

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2008-48214



\$76.00

00844419200800482140110110

12/08/2008 04:01:00 PM

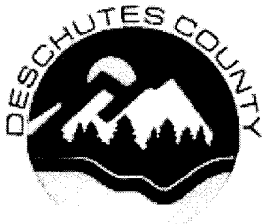
D-CCR Cnt=1 Stn=1

\$50.00 \$11.00 \$10.00 \$5.00

Do not remove this page from original document.

Deschutes County Clerk

Certificate Page



If this instrument is being re-recorded, please complete the following statement, in accordance with ORS 205.244:

Re-recorded to correct [give reason] _____
previously recorded in Book _____ and Page _____,
or as Fee Number _____.

BT 110936 TA 76

10/11/9

**Declaration of Conditions, Covenants, and Restrictions
For
South Briar
Bend, Deschutes County, Oregon**

The undersigned, Starboard LLC, an Oregon Limited Liability Company, and Somerset Development LLC, an Oregon Limited Liability Company ("Declarant") is the owner in fee simple of that real property known collectively as South Briar, ("the Property") in the City of Redmond, Deschutes County, Oregon, described more particularly in Exhibit "A", attached hereto and by this reference incorporated herein.

RECITALS

Declarant wishes to provide herein for certain restrictions on the use of the Property.

Now, THEREFORE, Declarant hereby declares that the Property and any improvements thereon shall be held, conveyed, encumbered, leased, rented, used and improved subject to the following covenants, conditions, restrictions, grants of easements, rights, charges and/or equitable servitudes. Any conveyance, transfer, sales, assignments, lease or sublease of the Property or any portion thereof shall and hereby is deemed to incorporate by reference all provisions of this Declaration. The provisions of this Declaration shall constitute covenants to run with all of the land, shall be binding upon all persons claiming under them, including the undersigned, its successors and assigns, and all parties having or acquiring any right, title, or interest in the Property or any part thereof, and shall be for the benefit of each Owner of any portion of the Property, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of such Owners.

**ARTICLE I
DEFINITIONS**

1. Declarant. Starboard LLC and Somerset Development, LLC.
2. Dwelling Unit. A residential house and all accessory uses associated therewith, such as storage sheds, garages, pools, greenhouses, etc.
3. Owner. The record Owner, or Owners, if more than one, of a Lot, including the Declarants and including a vendee under a recorded land sale contract or recorded memorandum of land sale contract.
4. Property. South Briar subdivision as the same appears on the map and plat thereof recorded in Volume 2008 Page 657 of the Records of Deschutes County, Oregon, and as further described in the attached Exhibit "A".
5. Lot. That discrete parcel of the Property conveyed or to be conveyed by the Declarant to an individual Owner in fee simple. For the purposes of this Declaration, a Lot shall exist from and after the date of recording of the Final Plat for the Property.

**ARTICLE II
RESIDENTIAL COVENANTS**

1. LAND USE AND BUILDING TYPE

Lots and Dwelling Units shall be used for residential purposes only, except as specifically provided for in this Declaration. All homes shall be constructed on site. Mobile and modular homes shall not be permitted. No building shall be occupied until the building is 100% complete.

The foregoing provisions shall not exclude construction of churches, schools, parks, or walking trails.

The foregoing provisions shall not exclude construction of a private greenhouse; storage unit, private swimming pool, or other such structures typically associated with residential use, provided the location of such structures is in conformity with the applicable municipal regulations and is compatible in design and decoration with the residence constructed on such lot.

2. LANDSCAPE MAINTENANCE

Landscaping is to be well maintained and shall remain in conformance with originally installed landscaping.

3. EASEMENTS

Each Lot shall be conveyed to Owners, other than Declarant, and thereafter held by such Owner, their successors and assigns subject to any and all easements of record at the time of the initial conveyance of the particular Lot involved to an Owner other than Declarant for the use and benefit of the several authorized public and/or other utilities, including by not limited to, cable television, sanitary sewers, water, gas, and electrical and drainage easements, and no Owner shall damage or interfere with the installation and maintenance of such utilities, or in any manner change the direction or flow of drainage channels in any such easements, or in any manner obstruct or retard the flow of water through drainage channels in any such easements.

