

AFTER RECORDING RETURN TO:  
C. Vande Wetering, Association Secretary  
Stoneybrook Village Owners Association  
4710 SW Hollyhock Circle  
Corvallis, OR 97333

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I, James V. Morales, County Clerk for Benton  
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records.

James V. Morales - County Clerk



**AMENDED AND RESTATED DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR STONEYBROOK VILLAGE**

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**AMENDED AND RESTATED DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR STONEYBROOK VILLAGE**

**THIS RESTATED DECLARATION** is made this 6<sup>th</sup> day of October, 2011 by the Stoneybrook Village Owners Association, a nonprofit membership corporation established under the laws of the State of Oregon (The Association).

**RECITALS**

A. The purpose of this Restatement is to consolidate, correct inconsistencies, and restate in their entirety the existing Declaration, the Declarations of annexation, and amendments for all phases of Stoneybrook Village. The 39.4 acre site within the City of Corvallis, Benton County, Oregon, is a retirement community designated as an age restricted (55+) community as defined in Oregon Statutes for Planned Communities, the Federal Fair Housing Act and the Housing for Older Persons Act of 1995.

B. Purchasers of property within Stoneybrook Village hereby consent to the Master Plan for Stoneybrook Village, as the same may be amended from time to time. By adoption of such Master Plan and this Declaration, one who acquires property in Stoneybrook Village will have the advantage of any further development of Stoneybrook Village, but shall not have any legal right to insist that there be development except as provided in this instrument or in the instruments subsequently recorded annexing areas to Stoneybrook Village and subjecting areas to this Declaration.

C. Stoneybrook Village consists of a variety of retirement facilities, such as single-family detached and attached homes, multi-family cottages, a congregate care retirement lodge and an assisted living facility, together with a clubhouse, poolhouse and water feature.

D. Prior owners and Declarants have recorded development plats for Stoneybrook Village Phase 1, Phase 2 and Phase 3 in the Plat Records of Benton County. Phase 1 contains single-family detached and attached homes, a clubhouse, poolhouse, and the Stoneybrook Lodge congregate care facility and multi-family cottages. Phase 2 contains the Assisted Living facility and additional single-family detached homes; and Phase 3 contains single-family detached homes, common area walking paths and a 2.015 acre lot zoned for RS-12 medium high density residential. Additional areas may be annexed to Stoneybrook Village by the Declarant.

**Table 1. Declarant History**

Recorded No.	Date Recorded	Declarant/Declarant Rights Assignee
M-251291-98	8-13-1998	Doris Conger Caldwell, Initial Declarant
M-259338-99	1-6-1999	Doris Conger Caldwell/Declarant Rights to Corvallis Development Co. LLC
2003-356980	11-12-2003	Corvallis Development Co. LLC/Declarant Rights to Matrix Development Corp.
2011-478879	5-26-2011	Legend Homes Corp, formerly known as Matrix Development Corp./Declarant Rights to Corvallis Development Co. LLC

**NOW, THEREFORE**, the property described in the Plats filed for Stoneybrook Village Phase 1, Phase 2 and Phase 3 shall be held, sold and conveyed subject to the following easements, covenants,



restrictions and charges, which will run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof. The power to enforce all of these covenants, conditions, restrictions and easements resides in the Stoneybrook Village Owners Association.

Owners representing at least seventy five percent of the total eligible votes of Stoneybrook Village Owners Association have voted to authorize the President of the Association to execute this Restatement on behalf of the entire Association.

## ARTICLE 1.

### DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 **"Additional Property"** means any land which is made subject to this Declaration as provided in Section 2.2.

1.2 **"Architectural Review Committee"** or the **"Committee"** means the committee appointed pursuant to Article 7.

1.3 **"Assessments"** means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 10 in this document.

1.4 **"Assessment Unit"** means a factor assigned to each Lot in accordance with Section 10.4 below for purposes of determining such Lot's pro rata share of Annual Assessments, Special Assessments, Limited Common Area Assessments and Emergency Assessments.

1.5 **"Assisted Living"** means the Multi-Family facility that offers assistance in matters of daily care to the residents.

1.6 **"Association"** means the nonprofit membership corporation formed as Stoneybrook Village Owners Association as defined in this document.

1.7 **"Board of Directors"** means the governing body of the Stoneybrook Village Owners Association.

1.8 **"Common Areas"** means those lots or tracts designated as such on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Stoneybrook Village, including any Improvements thereon, and shall also include Common Easement Areas and Limited Common Areas.

1.9 **"Common Easement Areas"** means those easements established for the benefit of all property within Stoneybrook Village pursuant to this Declaration or any declaration annexing Additional Property to Stoneybrook Village.

1.10 **"Common Maintenance Areas"** are same as Common Easement Areas.

1.11 **"Condominium"** means any property submitted to the Oregon Condominium Act in the manner provided by ORS Chapter 100 or its successors.

1.12 **"Declarant"** means the original owner-developer or subsequent developers of Stoneybrook Village. Declarant control and responsibility of the Association was terminated upon completion of Turnover to Stoneybrook Village Owners Association on June 1, 2007.

1.13 **"Declaration"** means all of the easements, covenants, restrictions and charges set forth in this Declaration, together with any Rules and Regulations promulgated hereunder; as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any supplemental declaration annexing property to Stoneybrook Village.

1.14 **"Design Guidelines"** mean the procedures, standards and guidelines adopted by the Architectural Review Committee.

1.15 **"Improvement"** means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to the Property.

1.16 **"Initial Development"** means the real property referred to in Section 2.1(a).

1.17 **"Limited Common Areas"** means those Common Areas for the exclusive use of certain Lots as designated in this Declaration or any declaration annexing Additional Property to Stoneybrook Village.

