

AMENDMENT TO DECLARATION OF RESTRICTIONS

SURFLAND UNIT NO. 1, LINCOLN COUNTY, OREGON

Comes now the Surfland Residents Association, pursuant to the resolution duly proposed, noticed, approved and enacted by the members of the Surfland No. 1 Residents Association, and amends the Declaration of Restrictions for Surfland Unit No. 1, Lincoln County, Oregon, *which* Declaration was recorded on November 5, 1945, in Volume 107, Page 328 of the official records of Lincoln County, Oregon.

Said Declaration is hereby amended in its entirety to read as follows:

All lands so granted in Surfland Unit No. 1 shall be subject to the following covenants and conditions and restrictions:

1. RESTRICTIONS ON LAND USE

1.1 No mobile homes, modular home, or manufactured homes (factory built), or any tents or temporary shelters shall be erected or used on any lot except during the course of construction of residence, and then not to exceed one year from the commencement of construction. Furthermore, the owners shall comply with all then applicable County regulations regarding the placement and use of said temporary structure and shall apply and comply with all applicable ordinances and laws (whether County, State, Municipal or Federal) regarding the use, occupation, and duration of placement of said temporary structure. The violation of said ordinances, laws or regulations shall constitute a violation of the provisions of this Declaration. It is further provided that, notwithstanding said laws, ordinances and regulations, no temporary structure shall be used and/or allowed, to remain on the property for longer than one year and shall only be permitted during the course of construction of a home.

1.2 Construction of the exterior surfaces of residences or other structures shall be completed within 12 months of the date construction begins. Activities to develop a driveway onto or into the lots, prior to building, are excluded from these time frames.

1.3 All plans for any new construction of residences, garages, changes to exterior of existing structures, must be submitted to the Improvement Committee for review and recommendation to the Board of Directors of the Association for final approval.

1.4 Nuisances: No noxious or offensive activity shall be carried out upon any of said property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

1.4.1 No animals but the usual family pets (dogs, cats, birds in cages, etc.) may be kept on the premises and they shall not be allowed to create disturbances or become a nuisance in or to the neighborhood or property within the plat, nor shall any animals of any kind or character be kept or raised for sale or profit on said property.

1.4.2 No sign shall be displayed, placed or kept on any lot or residence unit other than to identify the owner or advertise that his lot or residence unit is for sale or for rent. There shall be not more than one (1) sign for each said purpose, and no sign shall be larger than five (5) square feet.

1.4.3 Automobiles with then current licensing and registration may be parked outside garages and/or buildings. No other motor vehicle shall be kept, placed or stored on any lot unless it is screened from view from the road and from any other lot or is within a building.

1.4.4 No owner shall commit any act which shall block or otherwise impede the drainage of water through its natural courses (except by permit issued by any appropriate governmental authority), nor shall any owner block or impede the water running off any road system.

1.4.5 The owner of any lot shall not allow any unreasonably excessive noise to emanate from any lot.

1.4.6 No rubbish, garbage or dump shall be permitted on any property. Boundary fences, walls or hedges must be kept in good condition and repair. Lawns must be cut sufficiently often so that they do not detract from the appearance of the neighborhood.

2. SURFLAND RESIDENTS ASSOCIATION.

There shall be an association of all of the owners of property within Surfland to be known as the Surfland Residents Association. Such association, its successors and assigns (the Residents Association) shall be organized under the name "Surf land Residents Association", or named similar thereto, and shall have property, powers and obligations as set forth in this declaration for the benefit of the Surfland Subdivision and all owners of property located therein.

2.1 Organization: The Residents Association shall be organized as a non-profit corporation under the general non-profit corporation laws of the State of Oregon. The Articles of Incorporation of the Residents Association shall provide for its perpetual existence, but in the event the Association is anytime dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Residents Association as if they had been made to constitute the governing documents of the unincorporated association. In the event of an inadvertent dissolution, the Association's Board of Directors shall immediately thereafter cause the corporation to be reinstated. During such reinstatement period, the Board of Directors shall hold all Association property in trust for the reinstated corporation.