4. BUSINESS OR COMMERCIAL USES

No trade, craft, business, profession, commercial or similar activity, except as a home occupation approved by the City of Bend, shall be conducted on any lot. Not heavy equipment, vehicles, materials, or supplies used in connection with trade, services, or business shall be kept or stored on or in front of any residential lot, except the right of any builder and the Declarant to construct residences on any lot and to store construction equipment and materials on said lots in the normal course of said construction, and to use any residence as a sales office or model home for purposes of sales in the South Briar Estates development.

5. PARKING AND STORAGE

No vehicle of any type shall be parked or left on any portion of the Property other than within a Lot's driveway or garage.

All of the following vehicles and categories of vehicles shall be subject to the following special restrictions of this section:

- a. Any commercial vehicle, including a bus or any vehicle which exceeds 12,000 pounds gross vehicle weight, or which has a wheelbase exceeding 133 inches shall be parked in the development;
- b. Any farm vehicle or equipment;
- c. Any boat;
- d. Any trailer fitted or designated to be pulled by any other vehicle;
- e. Any vehicle within the generally recognized category of recreational vehicle, including a camper or camper body which is or may be mounted upon a pick-up truck;

- f. Any commercial-type vehicle including any pick-up truck or van on which any advertising is painted or otherwise displayed; and
- g. Any vehicle which is inoperable.

No vehicle described above may be permanently or semi-permanently parked anywhere within the Property (including any street, driveway or yard area). Unless it is enclosed within a garage, except for occasional, temporary periods of not more than twenty-four (24) hours each, and of not more than seventy-two (72) hours during any thirty (30) day consecutive period. Any Owner who parks or permits the prohibited parking of any such vehicle on the Project shall be deemed to commit a nuisance. No vehicle of any type (including regular passenger cars, motorcycles, bicycles or any other Vehicle) shall be parked on any street or other portion of the Property for the purpose of accomplishing repairs thereto or the reconstruction thereof, except for emergency repairs and then only to the extent necessary to enable movement of the vehicle. Violation of this prohibition against repairing vehicles shall also constitute a nuisance. An occasional, temporary period of parking allowed pursuant to this Section shall not be followed, within twenty-four (24) hours, by a subsequent, occasional, temporary period of parking.

6. NUISANCES

No noxious or offensive activity shall occur on any lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

7. TEMPORARY STRUCTURES

No trailer, tent, shack, garage, barn, motor home, or other temporary building or structure of any kind shall be used at any time for a residence either temporary or permanent. Temporary building, trailers or structures may be used by Declarant during the sales and construction or improvement of Lots, but shall be removed within a reasonable period of time after the completion of construction with that portion of the Property.

8. CONSTRUCTION

- a. Minimum home size of 1,250 square feet and all plans and specifications must be approved by the architectural review committee (ARC);
- b. Two (2) car garage minimum;
- c. Thirty (30) year or comparable roof minimum;
- d. Front of home must be double wall construction with a minimum of stone, brick or cedar accents. Subject to ARC design review;
- e. Front yard must be landscaped within one hundred and twenty (120) days of completion and landscaping must be approved by the ARC. Side and rear landscape must be completed within six (6) months of house completion;
- f. Driveways must be concrete or paver stone;
- g. All windows must have a minimum 3 1/2" wood trim.

9. FENCES AND HEDGES

- a. On residential lots, hedges or site-obscuring plantings shall not exceed three feet (3') in height in the front yard or on the side lot lines forward of the front building line;
- b. No fences shall be constructed in the front yard or on the side lot lines forward of the front building line;

- c. No fences shall be constructed within three feet (3') from the side lot line if said lot abuts a street. The maximum height of a fence or hedge shall not exceed six feet (6') in height. Fences shall be constructed of natural wood;
- d. Fence tops are to be constructed level, with grade changes to occur at the fence post.