1.18 **"Living Unit"** means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, including a house, townhouse, apartment or dwelling unit within a multiple occupancy building and a Condominium unit.

1.19 **"Lodge"** means the Multi-Family facility that offers independent living to its residents and provides services such as meals and housekeeping.

1.20 **"Lot"** means a platted or partitioned lot, tract or Condominium unit identified by a number or letter on any plat of property within Stoneybrook Village.

1.21 **"Maintenance Assessment"** means assessments relating to landscape maintenance and other services for Single-Family Lots under Section 9.1 that shall be assessed exclusively to Single-Family Lots.

1.22 **"Master Plan"** means the Master Plan of Stoneybrook Village approved by the City of Corvallis, Oregon, as the same may hereafter be amended.

1.23 **"Mortgage"** means a mortgage or a trust deed; "mortgagee" means a mortgagee or a beneficiary of a trust deed; and "mortgagor" means a mortgagor or a grantor of a trust deed.

1.24 **"Multi-Family Lot"** means any Lot to be used for more than one Living Unit, including without limitation cottages, congregate care and assisted living facilities, that are designated as such in this Declaration or in the declaration annexing such Lot to Stoneybrook Village.



1.25 **"Operations Fund"** means budget funds to be used for current expenses of the Association.

1.26 **"Owner"** means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.27 **"Phase 1"** means the recorded plat entitled Stoneybrook Village, Phase 1 filed in the plat records of Benton County, Oregon on August 13, 1998, in book 9, page 76 as M-251291-1998.

1.28 **"Phase 2"** means the recorded plat entitled Stoneybrook Village, Phase 1-2 filed in the plat records of Benton County, Oregon on June 1, 2001, in book 10, page 31 as M-299706-01.

1.29 **"Phase 3"** means the recorded plat entitled Stoneybrook Village, Phase 3-1 filed in the plat records of Benton County, Oregon on June 29, 2004, in book 10, page 68 as 2004-369891 and the recorded plat entitled Stoneybrook Village, Phase 3-2 filed in the plat records of Benton County, Oregon on April 27, 2006, in book 10, page 84 as 2006-403166.

1.30 **"Property"** means Stoneybrook Village.

1.31 **"Public Areas"** means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the Declaration annexing such property to Stoneybrook Village.

1.32 **"Reserve Fund"** or **"Reserves"** means the funds set aside in the Reserve Fund for replacement and/or repair of capital items.

1.33 **"Rules and Regulations"** means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.34 **"Single-Family Lot"** means any Lot to be used for one single-family Living Unit, whether detached or attached to a Living Unit on an adjoining Lot, and designated as such in this Declaration or in the declaration annexing such Lot to Stoneybrook Village.

1.35 **"Sold"** means legal title has been conveyed or a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.36 **"Stoneybrook Village"** means the Initial Development and any Additional Property annexed to this Declaration.

1.37 **"Stoneybrook Village Owners Association"** means an association of all the Owners within Stoneybrook Village and such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Property located therein.

1.38 **"Subsequent Development"** means future developments.



1.39 “**Turnover**” means the turning over of Association administration from the Declarant control to Owner control on June 1, 2007.

## **ARTICLE 2.**

### **PROPERTY SUBJECT TO THIS DECLARATION**

#### **2.1 Development.**

(a) **Initial Development.** All the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

(i) **Phase 1-1 (hereafter referred to as Phase 1).** All that certain real property located in Benton County, Oregon, in that certain plat entitled “Stoneybrook Village, Phase 1” filed in the plat records of Benton County, Oregon on August 13, 1998 in Book 9 at page 76 as M-251291-1998. Owner/Declarant: Doris Conger Caldwell, Trustee under the last will and testament of William E. Caldwell deceased. This development contained 47 single-family lots, one multi-family lot, one recreation facility lot (lots 1-49), a water feature and walking paths.

(ii) **Phase 1-2 (hereafter referred to as Phase 2).** All that certain real property located in Benton County, Oregon, in that certain plat entitled “Stoneybrook Village Phase 1” filed in the plat records of Benton County, Oregon on June 1, 2001 in Book 10 at page 31 as M-299706-01. Owner/Declarant: Doris Conger Caldwell, Trustee under the last will and testament of William E. Caldwell deceased. This development contained 3 single-family lots and one multi-family lot (lots 50-53).

(b) **Phase 3.**

(i) **Phase 3-1.** All that certain real property located in Benton County, Oregon in that certain plat entitled “STONEYBROOK” filed in the plat records of Benton County, Oregon on June 29, 2004 in Book 10 at page 68 as 2004-369891. Declarant: Matrix Development Corporation. This development contained 48 single family lots (1-49); (replatted 4 lots became 3 lots).

(ii) **Phase 3-2.** All that certain real property located in Benton County, Oregon in that certain plat entitled “STONEYBROOK” filed in the plat records of Benton County, Oregon on April 27, 2006 in Book 10 at page 84 as 2006-403166. Declarant: Matrix Development Corporation. This development contained 38 single family lots (50-87) and one undeveloped 2.015 acre lot zoned RS-12 medium-high density residential.

(c) **Tracts**

(i) **Phase 1**

**Tract A** – Stoneybrook Street, east side

**Tract B** – Stoneybrook Street, west side; water feature, perimeter parkway on Country Club and 49<sup>th</sup> Street (to Birdsong).