2.2 Membership Voting: Every owner of one or more parcels or residential units within the Surfland Subdivision shall, during the entire period of such owner's ownership of one or more parcels within Surfland, be a member of the Residents Association. Such membership shall commence, exist and continue solely and 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. Each lot shall have one vote on all matters submitted to the membership of the Residents Association. The Articles of Incorporation and Bylaws shall provide that the affairs of the Residents Association shall be conducted by a Board of Directors consisting of 5 members.

2.3 Powers and Obligations: The Residents Association shall have, exercise and perform all of the following powers and obligations:

2.3.1 The powers and obligations granted directly to the Residents Association by this Declaration, or by subsequent delegation by the action of a majority of the lot owners of property within the plat known as "Surfland Unit No. 1".

2.3.2 The powers and obligations of a non-profit corporation pursuant to the general non-profit corporation laws of the state of Oregon.

2.3.3 Any additional or different powers and obligations necessary or desirable for the purpose of carrying out the functions of the Residents Association pursuant to this Declaration or otherwise promoting the general benefit of the owners of property within Surfland. The powers and obligations of the Residents Association may from time to time be amended, repealed, enlarged or restricted by changes in the Declaration made in accordance therewith or by changes in the Articles of Incorporation or Bylaws of the Residents Association made in accordance with such instructions and the non-profit corporation laws of the State of Oregon.

2.4 Capital Improvement Assessments: Conveyance: The Residents Association may elect to purchase, construct or otherwise acquire equipment or other capital improvements for the general use and benefit of all the members of the Association and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment". Any such assessment shall be levied against all of the parcels within the subdivision known as Surfland Unit No, 1, Lincoln County, Oregon. Any action by the Residents Association pursuant to this section shall be effective only if approved by the vote or written consent of the majority of owners of the parcels within Surfland.

2.5 Liability: Neither the Residents Association nor any officer or member of its Board of Directors shall be liable to any owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Residents Association, its Board of Directors or any member of the Board of Directors provided only that the Board member has acted in good faith.

2.6 Rules: In the exercise of its powers and performance of its obligations pursuant to this Declaration, the Association may, from time to time and at its sole discretion, adopt, amend and repeal rules and regulations to be known as "Surfland Rules" to provide for the use and maintenance of the road system and to provide for the services for the general benefit of all owners. Such rules may provide, among other things, for speed and other traffic controls, trash disposal, safety patrol and reasonable fines and other penalties for violation of the rules. A current copy of such rules shall be kept on file at the principal office of the Association at all times. Such rules shall have the same force and effect as set forth herein as part of this Declaration.

3. IMPROVEMENT COMMITTEE, IMPROVEMENT OF CONSTRUCTION, RESTRICTIONS ON DEVELOPMENT

3.1 Improvement Committee. The Board of Directors shall appoint an Improvement Committee of three to five members of the association. The Board of Directors may remove and appoint members of the Improvement Committee at its discretion.

3.2 Duties and Rules. The Improvement Committee shall consider and act upon all matters properly submitted to it pursuant to this Declaration. In furtherance of this function, the committee shall adopt Improvement Committee Rules to establish its operating procedures and interpret, detail, and implement this Declaration. The Improvement Committee may establish reasonable fees to be paid to the association. The Improvement Committee rules shall have the same force and effect as if set forth in these covenants.

3.3 Approval of Building Construction. In the case of new construction or substantial reconstruction of a dwelling, the owner shall prepare and submit to the Improvement Committee such plans and specifications for the proposed work as the committee may require. Material required by the committee must include, but not necessarily be limited to, the following:

3.3.1 A plot plan indicating location of all improvements.

3.3.2 Working drawings and specifications for construction.

3.3.3 Drawing showing plan view, elevations, external materials, and owner's color scheme of all improvements.

The Improvement Committee shall render its decision, in writing, to an applicant with respect to proposed construction within thirty (30) days after requested materials are received.

3.4 Approval of Minor Additions, Remodeling or- Improvements. In the case of minor additions or remodeling, fence construction or other activity determined by Improvement Committee Rules, the owners shall submit to the committee such plans and specifications for the proposed work as the committee determines to be necessary to evaluate the proposal. A written decision on the proposed activity shall be rendered to the applicant within ten (10) days.

