accomplished by recordation in the deed records of the certificate of the president or secretary of the Association certifying that such annexation has been approved in the manner required by this Declaration.

- 10.12 No Right of Reversion. Nothing contained in this Declaration or in any deed that may be used by Declarant or his successors or assigns to convey any property subject to this Declaration shall be deemed to vest or reserve in Declarant or the Association any right of reversion or re-entry for breach or violation of any of the provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 29<sup>th</sup> day of June, 2005.

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Richard G. Murry