**Tract C** - Walking path between lots 14 & 15

**Tract D** – Walking path between lots 29 & 30 to lot 46

(ii) **Phase 2**

**Tract E** – Behind lot 50, west of Paige Street

**Tract F** – Behind lots 51-52, east of Paige Street

(iii) **Phase 3**

**Tract A** – 49<sup>th</sup> Street perimeter parkway, south of Birdsong

**Tract B** - Walking path between lots 12 & 13

**Tract C** – Walking path between lots 18 & 19

**Tract D** – Community Garden

**Tract E** – Walking path between lots 41 & 42

**Tract F** – 45<sup>th</sup> Street perimeter parkway, south of Birdsong

**Tract G** – 45<sup>th</sup> Street perimeter parkway, north of Birdsong



**Tract H** – Walking path between lots 54 & 55  
**Tract I** – Orchid Street  
**Tract J** – Orchid Street, planting triangle area  
**Tract K** - Behind lots 60-63  
**Track L** - Walking path between lots 81 & 82  
**Tract M** – 45<sup>th</sup> Street perimeter parkway, south of Tract F

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole Discretion annex to Stoneybrook Village as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Stoneybrook Village. The annexation of such Additional Property shall be accomplished as follows:

(a) **Document Preparation.** The owner or owners of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such Additional Property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) **Administration.** The property included in any such annexation shall thereby become a part of Stoneybrook Village and this Declaration and Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) **Requirements.** Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such Additional Property as Declarant may deem to be appropriate for the development of the Additional Property.

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) **Limitations.** There is no limitation on the number of Lots or Living Units which Declarant may create or may annex to Stoneybrook Village, except as may be established by applicable ordinances of the City of Corvallis. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the City of Corvallis.

(e) **Voting Rights.** Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3.

(f) **Allocation of Expenses.** The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.11.

2.3 **Improvements.** The common areas, clubhouse and poolhouse are the only developer improvements provided, but the Stoneybrook Village Owners Association may elect to negotiate additional improvements for any future annexations.

2.4 **Withdrawal of Property.** Declarant may withdraw property from Stoneybrook Village by an amendment to this Declaration executed by Declarant and recorded in the Deed Records of Benton County, Oregon. All voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated to the remaining Lots as provided in Section 10.11. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Initial Development or Additional Property annexed pursuant to

a declaration described in Section 2.2 at any time prior to the sale of the first Lot in the plat of the Initial Development, or in the case of Additional Property, prior to the sale of the first Lot in the property annexed by a supplemental declaration, or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Living Units. In addition, Declarant may withdraw any property then owned by Declarant or the Association if such withdrawal is a result of any changes in Declarant plans for the Property, provided that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property and is approved by a majority of the voting rights of the Association.

### **ARTICLE 3.** **LAND CLASSIFICATIONS**

#### **3.1 Land Classifications Within Initial Development & Subsequent Phases.**

All land within Stoneybrook Village is included in one of the following classifications:

- (a) **Single-Family Lots.**  
Phase 1, Lots 1-46 and 48-49  
Phase 2, Lots 50-52  
Phase 3, Plat 1, Lots 1-49 (replatted 4 lots became 3)  
Phase 3, Plat 2, Lots 50-87
- (b) **Multi-Family Lots.**  
Phase 1, Lot 47  
Phase 2, Lot 53
- (c) **Common Areas.**  
Phase 1, Tracts A, B, C, D and Lot 46  
Phase 2, Tracts E and F  
Phase 3, Plat 1, Tracts A, B, C, D, E, F and G  
Phase 3, Plat 2, Tracts H, I, J, K, L and M
- (d) **Limited Common Areas.**  
Phase 3, Tracts H & I
- (e) **Public Areas.** The streets dedicated in the plat of each phase of the Development.
- (f) **Common Easement Areas.** There are no Common Easement Areas in the

Development.

**3.2 Conversion of Lots to Common Areas.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Benton County. Such declaration shall be executed by Declarant, as owner of the Lots.

**3.3 Consolidation of Lots.** The owner of two adjoining Lots, with the approval of the Architectural Review Committee, may elect to consolidate such Lots into one Lot. The consolidation shall be effected by the Owner's recording in the deed records of Benton County a declaration stating that the two Lots are consolidated, which declaration shall include written consent executed on behalf of the Architectural Review Committee. Thereafter, the consolidated Lots shall constitute one Lot for all purposes of this Declaration, including voting rights and assessments. Once so consolidated, the consolidated Lot may not thereafter be partitioned nor may the consolidation be revoked without the prior approval of the Architectural Review Committee.



## ARTICLE 4.

### **PROPERTY RIGHTS IN COMMON AREAS**

4.1 **Owners' Easements of Enjoyment.** Subject to provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot. The use of Limited Common Areas, however, shall be limited to the Owners and invitees of the Lots designated in the supplemental declaration establishing the Limited Common Area.

4.2 **Title to Common Areas.** Title to the Common Areas was conveyed to the Association by Declarant free and clear of monetary liens at the Turnover meeting held June 1, 2007. Title to Common Easement Areas, subject to the easements set forth in this Declaration, was passed to the Owners of the respective Lots within which such areas are located.

4.3 **Common Easement Areas.** All Common Easement Areas have been conveyed to the Association and are now designated as Common Areas.

4.4 **Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) **Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas, including the Common Easement Areas:

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by or with the consent of Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(iii) An easement for the purpose of making repairs to any Improvements on Common Areas.

Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to governmental entities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(b) **Use of the Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas identifying the property as Stoneybrook Village or any appropriate directional signs. Facility identification signs are permitted on Multi-Family lots. All signage must be approved by the Architectural Review Committee and comply with any applicable sign ordinances. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area.



In such case, those Owners will not be required to share in the costs of maintaining the facility, as is more particularly described in Section 10.11.