3.5 Effective Period of Consent. The Improvement Committee's consent to any proposed work shall be automatically revoked one year after issuance unless construction of the work has been commenced or the owner has applied for and received a written extension of time for completion from the committee.

3.6 Procedure. In the event the committee fails to render its approval or 'disapproval within the time limits set forth above, the committee shall conclusively be deemed to have consented to the proposal, Any owner dissatisfied with a decision of the Improvement Committee may appeal the committee's decision to the Board of Directors in a method and manner as allowed by the board.

3.7 Improvement Committee Discretion. In making its decisions, the Improvement Committee shall comply with this declaration and act to provide harmony of external design and location in relation to surrounding structures, topography and the natural amenities of Surfland.

3.8 Restriction on Placement, Construction, and Improvements. The following restrictions are applicable to placement, construction and maintenance of improvements in Surfland:

3.3.1 No fence or structure shall be constructed within twenty feet from the front line of a lot.

3.3.2 Placement of all homes on a lot shall be subject to written approval of the Improvement Committee.

3.3.3 No home shall be permitted on a Lot unless there is also provided for such Lot a garage of a size sufficient to store one automobile; the floor of such garage shall be concrete and the driveway graveled or paved.

3.3.4 The home shall be situated upon a continuous footing of pumice or concrete block or upon a continuous concrete foundation meeting the standards of the Lincoln County Building Code. Any exposed utility facilities shall be enclosed or completely screened from view.

3.3.5 Only one home shall be located on each lot. The maximum height of a home shall not exceed 30 feet above grade (ground level) or above the maximum height of a home in an R-1 zone as allowed by the building code of Lincoln County, Oregon, whichever height is less. Furthermore, in no case shall the "grade" be increased by fill so as to allow for more height. "Grade" shall be determined by the average elevation of the ground covered by the structure in its natural state prior to excavation or other building activities.

3.3.6 It shall be the obligation of the Owner or occupant of any Lot to keep and maintain the same, the exterior of all structures located thereon in proper condition. This obligation shall include lawns and shrubbery on the Lot and includes also the area between the owner's property line and the improved portion of any abutting public curb or street. In case of dispute as to what constitutes proper condition under this paragraph, the recommendation of the Improvement Committee and decision of the Board of Directors operating under reasonable rules and regulation applicable to all Owners under similar circumstances shall be final.

3.3.7 All parcels in the tract shall be known and described as residential parcels on which no structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling and a private garage and those out-buildings which are approved by the Improvement Committee.

3.3.8 All property within the subdivision shall be left in a natural wooded appearance as much as possible, in order to maintain the character of the neighborhood. Careful clearing of trees and shrubs is required to prevent excessive loss of trees on neighboring lots. No tree over twenty inches circumference (at 48 inches above the ground) shall be cut without the written consent of the Improvement Committee.

3.9 Evidence of Compliance with Restrictions. Records of the Improvement Committee with respect to compliance with the provisions of this Declaration shall be conclusive evidence as to all matters shown by such records. Issuance of a certificate of completion and compliance by the Improvement Committee showing that the plans and specification of the improvement or other matters herein provided for have been approved and that such improvements have been made in accordance therewith, shall be conclusive evidence that shall justify and protect any title company insuring title to -any property subject to this Declaration, and shall fully protect any purchaser or encumbrance in connection therewith. After the expiration of one year following the issuance of a building permit therefore by governmental authority, any structure, work, improvement or alteration shall be deemed to be in compliance with the provisions thereof unless a notice of non-compliance executed by the Improvement Committee shall have been recorded in the deed records of Lincoln County, Oregon, or unless legal proceedings shall have been initiated to enforce compliance or completion.

4. ASSESSMENTS

4.1 Annual Dues. The Board of Directors shall assess and collect from every owner, and every owner shall pay annual membership dues. The annual assessment shall commence on July 1 of the year in which sales of parcels shall commence and the dues assessment shall be payable in a lump sum. The dues assessment will apply to each lot. The amount of the annual dues for each lot shall be decided by majority vote of the Association members attending the annual meeting on the second Saturday in June of each year. The funds shall be used for the business of the corporation, including:

4.1.1 Payment of the cost of insurance, including insurance protecting the Association against liability arising out of their functions and activities and administration of this Declaration.

