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Lincoln County, Oregon
06/22/2012 01:38:10 PM 2012-05987
DOC-AM/DECLAR Cnt=1 Pgs=26 Stn=20
\$130.00 \$11.00 \$15.00 \$10.00 \$7.00 - Total = \$173.00

When Recorded Return To:

Aqua Vista Square, L.L.C.
Our Coastal Village, Inc.
One East Camelback Road
Suite 340
Phoenix, Arizona 85012
Attn: K. Layne Morrill



00060604201200059870260261

I, Dana W. Jenkins, County Clerk, do hereby certify
that the within instrument was recorded in the Lincoln
County Book of Records on the above date and time.
WITNESS my hand and seal of said office affixed.



Dana W. Jenkins, Lincoln County Clerk

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF AVS TOWNHOUSE PUD**

THIS FIRST AMENDMENT (the "Amendment") is made this 21st day of June, 2012 by JHWF, LLC d/b/a Aqua Vista Square, L.L.C., an Oregon limited liability company (hereafter referred to as "Declarant"). Our Coastal Village, Inc., an Oregon public benefit corporation ("OCV"), joins in this Amendment as the Covenant Holder under Article 2 of the Declaration.

RECITALS

A. On or about January 27, 2012, Declarant caused to be recorded with the Lincoln County, Oregon Recorder that certain Declaration of Covenants, Conditions, and Restrictions of AVS Townhouse PUD, a Class II Planned Community under the Oregon Planned Community Act (the "Declaration"), at Recording No. 2012-00638. The Declaration covers that Property legally described on Exhibit "A" hereto.

B. Declarant remains the initial and sole owner of the Property subject to the Declaration and developer of the AVS Townhouse PUD. OCV remains the Covenant Holder under Article 2 of the Declaration.

C. Declarant is currently the only Member of the Association and has the power to amend the Declaration pursuant to Section 13.3 of the Declaration.

D. Declarant and OCV desire to amend the Declaration to address certain provisions pertaining to the Affordable Housing Covenants in Article 2 of the Declaration.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties are agreed as follows:

I. Affordable Housing Covenants. Article 2 of the Declaration shall be deleted in its entirety and replaced with the following:

ARTICLE 2

AFFORDABLE HOUSING COVENANTS

2.1 Intent. Declarant intends by this Article 2 to create Affordable Housing Covenants as defined in and authorized by ORS §§ 456.270 *et seq.*

2.2 Covenant Holder. Our Coastal Village, Inc., an Oregon public benefit corporation (“OCV”) is a public charity under section 501(c)(3) and section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986, one of whose purposes is to provide affordable housing for low and moderate income households, and is an eligible covenant holder under ORS § 456.270(3)(c). OCV has provided and will provide subsidies to the AVS Townhouse PUD. OCV and its successors and assigns shall be the covenant holder of the Affordable Housing Covenants set forth in this Article 2 (each a “Covenant Holder”).

2.3 Duration of Covenants. The Affordable Housing Covenants created by this Article 2 shall endure for a period of fifty (50) years from the initial recordation of the Declaration (the “Term”) and shall be enforceable in all respects by a Covenant Holder. Upon the expiration of the Term, the Affordable Housing Covenants shall have no further force or effect and shall cease to be enforceable.

2.4 Affordable Rental. Townhouses (and flats within Townhouse buildings) on any Lot shall be rented only to households with income between 50% and 100% of area median income (“AMI”) as defined in ORS § 456.270(2) who shall have completed OCV’s Rental Application which shall have been approved by Declarant and Covenant Holder (each an “Eligible Tenant”), as their Principal Residence (as defined in Section 2.5.1), and only in compliance with Sections 7.1, 7.2, and 7.3 of this Declaration. Only one (1) Eligible Tenant with income greater than 80% of AMI shall be permitted for each two Eligible Tenants with income at or less than 80% of AMI. Rental rates shall not exceed the amount which, at the commencement of the term of the lease would cause the Eligible Tenant’s total housing cost for the rented Townhouse or flat to equal thirty percent (30%) of household income. Annual re-certification of income eligibility is required by each

Tenant in order to continue renting. If the Eligible Tenant's income has increased on re-certification, but still qualifies, the rent may be increased appropriately. Total housing cost for this purpose includes rent and electric utility charges.

2.5 Affordable Sale.

2.5.1 Principal Residence. The Townhouse on any of Lots 1-5 shall be sold only for use as the buyer's Principal Residence. The Townhouse on Lot 6 includes two flats and shall be sold only to a single buyer who will use one of the flats as his or her Principal Residence and lease the other flat as permitted in this Declaration. For all purposes under this Declaration, "Principal Residence" shall mean actual the owner's or tenant's (as the case may be) actual presence living in the Townhouse for at least eight (8) months out of any twelve (12) month period.

2.5.2 Eligible Buyers. The Townhouse on any Lot shall be sold only to an Eligible Buyer whose Purchase Application shall have been reviewed and approved by Declarant and Covenant Holder. An Eligible Buyer shall be: (a) for the first sale of a Townhouse by Declarant, a household with income between 50% and 100% of AMI; provided, however, that only one (1) Eligible Buyer with income greater than 80% of AMI shall be permitted for each two Eligible Buyers with income at or less than 80% of AMI; or (b) for re-sale of a Townhouse after the first sale by Declarant, a household with income between 50% and 100% of AMI.

2.5.3 Sale Price on Initial Sale. The sale price of the first sale of a Townhouse by Declarant to an Eligible Buyer whose Purchase Application shall have been approved by Declarant and Covenant Holder shall not exceed the lesser of: (a) vertical construction costs for the Townhouse and its allocable share of costs of construction of the Common Area and all sales and closing costs, but excluding the cost of land and of site improvements (collectively, the "Land"); and (b) a price which will permit the Eligible Buyer's total housing cost ("Total Housing Cost") to equal thirty percent (30%) of the Eligible Buyer's income at the date of the sale contract. Total Housing Cost includes principal and interest payments on a loan secured by the Townhouse; mortgage insurance if any is required; property taxes, if any; monthly assessments by the Association (which include the cost of casualty and liability insurance); and monthly fees, lease and stewardship fees charged under a Qualified Ground Lease, if any.

2.5.4 Sale Price on Resale. The sale price of a Townhouse on any re-sale transaction to an Eligible Buyer after the initial sale by Declarant shall

not exceed the lesser of: (a) the price which, considering any down payment assistance for which the Eligible Buyer qualifies, will permit the Total Housing Cost of the Eligible Buyer to equal thirty percent (30%) of the Eligible Buyer's income at the date of the sale contract; (b) the Option Price, as defined in Section 2.5.7; and (c) any re-sale price limit set forth in a Qualified Ground Lease, if any.

2.5.5 Notice of Intent to Sell. The owner of a Townhouse who desires to sell the Townhouse shall give the Covenant Holder written notice in the substantially the form attached hereto as **Exhibit "B"**, which is incorporated herein, of his or her desire to sell and shall state whether the owner recommends a prospective buyer as of the date of the notice (the "Intent to Sell Notice").

2.5.5.1 Appraisal. If the Covenant Holder believes that the market value of the Townhouse (without regard to the market value of the Land) may be less than the Option Price defined below, the Covenant Holder shall commission a market valuation of the Land and Townhouse (the "Appraisal") by a reputable residential appraiser with at least ten (10) years experience in the Central Oregon Coast area ("Qualified Appraiser"). The Covenant Holder shall pay the cost of such Appraisal. The Appraisal shall proceed by analysis and comparison of comparable properties disregarding the restrictions contained in this Article 2 on the use of the Land and the transfer of the Townhouse. The Appraisal shall state the values contributed by the Land and by the Townhouse as separate amounts. The Covenant Holder shall require the appraiser to deliver a copy of the Appraisal both to Covenant Holder and to owner.

2.5.5.2 Inspection. The Covenant Holder may engage a qualified residential inspector to inspect the Townhouse, assess its condition, and evaluate whether there is deferred maintenance, excessive wear and tear, or damage. The Covenant Holder shall pay the cost of such inspection. The Covenant Holder shall require the inspector to provide a written report of his inspection (the "Inspection Report") and to deliver a copy both to the Covenant Holder and owner. If the Inspection Report identifies deferred maintenance, excessive wear and tear, or damage, then the owner shall, prior to the closing of any sale permitted under this Article 2, complete the repairs identified in the Inspection Report to the satisfaction of the Covenant Holder. If the owner does not promptly commence and diligently pursue completion of the required repairs, the Covenant

Holder may, but shall not be obligated to, perform the required repairs, and owner shall provide reasonable access to Covenant Holder's contractors for the performance of such repairs. The Covenant Holder may recover these expenses for repairs as described in Section 2.5.7 below.

2.5.6 Option to Purchase. Upon receipt from the owner of a Townhouse of an Intent to Sell Notice, the Covenant Holder has the option to purchase the Townhouse (the "Purchase Option") at the price calculated by the formula in Section 2.5.7 (the "Option Price"). The Covenant Holder designed the Purchase Option to further the goal of preserving the affordability of the Townhouses for succeeding Eligible Buyers while giving due regard to an owner's investment in a Townhouse. Covenant Holder may exercise the Purchase Option by notifying the owner in writing of such election on a form substantially the same as **Exhibit "C"** hereto which is incorporated herein (the "Notice of Exercise") within sixty (60) days of the receipt of an Intent to Sell Notice. After giving such notice, the Covenant Holder may either: (a) purchase the Townhouse itself; or (b) assign the Purchase Option to an Eligible Buyer who may purchase the Townhouse. Either the Covenant Holder or its assignee must complete the purchase of the Townhouse within sixty (60) days of the Notice of Exercise, or the Purchase Option shall expire and the owner may sell the Townhouse in compliance with all the other provisions of this Article 2. The Covenant Holder and the owner may agree in writing to extend the time allowed for completion of the purchase. Owner may recommend to Covenant Holder an Eligible Buyer accompanied by a fully completed Purchase Application on Covenant Holder's form. If the Eligible Buyer's application is acceptable to the Covenant Holder, it shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person unless the Covenant Holder determines that it will fulfill its charitable mission better by retaining the Townhouse for another purpose or transferring the Townhouse to another party.

2.5.7 Option Price. The Option Price referenced in this Article 2, subject to adjustment as provided in the last sentence of this Section 2.5.7, shall be the lesser of: (a) the fair market value allocated to the Townhouse (not the Land) in the Appraisal commissioned and conducted as provided in Section 2.5.5.1 (the "Appraised Value"); or (b) the owner's Purchase Price for the Townhouse plus two percent (2%) compounded annually from the closing date of the owner's purchase to the date of the Notice of Exercise (the "Formula Price"). The Formula Price is an alternate (to the "Appraised Value") maximum limit on the price for which a Townhouse can be sold; it

is not a guarantee that the Townhouse can be sold at the Formula Price. If the owner shall have failed to perform any of the deferred maintenance, excessive wear and tear, or damage identified in the Inspection Report, then: (a) if the Covenant Holder is the purchaser, the Option Price shall be reduced by the actual cost of the repairs plus an administrative fee equal to twenty percent (20%) of those costs (the "Repair Costs"); (b) if the Covenant Holder's assignee is the purchaser and Covenant Holder has completed the required repairs, Covenant Holder shall be paid the Repair Costs out of the proceeds due seller from the purchase escrow; or (c) if the Covenant Holder's assignee is the purchaser and Covenant Holder has not completed the required repairs, the Repair Costs shall be held in escrow and paid to Eligible Buyer upon completion of the required repairs.

2.5.8 Right of First Refusal. If any provision of the Purchase Option set forth above shall, for any reason, become unenforceable, the Covenant Holder shall nevertheless have a right of first refusal to purchase the Townhouse at the highest documented bona fide purchase offer made to owner, on the terms and conditions set forth in Exhibit "D" which is incorporated herein.