(c) **Alienation of the Common Areas.** The Association may not encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless such encumbrance, sale or transfer has been approved by at least eighty percent (80%) of the voting rights in the Association. This requirement shall not apply to the easements described in Section 4.4(a).

(d) **Limitations on Use.** Use of the Common Areas by the Owners, their family members, guests, tenants and contract purchasers shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner and the Owner's members, guests, tenants and contract purchasers to the extent provided in Article 11.

(ii) The right of the Association to adopt, amend, and repeal Rules and Regulations in accordance with this Declaration.

4.5 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the owners of Lots in all future phases of Stoneybrook Village a perpetual easement and right-of-way for access over, upon, and across the Common Areas for construction, utilities, communication lines, drainage, irrigation systems, signs and ingress and egress for the benefit of other property owned by Declarant and future phases of the Property. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or the Owner's family, tenants, employees, guests or invitees.

4.6 **Access Easement.** Owner and the Association is hereby granted a nonexclusive easement over the private drive located on Lot 47 as shown on the plat for access to and from the clubhouse and poolhouse located on Lot 46 and is designated as a Common Area. The Owner of Lot 47 shall be responsible for maintaining such private drive.

4.7 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, the Owner's right of enjoyment of the Common Areas to the members of the Owner's family and tenants or contract purchasers who reside on the Property, whose use of the Common Areas shall be subject to this Declaration and the Rules and Regulations adopted under this Declaration.

## ARTICLE 5.

### **PROPERTY RIGHTS IN LOTS**

5.1 **Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and the Owner shall comply with the restrictions made applicable to such Lot by this Declaration or by any supplement to this Declaration.

5.2 **Easements Reserved.** The following easements are reserved for the benefit of the Association:



(a) **Adjacent Common Area.** The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

(b) **Right of Entry.** Any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing the maintenance referred to in Section 9.1 and determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on the recorded plat. Within the easements, no structure, planting or other material may be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except to the extent the Association or a public authority or utility company is responsible for such maintenance. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side lot lines on which a party wall exists.

5.3 **Party Walls.** Each wall which is built as a part of the original construction of a Living Unit within the Property and placed upon the dividing line between Lots shall constitute a "party wall," and the following provisions shall apply:

(a) **General Rules of Law to Apply.** The general rules of law of the State of Oregon regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply to all such party walls, to the extent such rules are not inconsistent with the provisions of this Section 5.3.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. The word "use" as referred to in this section means ownership of a Living Unit or other structure which incorporates such wall or any part thereof. Either Owner sharing a party wall may cause such repairs and maintenance and seek contribution of the portion of the cost attributable to the other Owner using the party wall.

(c) **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 Owner thereafter makes use of the wall, such Owner shall contribute one-half of the cost of such restoration, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(d) **Weatherproofing.** Notwithstanding any other provision of this Section 5.3, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements.

(e) **Right to Contribution Runs with the Land.** The right of any Owner to contribution from any other Owner under this Section 5.3 shall be appurtenant to the land; shall pass to such Owner's successors in title; and shall also be the personal obligation of the Owner owning a Lot at the time such costs are incurred.

(f) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Section 5.3, the Board of Directors of the Association shall act as arbitrators and their decision shall be final.

5.4 **Side Yard Fencing.** Phase 3, Tracts B, C and E between Lots 12, 13, 18, 19, 41, and 42 of the Annexed Lots shall be restricted to a fence height of four (4) feet where adjacent to Annexed Common Area. This restriction may not be amended by the Association without first receiving from the City of Corvallis,



approval of a Planned Development Modification.

5.5 **Rear Fencing Required.** Phase 3, Lots 1-14 and 48-49 of the Annexed Lots require rear fencing with a minimum fence height of four (4) feet where adjacent to Annexed Common Area Tract A, F and G. This restriction may not be amended by the Association without first receiving from the City of Corvallis, approval of a Planned Development Modification.

## ARTICLE 6.

### **RESTRICTIONS ON USE**

6.1 **Age Restrictions.** Stoneybrook Village is intended as an adult only retirement community. No person under the age of 21 may reside in a Living Unit other than on a temporary, visiting basis, the maximum period of which may be established in the Rules and Regulations. Further, at least one occupant residing in a Living Unit must be 55-years of age or older, except during temporary periods approved by the Board of Directors of the Association. In no event may more than twenty percent (20%) of the Living Units be subject to such a waiver at any one time.

6.2 **Residential Use.** Except with the consent of the Association, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Single-Family Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Single-Family Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Single-Family Lots, (b) the right of Declarant to use any Living Unit as a sales or rental office or model home or apartment for purposes of sales or rental in the Property, and (c) the right of the Owner of a Single-Family Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his Living Unit. The Association shall not approve commercial activities otherwise prohibited by this paragraph unless the Association determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable governmental ordinances.

6.3 **Single-Family Use.** Each Single-Family Lot is designed for use as a single-family residence, except as otherwise expressly permitted in Section 6.2. No more than one Living Unit may be located on any Single-Family Lot and no more than four persons shall occupy any Single-Family Lot other than on a temporary basis.

6.4 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on in any Living Unit, Lot or Common Area nor shall anything be done or placed upon any Living Unit, Lot or Common Area which interferes with or jeopardizes the enjoyment of other Living Units or the Common Areas, or which is a source of annoyance to Owners or occupants. Occupants of Living Units shall exercise extreme care not to make noises which may disturb other occupants of other Living Units. No garage shall at any time be used as a residence either temporarily or permanently. No unlawful use shall be made of the Single-Family Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

6.5 **Trailers, Campers, Boats, Etc.** Except with the consent of the Association, no trailer, truck camper, boat or boat trailer, or other recreational vehicles or motorcycles, vehicles in excess of three-quarter (3/4) ton in weight or motor vehicles not operated in daily family use shall be parked in



driveways or on public streets within the Property or on any other portion of the Property, except in a garage or for the purpose of temporary loading or unloading. No such trailer or truck camper shall be used as a residence temporarily or permanently on any portion of the Property.