4.1.2 Payment of the cost of enforcing this Declaration.

4.1.3 Payment of the cost of other services which the Association deems to be of general benefit to the owners of property within Surfland for which the Residents Association may become obligated.

4.2 Interest, Default and Payment of Assessments and Fines: Each assessment levied pursuant to this Declaration, including Association's dues, shall be a separate, distinct and personal debt and obligation of the owner against whom the assessment is levied. Sale or transfer of the parcel by the owner shall not release such owner from the personal liability imposed hereunder. If the owner fails to pay such assessment or any installment thereof when due, the owner shall be in default in the amount not paid (Including installments not otherwise due if Association elects that such installments be accelerated), together with interest at 12% annual percentage rate, costs and attorney's fees as elsewhere provided for herein, shall become a lien upon the parcel against which the sum is due upon recordation by the Association of a notice of lien. The Association may commence proceedings to foreclose any such lien after one month following such recordation.

4.3 Expenses and Attorney's Fees: In the event the Association shall bring any suit or action to enforce this Declaration, to collect any money due them, or to foreclose a lien., the owner-defendant shall pay to the successful plaintiff all costs and expenses incurred by such plaintiff in connection with such suit or action, including a foreclosure title report in such amount as the Court may determine to be reasonable as attorney's fees at trial and upon appeal thereof.

5. NON-EXCLUSIVENESS AND ACCUMULATION OF REMEDIES

Action by the Association to pursue any remedy provided for violation of this declaration shall not prevent the concurrent or subsequent exercise of another remedy permitted under such covenants, and in any event, the Association shall be entitled to injunctive relief and in such suit or action, the prevailing party shall recover in addition to his costs and disbursements, such attorney's fees as the Court shall adjudge to be reasonable, including such attorney's fees, costs and disbursements on any appeal.

6. CONSTRUCTION, SEVERABILITY, NUMBER

This Declaration shall be liberally construed as an entire document to accomplish the purposes as stated in the introductory paragraphs. Nevertheless, each provision of this Declaration shall be deemed independent, and severable, and invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

7. MISCELLANEOUS PROVISIONS

7.1 This Declaration, or provisions thereof, may be amended or repealed as provided by the majority vote of members of the Surfland Resident's Association. Such amendment or repeal shall become effective only upon recordation of a certificate to the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal has been approved in the manner required herein.

7.2 The terms of 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 Surfland and owners thereof.

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

7.4 Notwithstanding any of the provisions of this document, no easements that have been granted or reserved herein, either expressly or by implication, shall be terminated or extinguished without the written and recorded consent of the owners of all property benefited by such easement.

7.5 An easement is reserved over the rear five feet of each lot for service and utility installation and maintenance. No person may utilize said easements without the written permission of the Improvement Committee, which may establish reasonable rules and regulations concerning the use and character of the use of said easement.

7.6 If the owners of any property within the subdivision, shall violate or attempt to violate any of the provisions of these conditions, covenants and restrictions as set forth in this document, it shall be lawful for any person or persons owning any real property in Surfland Unit No. 1 to bring an action in a court of law against the owner(s) alleged to be violating or attempting to violate any covenant, condition or restriction. Plaintiffs are allowed to either prevent such person from so doing (by way of injunction) and to recover damages and/or fines for such violation, including attorney's fees and court costs reasonably incurred in prosecuting said actions.

7.7 Nothing contained in this Declaration shall require the Residents Association to bring an action or otherwise prosecute any person for the violation of this Declaration. Also, the failure to commence enforcement action for violation of any of the provisions of this Declaration shall in no case be deemed to be a waiver of any of the provisions of this Declaration or a waiver of the right of the Association to take any action with regard to any situation in the future, nor shall the lack of enforcement action in any case be deemed an estoppel on the part of the Residents Association of any nature or any kind.

7.8 Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in nowise affect any of the other provisions hereto, which shall remain in full force and effect.