

7325677

AMENDED SOMERSET HILLS I DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, amending all prior Covenants, Conditions and Restrictions, is 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 1 through 83 of Somerset Hills 1, as platted and recorded in Book 62, Page 10, 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 Homeowner's 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. The Common Area to be owned by the Association at

the time of the conveyance of the first lot is described as follows:

Lots B, C, D and F, as platted and recorded in Book 62, Page 10, Lane County Oregon 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 Area.

Section 6. "Improved Lot" shall mean with 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.

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 agreeing 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 members 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 respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and 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, 1976.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance of a deed therefor, 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, and (2) special assessments for capital improvements, 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 each 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 assessment 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 Area.

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 Twelve Dollars (\$12.00) per Lot.

- (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 3% 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 3% 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.

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 30 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 sixty per cent (60%) of all the votes of each class of

membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all improved Lots. Assessments may be collected monthly or yearly.

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 Common Area. 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 at least thirty (30) days in advance of each annual assessment period. 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 six (6) per cent 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 this 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 became 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

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, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. This article shall not apply to the "Declarant" or Breeden Bros., Inc., provided that the "Declarant" or Breeden Bros., Inc. develops the tract in accordance with the plan submitted to HUD/FHA.

ARTICLE VI

EXTERIOR MAINTENANCE

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 exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VII

USE RESTRICTIONS

1. No lot shall be used for other than single family residential purposes and no building shall be erected on any lot except dwelling, garages or carports, swimming pool, tennis court, non-commercial greenhouse and garden shed.
2. A single family living unit, exclusive of open porches and garages, shall contain not less than 1100 square feet of habitable floor area.

3. Easements for installation and maintenance of utilities and facilities are reserved as shown on the recorded plat. Easements for installation and maintenance of drainage facilities are reserved over five feet at the rear of each lot and two and one-half feet over the side of each lot. Said property is subject to the terms and provisions of E.W.E.B. underground electric R-5U rate agreement as recorded in Lane County, Oregon.

4. No structure of a temporary character, trailer, basement, partly finished house, shack, garage, barn or other 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 six months from a starting date. Open carports shall not be used for storage other than that enclosed by wall of the structure.

5. Yards and parking strips 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. One tree shall be planted and sustained in the parking strip, or, when no parking strip exists, as near to the front of the lot as practicable.

6. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than 1/3 square foot, one sign of not more than five square feet advertising the property for sale or rent by the owner only, both of which must be not less than 20 feet from the front property line. All other signs, including real estate broker signs, are strictly forbidden.

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 that 1 dog, 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. No lot shall be used or maintained as a parking place for trucks, trailers, equipment, or materials, except during the course of constructor or used as a dumping ground for rubbish

or used as a parking place for vehicles not in regular family use and good operating condition.

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 material shall be kept in a clean and sanitary condition enclosed by fences that screen them from sight. Storage of 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. No noxious 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.

11. No fence shall be built over five feet in height or within fifteen feet of the front lot line without written Building Committee approval.

12. 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 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.

13. No individual sewage disposal system shall be permitted on any lot.

14. No building shall be located on any lot nearer than 20 feet to the front line of the lot, except corner lots which shall have a minimum setback of 15 feet; and except any lot having a grade of more than 8 per cent up or down from the street shall not have a minimum setback. No building shall be located nearer than 5 feet to an interior lot line, except when there is more than 10 feet between buildings, and except a garage which shall be not less than 3 feet. No dwelling shall be located on any interior lot nearer than 15 feet, to the rear lot line except when one side yard exceeds 15 feet, and except odd shaped lots which shall be measured from the deepest point. For the purpose of this covenant, eaves, steps, open porches, window wells and fireplaces shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

15. No TV 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.

16. Travel trailers, campers, boat trailers, trucks and similar vehicles are required to be parked behind the front line of the residence building.

17. Covenants 4, 5, 6, 9, 10, 11, 12, 14 and 16 shall not be applicable to the original developer and builder, Breeden Bros., Inc. 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, provided that the Declarant or Breeden Bros., Inc. develops, the tract in accordance with the plan submitted to HUD/FHA.

18. 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 strictest of the two is to be used. The decision of the Building Committee shall govern in determining which rules are the strictest.

ARTICLE VIII

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 wise 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. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. 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.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 13th day of April, 1973.

BREEDEN LAND CO., Declarant

By: _____
J. T. Breeden

John F. Breeden

STATE OF OREGON, COUNTY OF LANE, ss:

On this 13th day of April, 1973, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named J. T. Breeden and John F. Breeden, who are known to me to be the identical individuals described in and who executed the same freely and voluntarily.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public for Oregon
Commission expires: 2-4-74