6.6 **Vehicles in Disrepair.** No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Area for a period in excess of forty-eight (48) hours, unless kept within a garage. A vehicle shall be deemed to be in an "extreme state of disrepair" when in the opinion of the Association, its presence offends the occupants of the area. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner in addition to the assessments made upon him in accordance with this Declaration.

6.7 **Signs.** Signs on any Lots shall be limited to 24 inches by 36 inches and are not to be displayed for more than 30 days. For Sale or Lease signs and Security System signs are exempt from this provision.

6.8 **Animals.** No animals or fowls shall be raised, kept or permitted within the Property or any part thereof, except domestic dogs, cats or other household pets kept within a Living Unit or within a fenced-in back yard. No such dogs, cats or pets shall be permitted to run at large nor shall be kept, bred or raised for commercial purposes or in unreasonable numbers. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof. All dogs shall be kept on a leash while outside a Living Unit. An Owner or occupant may be required to remove a pet upon the third violation of any rule, regulation or restriction governing pets within the Property.

6.9 **Appearance.** No part of any Lot or any part of the Common Areas shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. With Architectural Review Committee approval, garbage and yard waste containers may be stored outside in approved containers in a manner that complies with Design Guidelines adopted by the Architectural Review Committee.

6.10 **Antennas.** Exterior antennas and satellite dishes shall not be permitted to be placed upon the exterior of any Single-Family Lot, except in accordance with Design Guidelines established by the Architectural Review Committee pursuant to Section 7.3.

6.11 **Exterior Lighting or Noisemaking Devices.** Except with the consent of the Architectural Review Committee, and except for exterior lighting originally installed, no exterior lighting or noisemaking devices shall be installed or maintained on any Single-Family Lot. Owners shall not tamper with exterior lighting installed in accordance with rules established by the Architectural Review Committee except to replace expended bulbs with similar new bulbs.

6.12 **Alterations.** Exterior painting, maintenance and roof repair or replacement will be performed by the Owner. Owners are expressly prohibited from painting or changing the exterior of a building or other structure without the written permission of the Architectural Review Committee. No structure may be installed outside of Living Units except structures, including without limitation fences, installed by the Association or installed with written approval of the Architectural Review Committee.

6.13 **Insurance.** Nothing shall be done or kept in any Single-Family Lot or Common Area which will increase the cost of insurance on other Lots or Common Areas. No Owner shall permit



anything to be done or kept in his Living Unit or in the Common Areas which will result in cancellation of insurance on any other Lot or any part of the Common Areas.

6.14 **Leasing and Rental of Single-Family Living Unit.** No Owner may lease or rent his Single-Family Living Unit for a period of less than thirty (30) days. All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or the Rules and Regulations, the Board may require the Owner to terminate such lease or rental agreement. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent his Living Unit.

6.15 **Landscape.** All maintenance of front yards of Single-Family Lots and the street side yards of all corner Single-Family Lots will be performed by the Association. With the approval of the Architectural Review Committee an Owner may install and maintain additional landscape or flowers in this area. All Owners shall maintain the remainder of their Lots in a neat and well-kept condition.

6.16 **Fences and Hedges.** No fences or boundary hedges shall be installed without prior approval of the Architectural Review Committee.

6.17 **Association Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such Rules and Regulations governing the conduct of persons and the operation and use of the Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be made available by the Association Board of Directors to each Owner. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

## ARTICLE 7.

### **ARCHITECTURAL REVIEW COMMITTEE**

7.1 **Architectural Review.** No Improvement (including fencing) shall be commenced, erected, placed or altered on any Lot, except Lots owned by Declarant, until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the existing improvements and as to location with respect to topography and finished grade elevations. The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases in which the Architectural Review Committee consent is required by this Declaration, the provisions of this Article shall apply.

7.2 **Committee Decision.** The Architectural Review Committee shall render its decision with respect to a construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within the specified time period, or if no suit to enforce this Declaration has been commenced within one



year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.3 **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the Design Guidelines that the committee intends for Stoneybrook Village. Consideration such as siting, shape, size, color, design, materials, height, solar access, impairment of the view from other Lots within Stoneybrook Village or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation, wildlife protection and any other factors which the committee reasonably believes to be relevant, may be taken into account by the committee in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any Federal Communications Commission rules and with any Design Guidelines duly adopted by the committee.

7.4 **Variance.** The Architectural Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted Design Guidelines. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) stop the Architectural Review Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

7.5 **Membership: Appointment and Removal.** The Architectural Review Committee shall consist of as many persons, but not less than three, as the Board may from time to time appoint. The Board may remove any member of the Committee from office at its discretion and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, The Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

7.6 **Majority Action.** A majority of the members of the Architectural Review Committee shall have the power to act on behalf of the committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

7.7 **Liability.** Neither the Architectural Review Committee nor any member of the committee shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the committee, and the Association shall indemnify the committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

7.8 **Non-waiver.** Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.



7.9 **Appeal.** Any Owner adversely affected by an action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

7.10 **Effective Period of Consent.** Architectural Review Committee consent for proposed work shall be revoked one year after issuance of the approval unless the project has commenced and is being pursued or the Owner has requested and been granted an extension.

