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*This document was last corrected on February 24, 2014.*

## SOMERSET HILLS III DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by BREEDEN LAND CO., hereinafter referred to as "Declarant."

### WITNESSETH:

WHEREAS. Declarant is the owner of certain property in the City of Eugene, County of Lane, State of Oregon, which is more particularly described as:

Lots 163 through 275 and Common Areas "A" and "B" of Somerset Hills III, as platted and recorded In Book 70, Page 4, Lane County Oregon Plat Records, in Lane County, Oregon.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed, subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

### ARTICLE I

#### DEFINITIONS

Section 1. "Association" shall mean and refer to Somerset Hills III Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract seller, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners and all Common Areas subsequently annexed thereto. The Common Areas to be transferred to the Association at the time of the conveyance of the first Lot

are described as follows:

Common Areas "A" and "B" as platted and recorded in Book 70, Page 4, Lane County Plat Records, in Lane County, Oregon

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Areas. A Tandem Lot is two separate Lots, unless improved with one living unit occupying both Lots, whereupon it shall be considered one Lot.

Section 6. "Improved Lot" shall mean with completed dwelling thereon.

Section 7. "Living Unit" shall mean any portion of structure intended for use occupancy or Ownership as a residence by a single family.

Section 8. "Declarant" shall mean and refer to Breeden land Co., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 9. "Street" shall mean and refer to the improved private access roads shown upon the Somerset Hills III recorded subdivision map.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agrees to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership.

Class A. Class A member shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and he shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1992.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements and (3) private street maintenance assessments or charges. Such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas and private streets.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$30.00 per Lot, which assessment shall be known as the "Base Rate." Assessments described in Article IV, Section 6, are in addition to the maximum annual assessment described in this paragraph, and shall be fixed by the Board of Directors.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum assessment plus maximum increase.

Note: according to the minutes of a Special Meeting of the Homeowner's Association on June 5, 2008, a motion (was) made and seconded to raise the annual dues to two hundred fifty dollars (\$250) per year. (The) motion carried by more than a 2/3 vote.

Section 4. Special Assessments for Capital Improvements. In addition to annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than fifteen (15) days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, succeeding meetings may be called without notice after a 15 minute recess, and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed by the uniform rate called the "Basic Rate," except that unimproved Lots shall be exempt from assessment until January 1, 1981, and shall thereafter be assessed the "Basic Rate." In addition, costs related to particular types of residential structures shall be assessed uniformly to all structures of that type as determined by the board of Directors. Such additional cost shall be assessed in addition to the "Basic Rate" set forth in Article IV, Section 3 above. Such special costs may include maintenance of private streets, exterior maintenance of tandem dwellings and similar special costs. Assessments may be collected monthly or yearly as determined by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month

following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot on or before January 1 of each year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 10 per cent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V

### ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to the Architectural Committee and approved in writing as to harmony of external design and location in relation to surrounding structures, topography and existing or planned plantings, by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any exterior maintenance of structures sharing a party wall with another structure shall require approval of the Board. This Article shall not apply to the Declarant.

## ARTICLE VI

### EXTERIOR MAINTENANCE

Each Owner shall be responsible for maintaining and keeping in good order and repair the interior and exterior of his own dwelling, including any garage or yard within lot lines.

In the event an Owner of any lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its

agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the buildings and any other improvements erected thereon.

Such maintenance or repair shall include, without being limited to, the following: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass landscaped areas, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces. Such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject as lien, and enforceable in the same manner. Damage caused by fire, flood, storm, earthquake, riot, vandalism or other causes other than normal wear from use and the elements shall be the responsibility of each Owner, but the Association reserves the right to replace the exterior of any structure damaged or destroyed from whatever cause and the cost of such repair or replacement may, in the discretion of the Directors, be added to and become a part of the assessment to which such lot is subject, and may become a lien, and be enforceable in the same manner.

The Association shall reasonably maintain or provide for the reasonable maintenance of the Common Areas, including improvements to said Common Areas.