10. SIGNS

No signs shall be erected or placed on any lot except one (1) "For Sale" or "For Rent" sign placed by the Owner, the Declarant, or by a licensed real estate agent not exceeding twenty-four inches (24") in height and thirty-six inches (36") in width. This restriction shall not prohibit the temporary placement of two "political" signs of the same dimension on any lot by the Owner, or the placement of a professional sign the Declarant, which must comply with any applicable City of Bend sign ordinances.

11. LIVESTOCK AND POULTRY

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot. Dogs, cats, or other household pets may be kept provided that they are not kept for breeding, or maintained for any commercial purposes, or in unreasonable numbers, and provided they do not create a public nuisance.

12. GARBAGE AND REFUSE DISPOSAL

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste, shall be kept in sanitary, covered containers. In no event shall trash containers be maintained so as to be visible from neighboring property.

13. POLES AND OVERHEAD WIRES

No poles shall be permitted within the subdivision except poles that are installed by the City of Bend as street light standards. Flags, official or decorative, are allowed when mounted on the front, side, or back of the house. No overhead wires shall be erected or used for any purpose.

ARTICLE IV GENERAL PROVISIONS

1. VOTING

- a. Owners Entitled to Vote. Only Owners shall be entitled to vote for any amendments or revocation of these Declarations. The voting privileges of each Class of Owners shall be as provided herein. Any action by the Owners to amend or revoke these CC&R's shall expressly require the vote or written assent of a prescribed percentage of the total voting power of the Owners of the Property, as more particularly state within the Declaration.
 - 1. Class A Owners. Class A Owners shall have one (1) vote for each Lot. When more than one person owns a single Lot, the vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner (or Owners) casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owners(s) was acting with the authority and consent of any other Owners of said Lot. The right to vote may not be severed or separated from the lot ownership

to which it is appurtenant, and any sale, transfer, or conveyance of such Lot to a new Owner or Owners shall operate to transfer the appurtenant vote without the requirement of any express reference thereto.

2. Class B Owner. The Class B Owners shall be the Declarant. The Class B Owner shall be entitled to four (4) votes for each Lot it owns.
- b. Voting Procedures. Any vote may be cast in person or by proxy. All proxies shall be in writing, dated, signed by the Owners(s) giving the proxy and filed with the Declarant before the commencement of any meeting. A proxy shall terminate six (6) months after its date unless the proxy specifies a shorter term. Every proxy shall automatically cease upon the sales of the Lot by the Owner and upon the death or incapacity of the Owners who executed the proxy.

2. AMENDMENT

Any amendment or revision to these Declarations requires an affirmative vote of at least fifty-one percent (51%) of the total voting power of the Owners (Class A and Class B) and to be effective, such amendments must be signed by the Owners of the Property and be recorded with Deschutes County.

3. TERMINATION

Any termination or revocation of these Declarations requires an affirmative vote of at least seventy-five percent (75%) of the total voting power of the Owners (Class A and Class B) and to be effective, such termination or revocation agreement must be signed by such Owners and recorded with Deschutes County property records.

4. ENFORCEMENT

Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether the relief sought is negative or affirmative action, by Declarant or any Owner. Failure by the Declarant and/or Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Should the Declarant and/or Owner(s), be required to employ an attorney to enforce any of these covenants, conditions, or restrictions, by reason of such violation, any and all costs incurred in such enforcement, including reasonable attorney fees, shall be paid by the Owner of such lot or lots on which the violation occurred, and Declarant and/or the enforcing Lot Owner shall have a lien upon such lot or lots to secure payment of all such accounts.

5. LIMITATION OF LIABILITY OF DECLARANT

Declarant shall not be liable to any Owner on account of any action or failure to act in performing its duties or right hereunder, provided that Declarant has, in accordance with actual knowledge possessed by it, acted in good faith.