7.11 **Estoppel Certificate.** Within fifteen (15) business days after written request is delivered to the Board by any Owner and upon payment of a reasonable fee fixed by the Board to cover costs, the Community Manager and the Architectural Review Committee shall provide such Owner with an estoppel certificate certifying with respect to any Lot owned by the Owner, that as of the date of the certificate, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the certificate shall also identify the non-complying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth in the certificate, such matters being conclusive as between the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

## ARTICLE 8.

### **ASSOCIATION**

8.1 **Organization.** The Association is organized as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 **Membership.** Every Owner of one or more Lots within the Property shall, during the entire period of such ownership, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 **Voting Rights.** Voting rights within the Association shall be allocated as follows:

(a) **Single-Family Lots and Condominium Units.** Single-Family Lots shall be allocated one vote per Lot. Condominium units shall be entitled to one vote for each Condominium unit.

(b) **Multi-Family Lots.** Multi-Family Lots shall be entitled to one vote for each Assessment Unit allocated to such Lot under Section 10.4.



8.4 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) **Declaration.** The powers, duties and obligations granted to the Association by this Declaration.

(b) **Oregon Law.** The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

(c) **Oregon Planned Community Act.** The powers, duties and obligations of an owners association pursuant to the Oregon Planned Community Act. Stoneybrook Village is subject to the Oregon Planned Community Act (ORS 94.550 to 94.783) and all subsequent amendments.

(d) **Additional Powers.** Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

(e) **Amendments.** The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

8.5 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 6.17 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as managers; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, attorneys and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas, subject to Section 4.4(c), and encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within Stoneybrook Village conveyed to the Association.

(h) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.4(c), the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.



(i) **Provide Special Services and Make Appropriate Charges.** The Association may in its sole discretion, provide various services to individual Owners requesting such services and make appropriate Individual Assessments or charges therefore to the users of such services, without being required to render such services to those of its members who do not request such services. Such services may include maintenance, housekeeping and linens, additional window washing, special trips, 24-hour monitoring and taxi service. The Board of Directors shall have the right to discontinue any service upon nonpayment or to eliminate any service for which there is no demand or adequate funds to maintain, or which the Association no longer wishes to provide.

(j) **Contracts with Multi-Family Facilities.** The Board of Directors of the Association may enter into agreements with the Owners of the Multi-Family Lots for use of such Owners' buses or other facilities or services.

(k) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

8.6 **Liability.** A member of the Board of Directors, an officer of the Association or committee member shall not be liable to the Association or any member of the Association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

8.7 **Election of Directors.** The Board of Directors shall consist of five directors elected by the Association membership. The terms of office and procedures for removal and filling of vacancies are set forth in the Bylaws of the Association.

8.8 **Turnover.** Declarant control of the Association was turned over to the Association on June 1, 2007.

## ARTICLE 9

### **MAINTENANCE, UTILITIES AND SERVICES**

9.1 **Maintenance of Single-Family Lots.** The Association shall maintain the front yard and corner lot street side yard landscaping on each Single-Family Lot. All other maintenance of the Single-Family Lots shall be the responsibility of the Owner pursuant to Section 9.7.

9.2 **Maintenance and Lighting of Common Areas.** The Association shall be responsible for exterior lighting for and perform all maintenance upon the Common Areas, Limited Common Areas and landscaping within dedicated rights of way, including but not limited to grass, trees, water features, walks, street lighting and signs, parking areas, walkways, clubhouse, poolhouse and facilities, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to carry out the purpose for which such areas are intended.

9.3 **Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the



utilities furnishing such services. The Association shall not be liable for any interruption or failure of such services. Each Owner shall be responsible for the cost of maintaining utility lines within his or her Lot.

9.4 **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Property safer than it otherwise might be. The Association shall not in any way be considered insurers or guarantors of security within the Property, nor shall be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system, monitoring system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its board of directors and committees are not insurers and that each person using the Property assumes all risks for loss or damage to persons, to units and to the contents of Lots and Living Units resulting from acts of third parties or the failure of any such systems.

9.5 **Services.** The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, cable, garbage and trash removal and security services. The Association may also provide services to specific Lots as described in Section 8.5(i).

9.6 **Access at Reasonable Hours.** For the purpose solely of performing the maintenance and services provided for in this Article 9, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of the dwelling thereof at reasonable hours. The Association shall also have a right of entry for purposes of effecting emergency repairs or action to prevent imminent damage or injury to other Living Units, to other Owners and their guests or invitees, or to the Common Areas. In such instances, the Association shall give notice by telephone, if reasonably possible prior to entry.

9.7 **Owner's Responsibility.** Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and all structures, landscaping, Living Units, and other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in accordance with the community-wide standard of Stoneybrook Village. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board of Directors shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Association may proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner as provided in Section 11.6. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 10.10 and 10.14.

## ARTICLE 10.

### **ASSESSMENTS**

10.1 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Stoneybrook Village and for the improvement, operation and maintenance of the Common Areas.



10.2 **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Maintenance Assessments, Limited Common Area Assessments and Individual Assessments, all as more particularly described below.

10.3 **Lots Subject to Assessment.** Lots owned by Declarant or by any successor, developer or builder who has purchased one or more parcels from Declarant for development shall not be subject to Assessments until such time as the Lot is occupied for its intended use subject to accrual of Reserves as described in Section 10.13. All other Lots shall pay a pro rata share of the Annual Assessments, Special Assessments, Emergency Assessments, Maintenance Assessments and Limited Common Area Assessments commencing upon the date such Lots are made subject to this Declaration as provided in Section 10.4.

10.4 **Apportionment of Assessments.** Each Lot subject to assessment shall pay a pro rata share of the Annual Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments based upon the total amount of each such Assessment divided by the total number of Assessment Units of Lots subject to assessment, times the number of Assessment Units assigned to such Lot as follows:

(a) **Single-Family Lots.** Each Single-Family Lot and each Condominium Unit shall be assigned one Assessment Unit. This assessment includes the assessments shown above and also any specific maintenance assessment pertaining to that type of housing category.