2.5.9 Financing Restrictions. An owner of a Townhouse may sign and deliver loan documents affecting the Townhouse only after obtaining the Covenant Holder's prior written consent. If the Covenant Holder consents in writing to any loan documents then the loan shall be considered a "Permitted Loan" and the lender making the loan shall be considered a "Permitted Lender." Covenant Holder may withhold consent to any loan if any one (or more) of the following conditions exists: (a) The Covenant Holder shall not have received, at least ten (10) business days prior to the date on which the owner requests the consent to be effective, copies of every document to be executed in connection with the loan including but not limited to good faith estimates, commitment letters, promissory notes, trust deeds, lease riders, etc (the "Loan Documents"); (b) Owner is in default under this Article Two or under any Trust Deed securing Owner's obligations under this Article Two at any time between the date owner submits the request for consent and the date owner executes and delivers the Loan Documents the Permitted Lender requires before it will authorize the escrow agent to transfer the loan proceeds; or (c) the proposed loan does not meet the standards set forth on Exhibit "E" hereto, which by this reference is incorporated herein.

2.5.10 Sale Documents. In order to assure that the benefit of the subsidy provided by the Covenant Holder remains with each subsidized

Townhouse so that subsequent owners will have a purchase price below the initial appraised value of the Townhouse and thereby preserve permanently affordable housing for the Yachats community, owner covenants and agrees that on any sale of a Townhouse it shall require, as a condition of sale, that the buyer: (1) agree to accept the same form of statutory warranty deed that the seller accepted on purchase of the Townhouse; (2) execute and deliver in connection with the closing, a letter of stipulation in substantially the form attached as **Exhibit "F"** hereto and shall cause buyer's legal counsel to execute a letter of acknowledgment in substantially the form attached as **Exhibit "G"** hereto, both of which are incorporated herein.

2.5.11 Excess Foreclosure Proceeds. In order to assure that the benefit of the subsidy provided by the Covenant Holder remains with each subsidized Townhouse so that subsequent owners will have a purchase price below the initial appraised value of the Townhouse and thereby preserve permanently affordable housing for the Yachats community, owner covenants and agrees that owner may not realize more than the Purchase Option Price as the result of any foreclosure or deed in lieu of foreclosure of any Permitted Loan. Rather, the Covenant Holder shall have the right to any and all net proceeds of sale of the a Townhouse remaining after payment of costs of foreclosure and satisfaction of the lien(s) of any Permitted Loan(s) which would otherwise have been payable to owner, to the extent such net proceeds exceed the net proceeds that Owner should have received had the Townhouse been sold for the Purchase Option Price established in Section 2.5.7. The person conducting any foreclosure sale of a Townhouse shall pay the amount of said excess proceeds directly to the Covenant Holder according to its instructions. In the event that, for any reason, such excess proceeds are paid to owner, owner shall promptly pay the amount of such excess proceeds to the Covenant Holder according to its instructions. Owner shall pay to the Covenant Holder, at its option, an amount equal to all fees and costs Covenant Holder may incur in connection with review and approval of any loan that does not meet the Standard Permitted Loan Terms described on **Exhibit "D"** hereto.

2.5.12 Stewardship Transfer Fee. If a Townhouse is sold to a person other than the Covenant Holder, the owner shall pay to the Covenant Holder a stewardship transfer fee of two percent (2%) of the Option Price (the "Transfer Fee"). The Transfer Fee may be added to the owner's sale price to the Eligible Buyer and paid by said Eligible Buyer. The Transfer Fee compensates Covenant Holder for its costs, including but not limited to appraisal fees, inspection fees, staff time, documentation costs, and professional fees incurred by reason of the sale.

2.5.13 Monthly Affordable Housing Program Service Fee. Each owner of a Townhouse, excluding only the first purchaser of the Townhouse from Declarant, shall pay to the Covenant Holder on the first day of each month, an affordable housing program service fee in the amount of Fifty and no/100 (\$50.00), subject to annual adjustment based on changes in the Bureau of Labor Statistics consumer price index for the Portland, Oregon metropolitan area. The affordable housing program service fee shall be prorated for months of partial ownership.

2.5.14 Qualified Lessor. The Townhouse may (but need not be) sold in conjunction with the conveyance of legal title to the Lot to a community land trust or other exempt organization (including OCV or a single member limited liability company wholly owned by OCV) whose purpose is to provide affordable housing for low or moderate income households (a "Qualified Lessor") and the concurrent ground lease of the Lot by such Qualified Lessor to an Eligible Buyer under a ground lease for a term of at least ninety (90) years at a nominal rental rate ("Qualified Ground Lease"). Any Qualified Lessor to whom legal title to a Lot is conveyed and who is not the Covenant Holder is hereby granted a third party right of enforcement (as defined in ORS § 456.270(7)) as to the Affordable Housing Covenants set forth in this Article 2. Any Qualified Ground Lease may impose additional covenants, conditions, and restrictions designed to ensure the permanent affordability of the Townhouse on the Lot covered by the Qualified Ground Lease for future Eligible Buyers, and such additional covenants, conditions, and restrictions: (a) may extend for periods longer than the Term but no longer than the term of the Qualified Ground Lease; (b) may include any provision permitted by ORS §§ 456.270 *et seq.*; and (c) shall not contain any provisions that are contrary to, or conflict with, the terms of this Declaration, except as expressly permitted in this Section 2.5.14.

2.5.15 Noncomplying Transfers. Any attempted sale, lease, or other transfer of a Townhouse that does not comply with the restrictions in this Article 2 shall be null and void, except in the case of a transfer to a Permitted Lender in lieu of foreclosure.

II. Qualified Appraiser. The second sentence in Section 13.6 of the Declaration shall be deleted and replaced with the following:

Fair market value shall be determined by a Qualified Appraiser (as defined in Section 2.5.5.1) selected by the Association.

III. Miscellaneous. The balance of the Declaration is hereby amended to reflect the purpose of this Amendment. The parties hereto acknowledge that except as expressly modified

hereby, the Declaration remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this Amendment and the Declaration, the terms of this Amendment shall control. Unless otherwise expressly defined herein, terms in this Amendment shall have the same meanings assigned to such terms in the Declaration.

Executed as of the date first above written.