In addition to the maintenance upon the Common Areas, whenever a Tandem lot is in separate ownerships, and the separate Owners cannot agree upon private maintenance, the Association shall provide exterior maintenance upon each such lot, including but not limited to, paint, repair, replace and care for roofs, gutters, downspouts, and all other exterior building surfaces, excluding glass. In the event that the need for maintenance or repairs is caused by the willful or negligent act of one of the Owners of a Tandem lot, his family, guests or invitees, the cost of such maintenance or repairs shall be added to the at-fault Owner's Lot and become a part of the assessment to which such Lot is subject. Tandem lots by way of example are Lots 164/165, 166/167, 170/171, 177/178, 180/181, 196/197, 202/203, 212/213, 216/217, 223/224, 249/250, 254/255, 264/265, 270/271, of the Plat of Somerset Hills III.

## ARTICLE VII

### EXEMPT PROPERTY

The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties expressly dedicated to and accepted by a local public authority, (b) the Common Areas, and (c) all other properties owned by the Association.

## ARTICLE VIII

### ENCROACHMENTS

If any portion of a party wall or other part of a building or structure, including but not limited to, foundation, roof overhangs, porches and fireplaces, now or hereafter constructed upon said property encroaches upon any part of the Common Areas (other than those parts of the common areas actually used for public sanitary and storm sewers,) or upon the Lot or Lots used or designated for use by another Lot Owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist and be binding upon the Declarant and upon all present and

future owners of any part of said property for the benefit of the present and future Owners of such encroaching building or structure for the purpose of occupying and maintaining same; in the event a structure consisting of more than one living unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Common Areas and in and upon each living unit and Lot for the benefit of the Association and the adjacent Owner or Owners to the extent reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs and/or replacements and the maintenance thereof are hereby granted and reserved for the benefit of the present and future owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Where there are certain drives and access ways, the cost of reasonable repair and maintenance of the same shall be shared by the Owners who make use thereof. No such common drive or access way shall be obstructed in any manner.

## ARTICLE IX

### EASEMENTS

All conveyances of land situated in the sold property, made by the Declarant, and by all persons claiming by, through, or under the Declarant, shall be subject to the foregoing restrictions, conditions and covenants, whether or not the same be expressed in the instruments of conveyance, and each and every such instrument of conveyance shall likewise be deemed to grant and reserve, whether or not the same be declared therein, mutual and reciprocal easements over and across all of the Common Areas of said property for the purposes of traveling by foot or conveyance or resting or otherwise being there, and over, under and across all portions of said property (except those portions thereof actually intended to be occupied as living space in any building now or hereafter located upon said property) and specifically including (without being limited thereto) the interior of party walls, attic crawl spaces and the area below the living space in any living unit, for the purpose of building, constructing and maintaining underground or concealed electric and telephone lines, gas, water, sewer, storm drainage lines, radio and television antennae and cables, and other utilities and services now or thereafter commonly supplied by public utilities or municipal corporations and upon all Common Areas for constructing and maintaining thereon streets, driveways, community and recreational facilities, ornaments and statues, swimming pools, lawns, landscaping and planted areas thereon; all of said easements shall be for the benefit of all present and future Owners of property subjected to the jurisdiction of the Association by recorded covenants and restrictions, recorded as hereinabove provided, and their tenants, contract purchasers and guests, said easements and rights of use, however, shall not be unrestricted but shall be subject to reasonable rules and regulations governing said right of use, as promulgated from time to time by the Directors of the Association in the interest of securing maximum safe usage of said easements without unduly infringing upon the privacy of the Owner or occupant of any part of said property. An easement over, upon and across all parts of said property is granted and reserved to the Association, its successors and assigns to the

extent reasonably required to perform exterior maintenance and to the extent reasonably necessary to perform other maintenance reasonably necessary or advisable to protect or preserve the value of the said property and the living units thereon.

In addition, an easement over, under, upon and across all parts of herein described Common Area is reserved by the Declarant for the purpose of constructing the project, installing and maintaining utility services, dedicating easements to public bodies, or for any other easement required in the development of the herein described property or adjacent property.

The Declarant shall have the right to transfer or assign all of his rights under this Covenant to another builder or developer.