- a. Violation of Law. Any violation of any stat, municipal, or local law, ordinance or regulation, pertaining to the Ownership, occupation or use of the Property or any part thereof is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

- b. Obligations of Owner. No Owner may avoid the burdens or obligations imposed on him by this Declaration by abandonment of his Lot. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, Owner shall, after the termination of his status as an Owner and prior to his again becoming an Owner, not incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration.
- c. Notices. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, such notice or document shall be deemed to have been delivered and received five (5) calendar days after a copy thereof has been deposited in the United States postal service, postage prepaid, addressed as follows:
1. If to an Owner, to the address of any Lot owned, in whole or in part, by him or to any other address last furnished by an Owner to the Declarant:
If to Declarant:
Starboard LLC
400 SW Bluff Dr. Suite 103
Bend, OR 97702
And
Somerset Development LLC
P.O. Box 720, Gresham, OR 97030

Provided, however, that any such address may be changed at any time by the party concerned by delivering a written notice of change of address to the other.

- d. Cumulative Remedies. Each remedy provided by this Declaration is cumulative and not exclusive.
- e. Partial Invalidity. The invalidity or partial invalidity of any provision of this Declaration shall not affect the validity or enforceability of any other provision.
- f. Number; Gender. The singular shall include the plural and the plural shall include the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

ARTICLE V ARCHITECTURAL REVIEW

1. Architectural Review Committee. A committee to be known as the Architectural Review Committee (ARC) shall be established consisting of the number of member as determined by the board, except that the ARC shall consist of not less than three (3) members.
 - a. The members of the ARC shall be appointed, terminated and/or replaced by Declarant so long as there is Class B membership. Thereafter, the Board shall appoint the members of the ARC. Members of the ARC may be terminated and/or replaced by the Board with or without cause.
 - b. The purpose of the ARC is to enforce the architectural standards of the community and to approve or disapprove plans for Improvements proposed for the Lots.
 - c. The ARC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.
2. Design Guidelines. The board may adopt, and from time to time, amend, modify, or revise an architectural manual (the "Design Guidelines"). Adoption of the Design Guidelines may occur without the consent of anyone prior to conveyance of the first Lot to an Owner other Declarant. Declarant may amend, modify, or revised the Design Guidelines without the consent of any other

part prior to conveyance of the first Lot to an Owner other than Declarant. Thereafter the Arc shall have the right to amend, modify, or revise the Design Guidelines, subject to the approval of the Board. No such amendments, modifications, or revision shall affect any prior ARC approval.

3. Scope of Review. No building, fence, wall, patio, deck, outbuilding, landscaping, pool, athletic facility or other structure of Improvement shall be erected, altered, added onto or repaired upon any portion of the Property without the prior written consent of the Arc; provided however, that Improvements erected, altered, added onto or repaired by Declarant shall be exempt from the provisions of this Article V.
4. Submission of Plans. Before the initiation of construction upon any Lot, the Owner thereof shall first submit to the ARC a complete set of plans and specifications from the proposed Improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the Arc for the performance of its function pursuant to the procedure outlined in the Design Guidelines (if any). In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. In the event an Owner submits plans or specifications to the ARC that are not adequate to permit the ARC to make an informed determination under this Article V, the Board shall have the authority to require the Owner submitting the inadequate plans or specifications to retain, at the Owner's expense, the services of a professional engineer, architect, designer, retain, at the Owner's expense, the services of a professional engineer, architect, designer inspector or other person to assist in the preparation of a sufficient submittal to the ARC.
5. Plan Review. Upon receipt by the Arc of all of the information required by the Article V, the ARC shall have thirty (30) days in which to review said plans. The proposed Improvements will be approved if, in the sole opinion of the ARC:
 - a. The Improvements will be of an architectural style and material that are compatible with the other structures in the Property;
 - b. The building set back lines;
 - c. The individual or company intended to perform the work is acceptable to the ARC;
 - d. The Improvements will be substantially completed, including all cleanups, within Twelve (12) months of the date of commencement. If the ARC fails to issue its written approval, or rejection, within thirty (30) days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ARC's approval shall be deemed to have been granted without further action.
6. Non-Conforming Structures. If there shall be a material deviation from the approved plans in the completed Improvements, such Improvements shall be in violation of this Article V to the same extent as if erected without prior approval of the ARC. The ARC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.
7. Immunity of ARC Members. No individual member of the ARC shall have any personal liability to any Owner or any other person for the acts or omissions of the ARC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ARC or any member thereof arising from acts or omissions of the ARC committed in good faith and without malice.