DECLARANT: JHWF, L.L.C. d/b/a AQUA VISTA SQUARE, L.L.C., an Oregon limited liability company

By: [Signature]
K. Layne Morrill, Manager

COVENANT HOLDER: OUR COASTAL VILLAGE, INC., an Oregon public benefit corporation

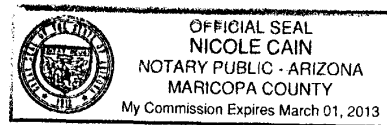
By: [Signature]
K. Layne Morrill, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

Personally appeared before me on June 21, 2012, K. Layne Morrill who being duly sworn did say that he is the sole Manager of JHWF L.L.C. d/b/a Aqua Vista Square, L.L.C., and that he signed this instrument on behalf of JHWF L.L.C. d/b/a Aqua Vista Square, L.L.C., and acknowledged this instrument to be its voluntary act and deed.

[Signature]
Notary Public for Arizona

My Commission Expires: 3/1/2013



STATE OF ARIZONA)
) ss.
County of Maricopa)

Personally appeared before me on June 21, 2012, K. Layne Morrill who being duly sworn did say that he is the President of Our Coastal Village, Inc. and that he signed this instrument on behalf of Our Coastal Village, Inc., and acknowledged this instrument to be its voluntary act and deed.

Nicole Cain Nicole Cain

Notary Public for Arizona

My Commission Expires: 3/1/2013

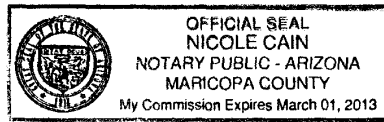


EXHIBIT "A"

(Legal Description of Property)

Lots 9 and 10, Block 2, Aqua Vista, in the City of Yachats, County of Lincoln, State of Oregon.

EXHIBIT B
Notice of Intent to Sell

(Form of Notice)

[Date]

Our Coastal Village, Inc.
[Address]

To Whom It May Concern:

Please be advised that **[I/we]** intend to offer **[my/our]** Property, located at ____ Aqua Vista Loop, Yachats, Oregon, for sale. **[I/we]** **[have/have not]** identified a prospective buyer at this time.

If prospective buyer is not known, use the following (or similar) language: The terms and conditions of our intended sale are as follows: {insert terms and conditions - e.g. we are moving on (date) we need to find another place before we can move from here, appliances not included, etc.} **[I/we]** understand that Our Coastal Village, Inc. ("OCV"), or your Designated Purchase Option Assignee, may choose to exercise the Option to Purchase the Property on the terms, and within the time period, set forth in the Affordable Housing Covenant (the "Covenant").

[I/we] also understand that if the Option to Purchase expires according to the terms of the Covenant, **[I/we]** are free to sell the Property in the open market subject to all of the restrictions in the Covenant except OCV's purchase option.

If prospective buyer is known, use the following (or similar) language: Enclosed with this notice, are the following items as required by the Covenant dated **[date]:** **{list items included with notice}**. **If necessary, insert the following:** The following items, also required by the Covenant, will be provided at a later date: **{list items to follow}**.

[I/we] understand that this Notice of Intent to Sell will be effective upon the date of your receipt of all items required by the Covenant.

[I/we] understand that you will tell **[me/us]** in writing within 45 days of the effective date of this Notice whether the prospective buyer identified herein is an Income Qualified Buyer, as defined in the Covenant, and whether the terms of the proposed transfer are permitted under the terms of the Covenant.

[I/we] understand that you, or your Designated Purchase Option Assignee, may choose to exercise the Option to Purchase on the terms, and within the time period, set forth in the Covenant.

Finally, **[I/we]** also understand that if the Option to Purchase expires according to the terms of the Covenant, **[I/we]** are free to sell the Property in the open market subject to all of the restrictions in the Covenant except OCV's Option to Purchase.

[Salutations]

EXHIBIT C

Notice of Exercise Regarding Purchase Option

(Form of Notice)

[Date]

[Name of OWNER]

[Address of OWNER]

Dear: **[Name of OWNER]:**

Please be advised that we are in receipt of your Notice of Intent to Sell the Property located at _____ Aqua Vista Loop, Yachats, Oregon. Please also be advised that all items required to make your notice effective, according to the Affordable Housing Covenant (the "Covenant"), were received by us on **[date]**.

ALTERNATIVE #1:

We hereby elect to exercise our Option to Purchase pursuant to the Covenant. We **[have/have not]** chosen to appoint a Designated Purchase Option Assignee at this time.

ALTERNATIVE #1A

We do not believe that the Appraised Value of the Property is less than the Formula Price (both as defined in the Covenant). Accordingly, the Formula Price governs. Our good faith estimate of the Purchase Option Price is \$_____. This is arrived at as hereinafter described. Your purchase price for the Property was \$_____ and you have owned the Property for _____ () years and _____ () months. Accordingly, the Formula Price is \$_____. $[(Purchase\ Price) \times 1.02^n]$, where n is the number of years including partial years, carried to two decimal points, that you have held the Property).

ALTERNATIVE #1B

We believe that the fair market value of the Property may be less than the Formula Price contained in the Covenant. Accordingly, we have ordered an appraisal of the Property. A copy of the appraisal will be provided to you when it is complete. If the Appraised Value is less than the Formula Price, the price under the Purchase Option will be the Appraised Value.

OCV understands that OCV or its Designated Purchase Option Assignee must enter into a contract for purchase and sale with you within forty-five (45) days from the date OCV receives a copy of the Appraisal, or OCV's purchase option will expire.

ALTERNATIVE #2:

Based on the items provided to OCV by you and/or your prospective buyer, OCV has determined and is satisfied that your prospective buyer is an Eligible Buyer and that the terms of the proposed transfer are consistent with the requirements set forth in the Covenant. You may proceed with the proposed sale, subject to the provisions of the Covenant.