(b) **Multi-Family Lots.** Lot 47, the Lodge complex, is assigned one (1) assessment unit for every three cottage or apartment units located on the lot. Lot 53, the Assisted Living complex, is assigned one (1) assessment unit for every six apartments located on the lot. Any further multi-family development within the annexed boundary of Stoneybrook Village or any future annexed property will require a formula established by the Stoneybrook Village Board for computing Assessment Units for such developments based upon the character of the facility.

10.5 **Annual Assessments.** The Board of Directors of the Association shall annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over-assessment and any common profits of the Association. In addition, the budget shall take into account the number of Assessment Units as of the first day of the fiscal year for which the budget is prepared and the number of Assessment Units reasonably anticipated to become subject to assessment during the fiscal year. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.13. Annual Assessments for such operating expenses and reserves shall then be apportioned among the Lots as provided in Section 10.4. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.6 **Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment, applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to five percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter. Special Assessments shall be apportioned as provided in Section 10.4 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.



10.7 **Emergency Assessments.** If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors of the Association shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefore, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis. Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter. Emergency Assessments shall be apportioned as set forth in Section 10.4 and payable as determined by the Board of Directors.

10.8 **Maintenance Assessments.** Assessments relating to landscape maintenance and other services for Single-Family Lots under Section 9.1 shall be assessed exclusively to Single-Family Lots.

10.9 **Limited Common Area Assessments.** Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas shall be assessed exclusively to the Lots having the right to use such Limited Common Areas.

10.10 **Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited. Individual Assessments include, without limitation, charges for services provided under Section 8.5(i). Individual Assessments shall also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due thirty (30) days after the Board of Directors has given written notice thereof to the Owners subject to Individual Assessments.

10.11 **Annexation of Additional Property.** When Additional Properties are annexed to Stoneybrook Village, the Lots included therein shall become subject to Assessments from the date of such annexation, except for those Lots exempt from assessment pursuant to Section 10.3. All other Lots shall pay such Assessments in the amount then being paid by other Lots. The Board of Directors of the Association, however, at its option may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recomputed Annual Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

10.12 **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than Reserves described in Section 10.13, separate and apart from its other funds, in an account to be known as the "Operations Fund". The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:



(a) **Maintenance.** Payment of the cost of maintenance, utilities and services as described in Article 9.

(b) **Insurance.** Payment of the cost of insurance as described in the Bylaws of the Association.

(c) **Taxes.** Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) **Other Services.** Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

**10.13 Reserve Fund.** The Association shall maintain a Reserve Fund for replacement of those items to be maintained by the Association all or a part of which will normally require replacement in more than one (1) and less than thirty (30) years. Such Reserve Fund is funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is established. The Assessments under this section begin accruing against each Lot from the date the first Lot in the Property is conveyed. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund shall be used only for replacement of common property as determined by the Board of Directors and shall be kept separate from the Operations Fund. Any interest earned on funds deposited in the Reserve Fund, however, may either be accumulated in the Reserve Fund or deposited in the Operations Fund. The Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments, Emergency Assessments or Limited Common Area Assessments. Nothing in this section shall prohibit prudent investment of the reserve account. Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of all voting rights in the Association. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots.

**10.14 Creation of Lien and Personal Obligation of Assessments.** Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 11.6, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11.

## **ARTICLE 11.**

### **ENFORCEMENT**

**11.1 Use of Common Areas.** In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association or other Rules and Regulations adopted by the Association governing the use of Common Areas, then the Association, acting through its Board of Directors, shall notify the Owner in writing that the violations exist and the Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, (b)



impose reasonable fines upon the Owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid into the Operations Fund as Individual Assessments, or (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from the Owner's Lot.

**11.2 Non-qualifying Improvements and Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot, the Improvements thereon and the use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have the right to do any or all of the following:

(a) **Assess Reasonable Fines** against such Owner in the manner and amount the Board deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) **Enter the Offending Lot** and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) **Bring Suit or Action** against the Owner on behalf of the Association and other Owners to enforce this Declaration.

**11.3 Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) **Rights.** The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot.

(b) **Lien.** The Association shall have a lien for any Assessment levied against any Lot, including any fines or other charges imposed under this Declaration or the Bylaws, against the Owner of the Lot from the date on which the Assessment is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire, and hold, lease, mortgage and convey the Lot.

(c) **Action.** The Association may bring an action to recover a money judgment for unpaid Assessments under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.



(d) **Other.** The Association shall have any other remedy available to it by law or in equity.

11.4 **Notification of First Mortgagee.** The Board of Directors shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days after notice of default to the Owner.

11.5 **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or non judicial sale thereunder shall extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

11.6 **Interest, Expenses and Attorneys' Fees.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed thirty percent (30%) of such Assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due under this Declaration or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

11.7 **Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 11, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Lot, or any part thereof, to do the same or similar acts.



11.8 **Non Exclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

## ARTICLE 12.

### **MORTGAGEES**

12.1 **Reimbursement of First Mortgagees.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement from the Association.