8. Limited Review. Any review and approval made by the ARC is limited to compliance with the intent of the architectural standards of the neighborhood as may from time to time be established by the Board or as otherwise set forth in the Design Guidelines. The review and approval made by the ARC is not to be construed as superseding, replacing, or modifying and review, approval, or permit required by any local, state or federal jurisdictional agencies. Nor is ARC review and approval intended to analyze or determine compliance with applicable governmental laws and regulations. It is the applicant's responsibility to obtain and comply with any permits that may be required by any local, state, or federal jurisdictional agency.

If case, suit or action is instituted to enforce any of the foregoing restrictions, covenants, or agreements, the prevailing party in such case, suit or action shall be entitled to recover from the losing party such sum as the court may adjudge reasonable as attorney's fees in such case, suit or action or in any appeal there from.

THE UNDERSIGNED, AS DECLARANT, SUBSCRIBED TO AND DATED THESE CONDITIONS, COVENANTS, AND RESTRICTIONS in Deschutes County, Oregon.

IN WITNESS WHEREOF, the parties hereto set their hand and seal this 5 day of Dec, 2008.

DECLARANT:

STARBOARD LLC

Tamara L. Sawyer
By: Tamara L. Sawyer, Member

SOMERSET DEVELOPMENT LLC

Gregory J. MacDowall
By: Gregory J. MacDowall, Member

STATE OF OREGON)

)ss:

County of Deschutes)

Dec 8, 2008

Personally appeared before me Tamara L. Sawyer, who, being duly sworn, did say she is a member of Starboard LLC, a member-managed Limited Liability Company, and that said instrument was signed in behalf of said Limited Liability Company, and acknowledged said instrument to be its voluntary act and deed.

Before me:
Terri Ausbrooks

Terri Ausbrooks
Notary Public for Oregon

My Commission Expires: 6.19.12

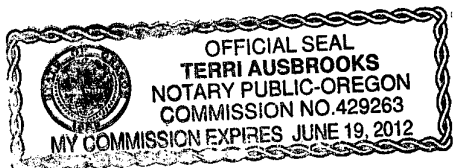


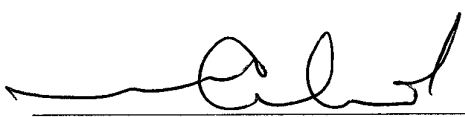
State of Oregon

County of Deschutes

On this 5 day of Dec, 2008, personally appeared before me, Gregory J. MacDowall, did say he is the member of Somerset Development LLC, a member managed Limited Liability Company, and that said instrument was signed in behalf of said Limited Liability Company, and acknowledge said instrument to be its voluntary act and deed.

WITNESS My hand and official seal.




Notary Public for Oregon

My Commission expires: 6.19.12

EXHIBIT "A"

PARCEL 1:

Lots One (1), Two (2), Three (3), Four (4), Six (6), Seven (7), Eight (8), Nine (9), Eleven (11), Twelve (12), Sixteen (16), Seventeen (17), Twenty (20), Twenty-one (21), Twenty-three (23), Twenty-four (24), Twenty-six (26), Twenty-seven (27), SOUTH BRIAR, recorded February 21, 2008, in Cabinet H, Page 657, Deschutes County, Oregon.

PARCEL 2:

Lots Five (5), Ten (10), Thirteen (13), Fourteen (14), Eighteen (18), Nineteen (19), Twenty-five (25), Twenty-eight (28), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33), Thirty-four (34) and Thirty-five (35), SOUTH BRIAR, recorded February 21, 2008, in Cabinet H, Page 657, Deschutes County, Oregon.

PARCEL 3:

Lot Fifteen (15), SOUTH BRIAR, recorded February 21, 2008, in Cabinet H, Page 657, Deschutes County, Oregon.

PARCEL 4:

Lot Twenty-two (22), SOUTH BRIAR, recorded February 21, 2008, in Cabinet H, Page 657, Deschutes County, Oregon.