[Salutations]

EXHIBIT D

Right of First Refusal

Whenever any party under Article Two of the Declaration shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale ("Offering Party") shall within the term of Article Two of the Declaration receive a bona fide third party offer to purchase the property which such Offering Party is willing to accept, the following shall apply:

- a) Offering Party shall give written notice (the "Notice") of such offer to the holder of the right of first refusal (the "Holder") Holder setting forth (1) the name and address of the prospective Buyer thereof, (2) the purchase price offered by the prospective Buyer, (3) all other terms and conditions of the sale, (4) sufficient information about the prospective Buyer's income so that Holder may determine if Buyer is an Eligible Buyer, and (5) sufficient information about the prospective Buyer's financing, if any, for Holder to determine if it complies with Article Two of the Declaration. Holder shall have a period of thirty (30) days after the receipt of the Notice containing the offer (the "Election Period") within which to elect to purchase the property on the same terms and conditions, including the purchase price set forth in the Notice. Such election shall be made by a written notice given to the Offering Party within the Election Period.
- b) If Holder makes the election to purchase the property, such purchase shall be made within ninety (90) days after such election shall have been made by Holder (or if the Notice shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice, including payment of the purchase price provided therein.
- c) Should Holder fail to make any election within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in the Declaration) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the Buyer than those set forth in the Notice. If the sale is not consummated within such one (1) year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one (1) year period, the Buyer shall purchase subject to a renewed right of first refusal in said property.

EXHIBIT E

Standard Permitted Loans

All terms used in this Exhibit have the same meaning as in Article Two of the Declaration.

In the event of any conflict between this Exhibit E and the Permitted Lender's mortgage or deed of trust or any other Loan Documents evidencing and securing the Permitted Loan, THE PROVISIONS OF THIS EXHIBIT E SHALL CONTROL.

A. DEFINITION OF STANDARD PERMITTED LOAN

A Standard Permitted Loan shall be either a standard first priority purchase money loan or a standard down payment assistance loan.

1. **Standard First Priority Purchase Money Loan.** This is a loan a) made by either an Institutional Lender, a Community Development Financial Institution, Habitat for Humanity or its affiliates, the Covenant Holder, or a party with a right to enforce Article Two of the Declaration, b) to Owner for the purpose providing Owner with money to pay the purchase price for the Townhouse and paying costs typically associated with acquiring such a Townhouse in Lincoln County, Oregon, and c) secured by a lien on the Townhouse that has priority over all other liens, including the lien of OCV's Deed of Trust, Assignment of Rents and Leases. An "Institutional Lender" includes federal, state, and local housing finance agencies (including but not limited to HUD, Federal Housing Administration, United States Department of Agriculture, Oregon Housing and Community Services Department, the Housing Authority of Portland); banks, savings and loan associations, or credit unions chartered by or under direct supervision or regulation by the United States or the State of Oregon; and charitable organizations recognized by IRS to be exempt from federal income taxes.

2. **Standard Down Payment Assistance Loan.** This is a loan a) made by any of the lenders described in 1. above, b) is subordinate to a standard first priority purchase money loan, c) does not require the Owner to make periodic payments, d) is not payable until the Owner transfers, sells, or refinances the Unit, and e) is approved by OCV. Standard Down Payment Assistance Loans may bear interest as long as the effective annual percentage rate does not exceed that of the standard first priority purchase money loan. The standard down payment assistance loan may not be a shared appreciation mortgage or any loan that bases the amount the Owner must pay on the value of the Townhouse or any index or formula other than simple or compound interest.

B. STANDARD PERMITTED LOAN TO INCORPORATE EXHIBIT E

The mortgage or deed of trust securing each Standard Permitted Loan shall a) be recorded after the Declaration and b) either (i) contain the following provisions in the body of the mortgage or deed of trust or as an attachment amending them, or (ii) the Permitted Lender by making the Standard Permitted Loan on the Townhouse subject to this Article Two of the Declaration shall have entered into an Agreement with OCV by which it has agreed to undertake the following obligations and to enforce its rights according to the following provisions, or (iii) the Permitted Lender by making the Standard Permitted Loan on the Townhouse subject to this Article Two of the Declaration shall be deemed to agree to the following:

C. RIGHTS OF OCV.

OCV and all subsequent holders have the following rights and relationships with the Permitted Lender:

1. **Permitted Lender shall deliver Notice of Default to OCV.** Notwithstanding anything in this Exhibit E or Article Two of the Declaration to which it is part to the contrary, Permitted Lender shall provide written notice to OCV of Owner's default under the Permitted Loan no less than thirty (30) days prior to issuing a formal notice of default to commence nonjudicial or other foreclosure action.
2. **OCV Right to Cure Default.** In the event Owner defaults in any of its obligations under the Permitted Loan, OCV has the right (but shall not have the obligation) within 120 days after its receipt of such notice, to cure such default in the Owner's name and on Owner's behalf, provided that current payments due the Permitted Lender during such 120-day period (or such lesser time period as may have been required to cure such default) are made to the Permitted Lender. Permitted Lender shall not have the right, unless such default shall not have been cured within such time, to accelerate the note secured by such Permitted Loan or to commence to foreclose under the Permitted Loan on account of such default.
3. **Permitted Lender to Allow Eligible Buyer to Assume Permitted Loan upon Request by OCV.** Upon written request by OCV at any time before foreclosure sale of or receipt of a deed in lieu of foreclosure with respect to the Townhouse as a result of Owner's default under the Loan, Permitted Lender will permit potential buyers who meet a) Permitted Lender's requirements and b) OCV's income requirements to be an Eligible Buyer to assume a Permitted Loan so long as there is no ongoing default under the Permitted Loan documents (or the default is cured by the assumption), all foreclosure and other costs have been paid to Permitted Lender, all loan fees and/or assumption fees are paid by the new Eligible Buyer or OCV, and the new Eligible Buyer receives an appropriate conveyance of the Unit.
4. **OCV Right to Purchase Permitted Loan.** Such Permitted Loan and related documentation shall provide, among other things, that if after such cure period the Permitted Lender intends to accelerate the note secured by such Permitted Loan or initiate foreclosure proceedings under the Permitted Loan, in accordance with the provisions of this Article Two of the Declaration the Permitted Lender shall first notify OCV of its intention to do so and OCV shall have the right, but not the obligation, upon notifying the Permitted Lender within thirty (30) days of receipt of said notice from said Permitted Lender, to acquire such Permitted Loan for the amount of the indebtedness secured by such Permitted Loan.
5. **OCV Right to Credit Bid at Foreclosure Sale.** The Permitted Lender shall instruct the party conducting any foreclosure sale to accept a credit bid from OCV as holder of the deed of trust securing Article Two of the Declaration (However, the Permitted Lender shall not be liable for the failure of the party conducting the foreclosure sale to follow these instructions).
6. **OCV Option to Purchase After Foreclosure.** If Permitted Lender acquires title to the Townhouse by purchase in foreclosure sale by a Permitted Lender or the delivery of a deed to a

Permitted Lender in lieu of foreclosure; the Permitted Lender shall give OCV written notice of such acquisition and OCV shall have an option to purchase the Townhouse and acquire the Townhouse from the Permitted Lender for the full amount owing to the Permitted Lender under the Permitted Loan; provided however, that 1) OCV must give written notice to the Permitted Lender of OCV's intent to purchase the Townhouse within thirty (30) days following OCV's receipt of the Permitted Lender's notice of such acquisition of the Townhouse and 2) at the same time it gives written notice, OCV must pay Permitted Lender's holding costs for the Townhouse plus the full amount owing to the Permitted Lender under the Permitted Loan for the period between the date it received written notice from the Permitted Lender to the date it gives written notice of its intent to purchase as well as a refundable deposit equal to a 60-day period of the same holding costs and loan amount. If OCV complies with both conditions, Permitted Lender shall enter into a purchase and sale Article Two of the Declaration with OCV for OCV to purchase the Townhouse for the full amount owing to the Permitted Lender under the Permitted Loan and its holdings costs within 60 days. As part of Article Two of the Declaration, OCV shall pay into escrow the refundable deposit. OCV and the Permitted Lender shall use a form of purchase and sale Article Two of the Declaration typically used in the Portland metropolitan area that includes terms customary for purchases of Units in the Portland metropolitan area and all other terms for the purchase and sale Article Two of the Declaration to be legally binding. If OCV does not complete the purchase within such period, the deposit shall be refunded to OCV or OCV shall release the deposit to the Permitted Lender according to terms of the purchase and sale Article Two of the Declaration, and the Permitted Lender shall be free to sell the Townhouse to another person.

7. *Payment of Excess Proceeds to OCV.* In the event of there being excess proceeds from a foreclosure sale, the Permitted Lender shall instruct the party conducting any foreclosure sale to pay the excess proceeds to OCV and not to the Owner within 30 days of the foreclosure sale. (However, the Permitted Lender shall not be liable for the failure of the party conducting the foreclosure sale to follow these instructions).

8. *OCV Not Liable/or Loan.* Nothing in Article Two of the Declaration or in this Exhibit E shall be construed as rendering OCV or any subsequent holder of OCV's interest in and to Article Two of the Declaration or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Permitted Loan or any part thereof.

9. *OCV Not Liable/or Deficiency.* The Permitted Lender shall not look to OCV or OCV's interest in Article Two of the Declaration, but will look solely to Owner and the Townhouse for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that OCV's consent to such Permitted Loan shall be without any liability on the part of OCV for any deficiency Judgment).

10. *Condemnation.* In the event any part of the Townhouse is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Permitted Lender, the Owner, and OCV, as their interests may appear.

11. **No Assignment of Service Fee.** OCV shall under no circumstances be obligated to execute an assignment of the monthly Service Fee or other fees payable by Owner to OCV under the terms of Article Two of the Declaration.

12. **Permitted Lender's Rights to Modify Permitted Loan Restricted.** OCV agrees to each and every renewal or extension that Permitted Lender may grant for the payment of any sum due or to become due under any of the Permitted Loan. OCV agrees that Permitted Lender, in its sole discretion and without affecting the obligations and liability of OCV under this Article Two of the Declaration, may grant any renewal, modification, or extension of any Permitted Loan upon whatever terms and conditions as Permitted Lender deems advisable; provided, however, that no such action shall have the result of increasing the principal amount of the Permitted Loan except for increases related solely: (a) to defaults under the Permitted Loan including accrued principal and interest, penalties and collection costs; and/or (b) to advances for such items as taxes, insurance, association fees, and the like to protect the underlying collateral. Permitted Lender shall provide written notice to OCV in the event of any renewal, modification, or extension of a Permitted Loan covered by this paragraph.

D. RIGHTS OF PERMITTED LENDER.

The Permitted Lender has the following rights and relationship to OCV and any subsequent holders:

1. **Notice of Article Two of the Declaration Default.** In the event that OCV sends a notice of default under Article Two of the Declaration to Owner, OCV shall also send a notice of Owner's default to Permitted Lender.

2. **Lender's Rights.** Permitted Lender shall without consent by OCV have the right, but not the obligation, to:

A. Cure any default under Article Two of the Declaration, and perform any obligation required under Article Two of the Declaration, such cure or performance by a Permitted Lender being effective as if it had been undertaken and performed by Owner;

B. Acquire and convey, assign, transfer, and exercise any right, remedy or privilege granted to Owner by Article Two of the Declaration or otherwise by law, subject to the provisions, if any, in said Permitted Loan, which may limit any exercise of any such right, remedy or privilege; and

C. Rely upon and enforce any provisions of Article Two of the Declaration to the extent that such provisions are for the benefit of Permitted Lender.

3. **Not Liable/or Performance under Article Two of the Declaration.** Permitted Lender shall not, as a condition to the exercise of its rights, be required to assume personal liability for the payment and performance of the obligations of the Owner under Article Two of the Declaration. Any such payment or performance or other act by Permitted Lender shall not be construed as an Article Two of the Declaration by Permitted Lender to assume such personal

liability.

4. *No Amendment of Article Two of the Declaration without Permitted Lender's Approval.* The parties to this Exhibit and Article Two of the Declaration of which is a part may not amend either without the prior written approval of the Permitted Lender. Permitted Lender shall not unreasonably withhold or delay its approval. If Permitted Lender has not provided written objections to OCV or the current holder within sixty (60) days after OCV or the current holder delivered the proposed amendment(s) to the Permitted Lender, then Permitted Lender shall be deemed to have approved the amendment(s).

5. *Termination of Article Two of the Declaration Upon Foreclosure or Deed-In-Lieu Of Foreclosure.* Article Two of the Declaration shall terminate automatically upon foreclosure or upon the acceptance of a deed-in-lieu of foreclosure. In the event Article Two of the Declaration is terminated because Permitted Lender foreclosed its Permitted Loan or accepted a deed-in-lieu of foreclosure, provisions of Article Two of the Declaration that a parties would reasonably expect to survive foreclosure in order to be given effect shall survive as long as necessary to be given effect.

6. *Subordination of Article Two of the Declaration; Cooperation with Termination.* Upon Permitted Lender's request, OCV shall execute a subordination agreement in form acceptable to Permitted Lender including any or all of the provisions of this Exhibit E. Upon termination pursuant to Section 5 above, OCV, Owner, any other holder of Article Two of the Declaration, and any party with a right to enforce Article Two of the Declaration, immediately shall execute and record a Release of Article Two of the Declaration expressly releasing the Townhouse from all the terms and restrictions of this Article Two of the Declaration upon the request of the Permitted lender.

E. RIGHTS OF PERMITTED LENDER AND OCV TO OWNER'S PAYMENT AND PERFORMANCE INFORMATION; OWNER'S CONSENT.

1. *Disclosure to OCV by Permitted Lender.* If OCV obtains prior written authorization from Owner for the disclosure by Permitted Lender of Owner's Loan payment and performance information and account history, Permitted Lender will not unreasonably refuse to provide such authorized information to OCV upon reimbursement of Permitted Lender's reasonable costs. OCV shall use any such information supplied to it only for purposes of monitoring Owner's performance of its obligations under the Permitted Loan.

2. *Disclosure to Permitted Lender by OCV.* OCV will obtain written authorization from Owner to disclose to Permitted Lender information related to Owner's performance of Article Two of the Declaration. This includes without limitation the Owner's payment information and history. OCV will not unreasonably refuse to provide such authorized information to Permitted Lender upon reimbursement of OCV's reasonable costs. Permitted Lender shall use such authorized information supplied to it only for purposes of monitoring Owner's performance of Article Two of the Declaration.

3. *Owner's Consent to Disclosures; Limited Waiver of Confidentiality; Further*

Assurances. Owner by acceptance of deed conveying title to Townhouse to it subject to this Article Two of the Declaration shall be deemed to have provided written authorization for the disclosures by OCV and Permitted Lender of its confidential information described above. Owner waives the confidentiality of the information Owner and Permitted Lender share with each other according to this consent. Upon request by OCV and/or Permitted Lender, Owner agrees to sign and deliver additional disclosure consent and waiver forms of OCV and/or Permitted Lender to give full effect to this provision.

4. OCV Assistance to Permitted Lender. OCV shall provide reasonable assistance to Permitted Lender with respect to the exercise by Permitted Lender of its remedies regarding any Loan including, but not limited to the collection of amounts due Permitted Lender, locating and contacting Owner, providing credit and homeownership counseling services to Owner, and assisting in the timely cure of any and all events of default, if possible.

F. OCV PURCHASE OPTION IN EVENT OF NOTICE OF DEFAULT TIME IS OF THE ESSENCE.

Any event of default for any reason under the Permitted Loan shall be deemed a default under Article Two of the Declaration entitling OCV in addition to all of other rights and remedies in Article Two of the Declaration and as otherwise provided by law, to exercise the following purchase option for the Townhouse as follows:

1. Owner shall sell the Townhouse to OCV for a price equal to the lower of a) the Option Price of the Townhouse or b) the amount outstanding on the Permitted Loan. OCV may assign this right to purchase to an Eligible Buyer.

2. Any payment made by OCV to cure any default in the Permitted Loan and any unpaid monthly Service Fee or other payments due to OCV from Owner according to Article Two of the Declaration shall be applied as credits against the purchase price.

3. If any Eligible Buyer exercising this purchase option meets Permitted Lender's qualifications for the Permitted Loan and wishes to assume the Permitted Loan, Owner agrees to fully cooperate with OCV, Permitted Lender, the Eligible Buyer, and any title/escrow companies to complete the transfer of the Townhouse, the assumption of the Permitted Loan, the assumption of any existing down-payment assistance or other public or private subsidy loan for which the Eligible Buyer is qualified, and any Permitted Lender's new purchase or repair loan to the Eligible Buyer.

4. Owner further agrees to sign such forms and documents as OCV, the Eligible Buyer, Permitted Lender, new Permitted Lender, existing down-payment assistance or other subsidy Permitted Lender, or any title or escrow company shall reasonably request to implement the transfers, assignments, and/or assumptions provided in this section, including without limitation a purchase and sale Article Two of the Declaration and any documents related to assumption of the Permitted Loan, assignment of the right to purchase, conveyance of title to the Townhouse, and possession and occupancy of the Townhouse by OCV or the Eligible Buyer.

5. In the event that OCV purchases the Townhouse under this Section F, upon subsequent sale, OCV agrees to pay to Owner a portion of any difference between OCV's purchase price paid to Owner and OCV's sale price based on the Option Price in Article Two of the Declaration. Before applying the Option Price, however, OCV shall first deduct from the difference all of its costs and expenses related to the Townhouse arising from or related to Owner's default under the Permitted Loan, the transfer to OCV, and the subsequent sale to a new Eligible Buyer including without limitation additional staff time; unrecovered Service Fee or other payments due to OCV under this Article Two of the Declaration or any other Article Two of the Declaration with Owner; unrecovered Permitted Loan payments made on Owner's behalf; any payment of Permitted Lenders foreclosure costs or holding costs; any collection costs; all finance costs; all repair and replacement costs reasonably necessary for resale; insurance costs; property taxes; utility costs; broker fees; title, escrow, and recording costs; legal fees; and OCV's then applicable transfer and administrative fees for all such activities.

6. In the event that OCV assigns its purchase right to a new Eligible Buyer who purchases the Unit, OCV shall in its sole discretion reasonably attempt to assist the Eligible Buyer to increase the amount of the Permitted Loan it assumes or the amount of any new Permitted Loans that "would allow it to purchase the Townhouse at or closer to the Purchase Option Price determined under Article Two of the Declaration if that is greater than the purchase price established in section 1 above. Owner, however, acknowledges and supports OCV's mission and primary responsibility to retain the Townhouse in trust for low income persons in the community and acknowledges that numerous factors may limit OCV's ability to increase the purchase price. OCV's duty under this provision is not reviewable for abuse of discretion under any circumstance.

G. TERMINATION OF ARTICLE TWO OF THE DECLARATION AND RELEASE.

1. ***OCV's Right to Terminate Article Two of the Declaration.*** OCV retains all rights to terminate Article Two of the Declaration provided by ORS 456.

2. ***Release of Article Two of the Declaration.*** Upon termination of Article Two of the Declaration, OCV, any other holder of Article Two of the Declaration, and any party with a right to enforce Article Two of the Declaration shall execute and record a Release of Article Two of the Declaration expressly releasing the Townhouse from all the terms and restrictions of this Article Two of the Declaration upon the request of any party including but not limited to the Owner and Permitted Lender.

H. CONFLICT WITH LOCAL, STATE, OR FEDERAL LAW.

If any provision of this Exhibit E is held to be invalid, illegal, or unenforceable by any court, the remaining provisions of Exhibit E and Article Two of the Declaration shall nevertheless be binding, and both the remaining provisions and Article Two of the Declaration shall be enforceable as if the void or unenforceable provision(s) had not been included

EXHIBIT F

(Letter of Stipulation)

TO: OUR COASTAL VILLAGE, INC.
FROM: _____
DATE: _____

I intend this letter to be an exhibit to the Deed by which I will take title to the Townhouse which is subject to an Affordable Housing Covenant (the "Covenant"). I intend to purchase the Townhouse subject to the Covenant, which restricts my use of, and my ability to transfer, the Townhouse. I am buying the Townhouse and agreeing to abide by the Covenant freely, without pressure from other parties, and with the intent of receiving certain benefits, as described here.

My legal counsel, _____, has explained to me all of the terms and conditions of the Covenant and other legal documents that are part of this transaction. I understand the present and future effects of these terms and conditions on my rights of ownership of the Townhouse. I have discussed these terms and conditions with _____ (who are my heirs) for the purposes of increasing their understanding and acceptance of these terms and conditions.

I understand that the following documents describe the special nature of the purchase of my home:

- a) This Letter of Stipulation;
- b) The Letter of Acknowledgment from my Attorney;
- c) The Covenants, Conditions and Restrictions of AVS Townhouse PUD and all amendments thereto;
- d) The Deed including all Exhibits;
- e) The Deed of Trust in favor of OCV that secures performance of the Covenant; and
- f) The Articles of Incorporation and Bylaws of AVS Townhouse Association, Inc.

The purpose of this Letter of Stipulation is to show to anyone who examines this transaction in the future that I understand and agree to the goals, terms, and conditions set out in these documents including but not limited to the following:

1. OCV was founded to develop and preserve long-term affordable homeownership for people of limited resources.

2. The goal of OCV is to stimulate the conveyance of decent and affordable housing among Eligible Buyers, as defined in, and regulated by, the Covenant. I am an Eligible Buyer.
3. OCV holds the Covenant restricting the Townhouse which I am buying.
4. The Covenant restricts the financing I can use to pay my Purchase Price for the Townhouse. The Covenant restricts how I may use the Townhouse. And the Covenant restricts my right to transfer of the Townhouse to others.
5. The Covenant limits the price at which I may resell the Townhouse. The Covenant limits me to sell the Townhouse to either another Eligible Buyer or to OCV.
6. Should I decide to sell the Unit, OCV has the right to purchase it before I offer it to anyone else.
7. The limited price at which I may sell the Unit to another Eligible Buyer or OCV is called the "Formula Price." The Formula Price is calculated by multiplying my purchase price of \$_____ by two percent (2%) for each year I have owned the Townhouse.
8. When I sell my Townhouse, if the Appraised Value of my Townhouse (that is the value of my Townhouse without the restrictions of the Covenant) is lower than the Formula Price, then I must sell at the lower Appraised Value.
9. When I sell my Townhouse, if the market value of my Townhouse (without restrictions) is greater than the Formula Price, I must sell for no more than the Formula Price.
10. This limitation on the resale price insures fair compensation to me and the affordability of the Townhouse to another Eligible Buyer.
11. I agree with OCV's goal and the requirements of the Covenant that the Townhouse be sold, directly or indirectly, at an affordable price to another Eligible Buyer.
12. I understand that in addition to subsidizing my purchase of the Townhouse, OCV will provide the rights and privileges in the Covenant.
13. I eagerly and freely accept the ownership of the Townhouse on these terms and conditions.
14. I intend to occupy the Townhouse according to the Covenant.

It is my desire for reasons both of private motivation and sound public policy that the terms of the Covenant and the other documents be honored. I consider these terms fair and equitable to me.

Sincerely,
OWNER

Printed Name: _____

Printed Name: _____

STATE OF OREGON)
)
County of Lincoln)

This instrument was acknowledged before me on the ____ day of _____,
2012, by _____ and _____, OWNER.

Notary Public

My Commission Expires:

EXHIBIT G

Letter of Acknowledgment of OWNER's Attorney

I, _____, have been independently employed by _____ (hereinafter "Client") who intends to purchase property that includes a residential Townhouse ("Townhouse") located at _____ Agua Vista Loop, Yachats, OR 97498.

In connection with the contemplated conveyance of said townhouse, I reviewed with Client the following documents relating to the transaction:

- a) This Letter of Acknowledgment;
- b) A Letter of Stipulation from the client;
- c) The Affordable Housing Covenant contained in the CCRs of AVS Townhouse PUD and all amendments thereto;
- d) The Deed to which this is an Exhibit;
- e) The Deed of Trust in favor of Our Coastal Village, Inc. that secures performance of the Agreement; and
- f) The Articles of Incorporation and Corporate By-laws of the AVS Townhouses Association, Inc.

Client has received full and complete information and advice regarding this conveyance and the foregoing documents. My advice and review has been given to reasonably inform Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

Client has entered the aforesaid transaction in reliance on his/her own judgment and upon his/her investigation of the facts. The full and complete advice and information provided by me was an integral element of such investigation.

Signature of Attorney

Date of Signature

Printed Name of Attorney

Printed Name and Address of Attorney's Business or Law Firm

STATE OF OREGON)
)
County of _____)

 This instrument was acknowledged before me on _____,
by _____ and _____.

Notary Public – State of Oregon

Commission Expires: _____