## ARTICLE X

### SOMERSET HILLS III USE RESTRICTIONS

1. No lot shall be used for other than residential purposes and no buildings shall be erected on any Lot except dwellings, garages or carports.
2. A single family living unit shall be limited to occupancy by one related family and exclusive of open porches and garages, shall contain not less than 600 square feet of habitable floor area.
3. Easements for installation and maintenance of utilities and facilities are reserved as shown on the recorded plat. Said property is subject to the terms and provisions of E.W.E.B. underground electric rate agreement as recorded in Lane County, Oregon.
4. No structure of a temporary character, trailer, basement, partly finished house, shack, garage, barn or out-building shall be used on any Lot at any time as a residence either temporarily or permanently. All structures, additions or alterations shall be completed in not less than twelve (12) months from the starting date.
5. Yards shall be landscaped not more than thirty days after occupancy, except when occupancy occurs after October 1st and before May 1st, yards delivered to occupant during said inclement weather shall be landscaped not more than thirty days after May 1st. Yards shall be maintained in a neat, clean condition and grass shall be watered and cut regularly.
6. No sign of any kind shall be displayed to the public view on any Lot except one Block Parent and one home occupation sign of not more than 1 square foot, both of which must be not less than twenty feet from the front property line. All other signs, including real estate broker signs, or owner signs advertising the property for sale or rent, are strictly forbidden. An automatic assessment of not less than \$10.00 for each day a non-conforming sign is displayed to public view may be assessed by the Homeowners Association to any Owner in violation of this covenant and said assessment shall constitute a lien upon the property.
7. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.



8. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except 1 dog and/or 1 cat or other household pet may be kept, provided they are not kept, bred or maintained for any commercial purpose and do not create objectionable noise or odor and are maintained on a leash when off the owner's property.

9. Except as provided in Paragraph 11 of these restrictions, no Lot shall be used or maintained as a parking place for trucks, equipment or materials, except during the course of construction, or used as a dumping ground for rubbish or used as a parking place for automobiles not in regular family use and good operating conditions.

10. Trash, garbage or other waste shall not be kept except in sanitary containers emptied weekly. All incinerators, garbage cans or other equipment for the storage of or disposal of such materials shall be kept in a clean and sanitary condition enclosed by fences that screen them from sight.

11. Storage or any kind of goods, chattels, merchandise, material, fuel, supplies or machinery shall be within walls of the building, or enclosed by tight fences that completely screen it from sight. Open carports shall not be used for storage other than that enclosed by walls of the structure. Travel trailers, campers, boat trailers and similar vehicles are required to be parked behind the front line of the residence building, and in the case of corner Lots, only on the side of a residence building not facing a street.

12. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

13. No building, fence, structure or alteration shall be erected on any Lot until plans and specifications have been approved by the Architectural Committee of Somerset Hills III Homeowners Association, which will be appointed by the Owners and declarants herein named or their successors in interest. The Architectural Committee shall approve only those structures and alterations which harmonize in material, design, size, and elevation with existing or planned buildings. This provision shall not apply to the original Developer.

14. No TV, citizens band or any other antenna erected on any Lot shall extend more than two feet above the portion of the roof of the dwelling on which it is mounted.

15. Covenant use restrictions 1, 4, 5, 6, 9, 10, 11, 12, 13, and Article V shall not be applicable to the original developer and builder, Breeden Bros., Inc., or the builder's agent, Breeden Bros. Realty Co., during the construction and sales period. Breeden Bros., Inc. shall have the right to assign one or all of their rights under this covenant to another builder or developer.

16. When these covenants do not cover a situation, the rules and regulations of the City of Eugene shall be applied in all cases. Where there are conflicting rules showing a difference in requirements, the stricter of the two is to be used. The decision of the Board of Directors shall govern in determining which rule is the strictest.

17. Destruction by fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the

others under any rule of law regarding liability for negligent or willful acts or omissions. The word "use" as referred to herein means ownership of a dwelling unit or other structure which Incorporates such wall or any part thereof.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. At any time this Declaration may be amended by an instrument signed by a majority of the Lot Owners (the majority of the Lot Owners shall be determined pursuant to the voting rights established by Article III, Section 2 above) provided, however, the Association may not be terminated and the obligation to reasonably maintain the Common Area may not be abrogated during the initial twenty (20) year term commencing upon recordation of this Declaration. Any Amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to-the Properties with the consent of two-thirds (2/3) of each class of members, except additional lands within Sections 2, 3, 10 and 11, T18S R 4WWM, Lane County, Oregon, may be annexed by the Declarant without the consent of members within 10 years of the date of this instrument.