12.2 **Right of First Mortgagees Relating to Maintenance.** At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as provided in this section, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 12.2 and shall be sent postage prepaid by certified United States mail, return receipt-requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

## ARTICLE 13.

### **MISCELLANEOUS PROVISIONS**

13.1 **Proposal, Amendment and Repeal.** Amendments shall be proposed by either a quorum of the Board of Directors or by members having one-fourth of the voting rights entitled to be cast for such amendment. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the voting rights in the Association. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Benton County, Oregon, of a certificate by the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

13.2 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for an



initial period of thirty (30) years commencing with the date on which this document was first recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the voting rights in the Association. Any such termination shall become effective only if a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required in this Declaration, is duly acknowledged and recorded in the Deed Records of Benton County, Oregon, not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner access to the Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

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

**13.4 Lessees and Other Invitees.** Lessees, employees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself.

**13.5 Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Lot shall give the Association written notice within seven (7) days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

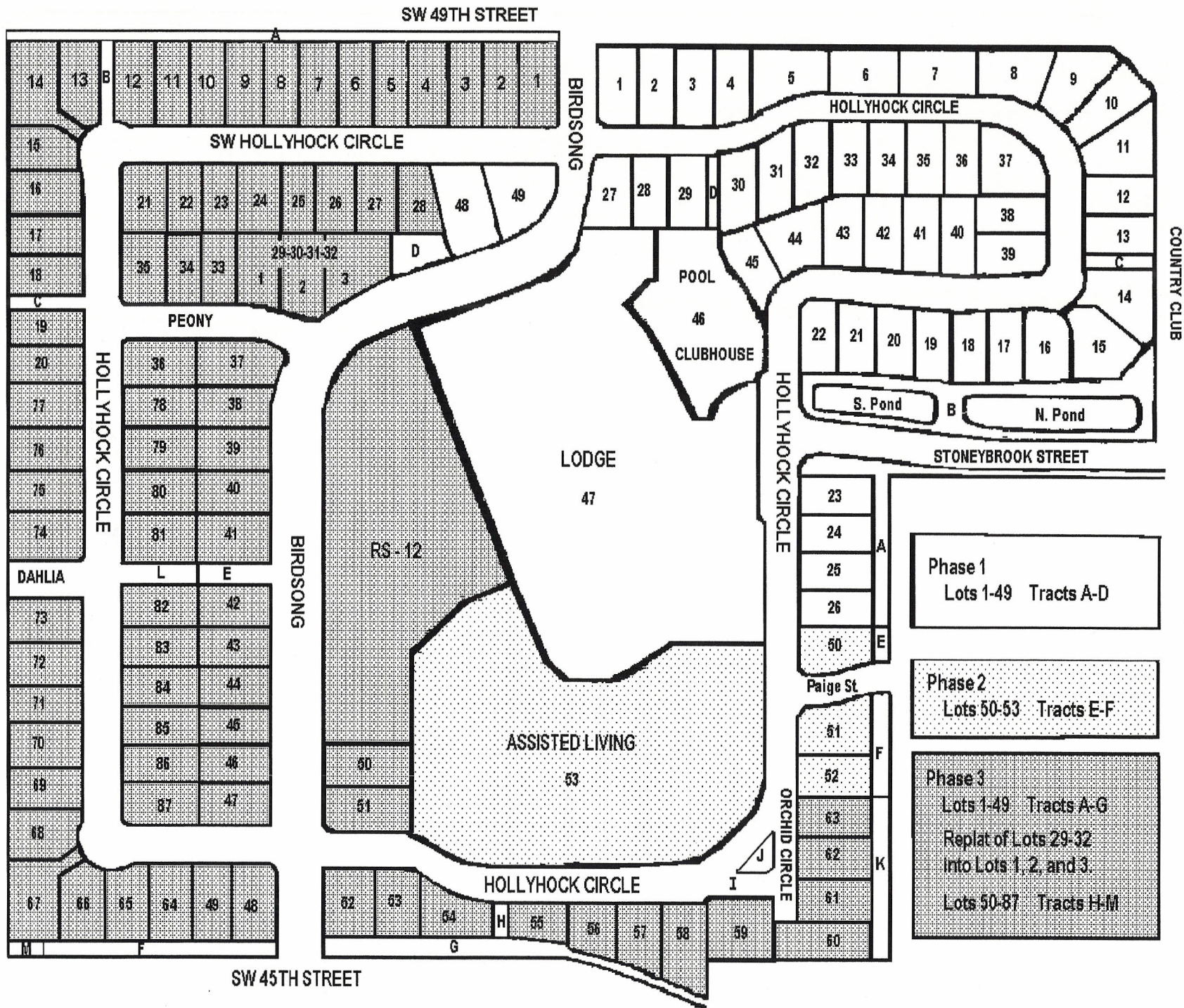
**13.6 Non-waiver.** Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

13.8 **Notices, Other Documents and Stoneybrook Plat.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid. If addressed to the Association, mail to: Stoneybrook Village Owners Association, 4710 SW Hollyhock Circle, Corvallis, OR 97333; if to an Owner, mail to the address given by the Owner at the time of purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided in this section.







**Certification**

The Board of Directors has adopted a resolution in accordance with ORS 94.590 causing this Declaration to be Amended and Restated. All Amendments in this Restatement have been certified on behalf of the Association by the President and Secretary as being adopted in accordance with the Declaration by approval of owners representing 75% of the total votes in the Association.

STONEBROOK VILLAGE OWNERS ASSOCIATION  
An Oregon non-profit corporation

By: Barbara A. Bowns  
Barbara Bowns, President

Charles D. Vande Wetering  
Charles D. Vande Wetering, Secretary

October 6, 2011  
Date

STATE OF OREGON    )  
                                  )ss.  
COUNTY OF BENTON )

This instrument was acknowledged before me this 6 day of October, 2011, by Barbara Bowns, President and Charles D. Vande Wetering, Secretary of Stoneybrook Village Owners Association, and Oregon non-profit corporation, on its behalf.

[Signature]  
Notary Public  
My commission expires:  
Commission No.:

