



# CC&R'S

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# Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Charbonneau

## The Village at Wilsonville

This Amended and Restated Declaration of Covenants and Restrictions for Charbonneau, the Village at Wilsonville, supersedes the covenants, conditions and restrictions that were originally set forth on the 19<sup>th</sup> day of October 1972, in the document entitled "Covenants, Conditions and Restrictions for Charbonneau, the Village at Wilsonville;" said document being recorded in the deed records of Clackamas County, Oregon, as Document No.72 31963 (hereinafter "Original Declaration"). Furthermore, this amended and restated declaration supersedes all previous amendments to the Original Declaration.

Pursuant to Article XII, Section 3 of the Original Declaration, the Owners holding no less than seventy-five (75%) percent of the voting rights of the Association may amend the Original Declaration, and do so by adopting this Amended and Restated Declaration of covenants, Conditions and Restrictions for Charbonneau, the Village at Wilsonville, (hereinafter "Declaration") as herein set forth. However, all easements granted and reserved under the Original Declaration may not be amended except by an instrument signed and acknowledged by one hundred (100%) of the Owners of the property concerned and by the Architectural Committee

### ARTICLE I DEFINITIONS

**Section 1.** "Association" shall mean and refer to CHARBONNEAU HOMEOWNERS ASSOCIATION, a non-profit corporation organized under the laws of the State of Oregon, its successors and assigns.

**Section 2.** "Common Area" shall mean all real property, and appurtenances thereto, now or hereafter owned by the Association for the common use and enjoyment of the members of the Association.

**Section 3.** "Member" shall mean and refer to every person or entity who holds membership in the Association.

**Section 4.** "Neighborhood Recreational Zone" shall mean all real property and appurtenance thereto now and hereafter owned by the Association for the use and enjoyment only of the members of the Association whose residence locations are declared to be appurtenant thereto.

**Section 5.** "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of all or any part of Said Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 6.** "Residence" shall mean that portion or part of any structure intended to be occupied by one family as a dwelling, together with attached or detached garage, as the case may be, and the patios, porches, or steps annexed thereto.

**Section 7.** "Residence Locations" shall mean and refer to any separately designated plot of land shown upon any recorded subdivision of Said Property, with the exception of the common Area and Neighborhood Recreational Zone.

**Section 8.** "Said Property" shall mean and refer to that certain real property herein described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association by recorded Declarations in the manner hereinafter set forth.

## **ARTICLE II SUBMISSION TO PLANNED COMMUNITY ACT**

To the extent its provisions do not conflict with this Declaration and any associated Bylaws, the governance and operation of the community shall conform with the Oregon Planned community act, ORS 94.550 through 94.785, as may be amended from time to time.

## **ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION**

The real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All of that certain real property located in Clackamas County, Oregon, legally described on the attached Exhibit A.

## **ARTICLE IV MEMBERSHIP**

Every person or entity who is a record Owner of a fee or undivided fee interest in any Residence Location which is subject by covenants of record to assessment by the Association, including contract Sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. No Owner shall have more than one (1) membership. Membership shall be appurtenant to and may not be separated from ownership of any Residence Location, which is subject to assessment, by the Association. Ownership of such Residence Locations shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate when such ownership shall terminate or be transferred.

## **ARTICLE V VOTING RIGHTS**

Each Owner shall be allocated one vote in the affairs of the Association for each Residence Location owned by such Owner. The Board of Directors shall be entitled to vote on behalf of any Residence Location, if any, which has been acquired by or on behalf of the Association; provided, however, that

the Board of Directors shall not be entitled to vote such residence Locations in any election of Directors. The method and procedures for voting shall be as specified in the Bylaws, however, in the event that any terms of this Declaration conflict with those contained in the Bylaws, the terms of the Declaration shall prevail.

## ARTICLE VI PROPERTY RIGHTS

**Section 1.** Member's Easements of Enjoyment. Every member of the Association shall have a right and easement of enjoyment in and to the cluster Recreational Zones and the Common Areas and such easement shall be appurtenant to and shall pass with the title of every assessed Residence Location, subject, however, to the following provisions:

The right of the Association to limit the number of guests of members permitted to use the cluster Recreational Zones and/or the Common Areas.

The right of the Association to describe which members are permitted to use the cluster Recreational Zones and to determine which members may be classified as guests in regard to other recreational Zones which they have not before described as a member.

The right of the Association to charge reasonable admission for the use of any recreational facility situated upon the cluster Recreational Zones and/or Common Areas.

The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common Areas and the facilities and in aid thereof to mortgage Said cluster Recreational Zones and/or Common Areas' facilities for such purposes, and the rights of any mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder.

The right of the Association to suspend any member's voting rights and/or right to use any of the recreational facilities owned by the Association, for any period during which any assessment against said member's property remains unpaid; and for a period not to exceed thirty (30) days for each infraction of its published rules and regulations.

The right of the Association to dedicate or transfer all or any part of the cluster Recreational Zones and/or the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by the members entitled to case two-thirds (2/3) of the total votes of the membership has been recorded in the appropriate Records of Clackamas County, Oregon, agreement to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than ninety (90) days prior to such dedication or transfer. Subject to Article XIV, the right of the directors of the Association promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe usage of such cluster recreational zones and/or common areas by the members of the Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of Said Property, including, without being limited thereto, rules restricting persons or over designated ages from using certain portions of Said Property during certain times, and reasonable regulations and restrictions regarding parking.

**Section 2.** Delegation of Use. Any member may delegate, in accordance with the Rules and Regulations adopted from time to time by the directors, his right of enjoyment to cluster Recreational Zones and/or Common areas and their facilities to the members of his family, his tenants or contract purchasers, providing they reside on the member's residence.

**Section 3** Title to the Cluster Recreational Zones and the Common Areas. The Association shall hold fee simple title to the cluster Recreational Zones and the Common Areas designated as such on Exhibits "B" and "C" attached hereto.

## ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1.** Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Residence Location, by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association: (1) regular annual or other regular periodic assessments or charges as established by the Association from time to time; and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. A portion of the regular assessments will be allocated to a general "reserve account" as set forth and described in this Article.

"The regular, special and reserve assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time such assessment became due. The obligation shall remain a lien upon the property until paid or foreclosed."

**Section 2.** Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in Said Property, and in particular for the improvement, maintenance and exterior painting of Said Property, services and facilities devoted to this purpose and related to the use and enjoyment of the cluster recreational zones, the common areas, the residence locations and residences situated upon Said Property. The reserve portion of the regular assessment shall be used solely for common area maintenance, exterior painting, replacement and repairs as hereinafter provided."

**Section 3.** Assessment of Owners; Increases or Decreases. . Every Residence Location shall be obliged to pay equal regular and special assessments as determined by the Board of Directors on behalf of the Association pursuant to this Declaration and the Association' Bylaws. Assessments may not be waived due to limited or nonuse of Common Property. The Association's board of Directors, on behalf of the Association, shall assess the common expenses against the Owners, from time to time, and at least annually, as set by the Board of Directors for the Residence Locations as provided in this Declaration. The Association shall take prompt action to collect from a Lot Owner any common expense due that remains unpaid by him for more than thirty (30) days from the due date for its payment.

"Regular assessments only, not including the reserve portion of the assessments, may be increased or decreased effective January 1 of each year by the Board of Directors without a vote of the membership in conformance with the rise, if any of the Consumer Price Index (published by the Department of Labor, Washington D.C., or its successor). The reserve portion of the assessments may be increased or decreased effective January 1 of each year by the Board of Directors without a vote of the membership."

**Section 4.** Annual Budgets. The Association's Board of Directors shall, from time to time, and at least annually, prepare an operating budget for the Association, taking into account the current costs of maintenance and service and future needs of the Association, any previous over assessment and any common profits of the Association. The budget shall provide for exterior painting and such reserve or contingency funds as the Board of Directors deem necessary or as may be required by this Declaration or by law. The Board of Directors shall also, from time to time, and at least annually,

prepare a budget with respect to the maintenance, repair and replacement requirements for Common Areas."

**Section 5. Determination of Common Expenses.** Common expenses shall include:

- a. Expenses of administration.
- b. Expenses of utilities to and maintenance, repair, or replacement of Common Areas/Property.
- c. Cost of insurance or bonds obtained in accordance with the Association Bylaws
- d. Reserve for replacements, including drains and sewers.
- e. Any deficit in common expenses applicable to the Association for any prior period
- f. Any other items properly chargeable as an expense of the Association.
- g. Exterior Painting.

**Section 6. Common Area Reserve Account.** A portion of the common expenses collected from each Owner shall be placed in an account separate and distinct from the general operating account of the Association. This separate account is to be used only as a reserve account for exterior painting, major maintenance and replacement of the Common Areas and drains and sewers pursuant to Article X of this Declaration, all or part of that which would normally require replacement in more than three (3), or less than thirty (30), years from the time the budget is determined by the respective Board of Directors."

**Section 7. Trust Accounts.** The Board shall have the authority to dissolve the Trust and move the trust funds into the reserve account of the Association. Such funds shall be allocated to a reserve for exterior painting, and no owner shall have an individual rights to such reserves."

**Section 8. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the cluster recreational zones and/or the common areas, including the necessary fixtures and personal property related thereto, provided that such special assessment for structural alterations, capital additions or capital improvements shall require the assent of fifty-one percent (51%) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. This section shall not prohibit the Directors from authorizing capital expenditures for replacements or repairs or improvements from funds generated by regular assessments

**Section 9. Due Dates.** The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. The Association shall upon demand at any reasonable time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified residence location have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 10. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Secretary of the said Association shall file in the office of the



Director of Records, County Clerk, or appropriate recorder of conveyances of Clackamas County, State of Oregon, within one hundred twenty days after delinquency, a statement of the amount of an such charges or assessments together with interest aforesaid which have become delinquent with respect to any residence location on Said Property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same.

The aggregate amount of such assessment, together with interest costs and expenses and a reasonable attorney's fee for the filing and enforcement thereof, from the date the notice of delinquency thereof is filed in the office of said Director of Records or County Clerk or other appropriate recording office, until the same has been paid or released as herein provided. Such lien may be enforced by said Association in the manner provided by law with respect to liens upon real property.

The Owner of Said Property at the time said assessment becomes due shall be personally liable for the expenses, costs, and disbursements and attorneys' fees shall be secured by said lien, including fees on appeal. The Owner at the time such assessment is incurred shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the cluster recreational zones or the common areas or abandonment of his residence location or any improvement thereon.

**Section 11. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be inferior, junior and subordinate to the lien for all mortgages and trust deeds now or hereafter placed upon Said Property or any part thereof. Sale or transfer of any residence location or any other part of Said Property shall not affect the assessment lien. However, the sale or transfer of any residence location which is subject to any mortgage, pursuant to a decree of foreclosure of such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which became due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relieve such residence location and any improvements thereon from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 12. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties expressly dedicated to and accepted by a local public authority, and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Oregon (however, no land or improvement devoted to dwelling use shall be exempt from said assessment); (b) the cluster recreational zones and the common areas; and (c) all other properties owned by the Association.

## **ARTICLE VIII PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall, which is built as a part of the original construction of the homes upon the properties and placed on or immediately adjacent to the dividing line between the Residence Location owned by different persons, shall constitute a party wall. To the extent not inconsistent with the provisions of the Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners whose Residence abut such wall.



**Section 3. 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. If the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omission. The word "use" as referred to herein means ownership of a dwelling unit or other structure, which incorporates such wall or any part thereof.

**Section 4. Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6. Arbitration.** Any dispute concerning a party wall, or any provisions of this Article shall be arbitrated. Each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators, whose decision will be binding upon the parties thereto.

**Section 7. Encroachments.** If any portion of a party wall or other party of a Residence building or structure now or hereafter constructed upon Said Property encroaches upon any part of the Cluster Recreational Zones or the Common Areas or upon the Residence or Residence Locations used or designated for use by another Residence Location Owner, such encroachment shall be made known to the Architectural Committee which will investigate the origin, length of time and extent of the encroachment. If the Board of Directors finds that it would be a hardship on the present Owner of the structure which is now encroaching to have the encroaching materials removed, then an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist, and be binding upon the Association and upon all present and future Owners of any part of Said Property for the benefit of the present and future Owners of such encroaching building or structure for the purpose of occupying and maintaining the same; and in the event a structure consisting of more than one Residence becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Cluster Recreational Zones and/or Common Areas and in and upon each Residence and Residence Location for the benefit of the Association and the adjacent Owner or Owners to the extent reasonably

necessary or advisable to make repairs and replacements; and minor encroachment resulting from any such repairs and/or replacements the maintenance thereof are hereby granted and reserved for the benefit of the present and future Owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

## **ARTICLE IX ARCHITECTURAL CONTROL**

Notwithstanding any other provision in this Article, decisions of the Committee shall be subject to the architectural standards and guidelines of the Charbonneau Country Club

**Section 1. Approval.** No building, fence, wall, hedge, structure, improvement, common area and recreational zone, refurbishing, painting, staining, decorating, obstruction, ornament, landscaping or planting shall be placed or permitted to remain upon or be removed from any part of Residence

Location or the exterior of the residence unless a written request for approval thereof has been approved in writing by a majority of the Architectural Committee or by its representative designated by a majority of the Committee.

**Section 2. Written Requests for Architectural Committee Approval.** All written requests submitted pursuant to Section 1 of this Article shall include, as appropriate, all plans, specifications, drawings and a general description of the work to be performed. The request shall include a description of the proposed siting, shape, size, color and materials to be used, including a description of any proposed landscaping.

**Section 3. Architectural Guidelines.** The Architectural Committee may adopt from time-to-time additional architectural guidelines to further implement this Article.

**Section 4. Architectural Committee.** The Architectural Committee shall consist of three members. Members of the Committee shall be elected for a term of three years by the majority vote of the Board of Directors of the Association. The decision of any two members shall be binding, however, applications may be resubmitted pursuant to rules of the Committee. Upon failure of the Committee or its designated representative to approve or disapprove an application for a period of thirty (30) days after it has been submitted in writing to the Chairman of the Committee or his designated representative, said application will be deemed to have been approved. If any member of the Committee is unable or unwilling to act, the remaining members shall elect a successor to serve out the unexpired term,

**Section 5. Committee Discretion.** The Committee may withhold approval of any proposal if the Committee finds the proposal would be inappropriate for the particular Residence Location or incompatible with the architectural standards and guidelines of the Association. Considerations such as siting, shape, size, color, design, height, solar access or other effects on the enjoyment of other Residence Locations and common areas, and any other factors which the Committee reasonably believes to be relevant, may be taken into consideration by the Committee in determining whether or not to approve any proposal. Notwithstanding any other provision in this Article, decisions of the Committee shall be subject to the architectural standards and Guidelines of the Charbonneau Country Club.

**Section 6. Effective Period of Consent.** The Committee's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the Committee,

**Section 7. Enforcement.** Without prior approval, if a condition exists or changes have come about which may be caused by any event, time or effect, which in the opinion of the majority of the Architectural Committee must be remedied, corrected, altered, modified or eliminated, then said Committee shall so notify the Owner thereof, and the Owner shall forthwith comply with said notice. If the Owner refuses or delays in so complying with said notice, then the Association shall have the right to perform said work specified in the Committees' notice to the Owner and assess the Owner and Residence Location the cost thereof.

**Section 8. Non-waiver. Precedent and Estoppel.** Approval or disapproval by the Committee of any matter proposed to it or within its Jurisdiction shall not be deemed to constitute precedent, waiver, or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

**Section 9. Liability.** Neither the Committee nor any member thereof shall be liable to an Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

**Section 10. Appeals.** Any Owner adversely impacted by the final decision of the Architectural Committee may appeal such decision to the Board of Directors. Appeals shall be made in writing within ten (10) days of the Committee's decision and shall contain the Owner's specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors within twenty (20) days after receipt of such appeal. The determination of the Board shall be final.

**Section 11. No Compensation.** No member of the Architectural Committee, however created or constituted, shall receive any compensation from the Association or make any charge for his services.

**Section 12. Fees.** The Committee may charge a reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the Committee to retain architects, attorneys, engineers, and landscape architects and other consultants to advise the Committee concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. Such fees shall be collectible as assessments.

## **ARTICLE X ASSOCIATION'S MAINTENANCE OBLIGATION**

**Section 1. Neighborhood Recreational Zones and the Common Areas.** The Association shall maintain and/or provide for the maintenance of the neighborhood recreational zones and the common areas.

**Section 2. Exterior Paint of Residence Locations.** The Association shall provide periodic exterior painting for all Residence Locations as determined necessary by the Board of Directors."

**Section 3. Drains and Sewers.** The Association shall provide maintenance and repair of all building drains and building sewers which lie in, on or under the common areas.

## **ARTICLE XI OWNER'S MAINTENANCE OBLIGATION**

**Section 1. General Maintenance Obligation.** . Each Owner shall maintain their Residence, Residence Location and all improvements thereon in good and sufficient repair and shall keep the same painted (to the extent not the responsibility of the Association) or stained, roofs replaced, gutters replaced, lawns cut, shrubbery trimmed, windows unbroken and glazed, rubbish and debris removed, weeds cut and other maintenance in a neat and aesthetically pleasing condition. The cost of such maintenance and repair shall be borne by the Owner so involved."

**Section 2. Failure to Maintain** In addition to any other remedies provided for in this Declaration, in the event that any Owner shall permit any improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board and/or its assignees, upon twenty-one (21) days prior

written notice to the Owner of such Residence Location, shall have the right to correct such condition, and to enter upon said Residence Location, if necessary, for the purpose of correcting or repairing the same. Such Owner shall promptly reimburse the Association for the cost thereof. Said costs shall be enforceable in the same manner as regular assessments as set forth in Article VII of this Declaration,

## **ARTICLE XII USE RESTRICTIONS**

The following restrictions shall be applicable to the real property described on Exhibits "A," "B," and "C" and any other property hereinafter annexed hereto and shall be for the benefit of and limitation upon all present and future Owners and authorized users thereof of Said Property, or of any interest therein,

**Section 1.** Unless written approval is first obtained from the Architectural Committee, no sign of any kind shall be displayed to the public view on any Residence Location except one professional sign of not more than five (5) square feet advertising the Residence for sale or rent.

**Section 2.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of Said Property, except dogs, cats or other tame, domestic household pets provided such household pets are not kept, bred or maintained for any commercial purpose. The number of pets kept at each residence may be limited and the control thereof shall be by rule prescribed by the Directors.

**Section 3.** No part of Said Property shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. No garbage, trash or other waste shall be kept or maintained on any part of Said Property except in a sanitary container. Equipment for the storage of or the disposal of such material shall be kept in a clean and sanitary condition.

**Section 4.** No noxious or offensive condition or anything which may be or become an annoyance or nuisance to the neighborhood shall be permitted. However, the normal and reasonable use of electric golf carts shall not be deemed a violation of this section.

**Section 5.** No trailer, camper, truck, tent, garage, barn, shack or other out-building shall at anytime be used as a residence temporarily or permanently on any part of Said Property.

**Section 6.** Parking of boats, trailers, motorcycles, trucks, truck-campers and other over-sized vehicles (as defined by the Board of Directors) shall not be allowed on any part of Said Property nor on public ways adjacent thereto excepting only within the confines of an enclosed garage, and no portion of same may project beyond the enclosed area except under such circumstances, if any as may be prescribed by written permit approved by the Architectural Committee. All other parking of equipment shall be prohibited except in such areas, fully screened from public view, as may be approved in writing by the Architectural Committee.

**Section 7.** All Owners are members of the Association and entitled to an equal share in the rights and interests and privileges and obligations as such Except the facilities in the Cluster Recreational Zone which are only for the use and enjoyment of the Owners in said Cluster, the Owner will have the right to use all other Common Areas owned by such Association subject to the rules and regulations and restrictions applicable thereto.

**Section 8.** All Cluster Recreational Zones and Common Areas are to be maintained by the Association and no changes in the equipment, design, decor, landscaping, removal or trimming of trees, lawns or shrubs will be permitted without written authorization by the Architectural Committee.

**Section 9.** All walks and streets are for the use of Association members on an equal basis, subject to reasonable rules and regulations promulgated from time to time in writing by the Directors. It shall be the responsibility of each member to allow maximum ease of pedestrian bike and vehicular ingress and egress over walks, streets and driveways by prohibiting automobile parking in front of garages or in the driveways, paths or alleyways and allowing no obstruction or barrier on, across or adjacent to sidewalks or paths which would interfere with any other member's use of the Cluster Recreational Zones and the Common Areas or access to his Residence Location.

**Section 10.** Exterior painting will be provided for by the Association pursuant to Article X. Owners are expressly prohibited from painting or changing the exterior of any building, garage, fence or wall without the written permission of the Architectural Committee.

**Section 11** The security systems installed in the Residence Locations are the express property of the Owner of said Residence location. All costs associated with such security systems shall be born by each Owner, respectively.

**Section 12.** Guest parking areas are to be used exclusively by guests and invitees of the Owners. Owners vehicles parked in violation of this restriction are subject to enforcement action including reasonable fines and towing pursuant to the rules and regulations of the Association.

### **ARTICLE XIII EASEMENTS**

All conveyances of land situated in the Said Property by all persons claiming by, through, or under the Declarant, shall be subject to the foregoing restrictions, conditions and covenants whether or not the same be expressed in the instruments of conveyance, and each and every such instrument of conveyance shall likewise be deemed to grant and reserve, whether or not the same be declared therein, mutual and reciprocal easements over and across all of the Cluster Recreational Zones and the Common Areas of Said Property for the purpose of traveling by foot, by bike, cart or other conveyance or resting or otherwise being thereon, and over, under and across all portions of Said Property (except those portions thereof actually intended to be occupied as living space in any building nor or hereafter located upon Said Property and specifically including (without being limited thereto) the interior of party walls, attic crawl spaces and the area below the living space in any living units,) for the purpose of building, constructing and maintaining underground or concealed electric and telephone lines, gas, water, sewer, storm drainage lines, security, radio and television antennae and cables, and other utilities and services now or thereafter common supplied by public utilities or municipal corporations and upon all Cluster Recreational Zones and Common Areas for constructing and maintaining thereon streets, driveways, community and recreational facilities, ornaments and statues, swimming pools, lawns landscaping and planed areas thereon; all of said easements shall be for the benefit of all present and future Owners or property subjected the jurisdiction of the Association by recorded covenants and restrictions, recorded as hereinabove provided, and their tenants, contract purchasers and guests; said easements and rights of use, however, shall not be unrestricted but shall be subject to reasonable rules and regulations governing said right of use, as promulgated from time to time by the Directors of the Association in the interest of securing maximum safe usage of said easements without unduly infringing upon the privacy of the Owner or occupant of any part of Said Property. An easement over, upon and across all parts of Said Property is granted and reserved to the Association, its successors and assigns to the extent reasonably required to



perform exterior maintenance and to the extent reasonably necessary to perform other maintenance reasonably necessary or advisable to protect or preserve the value of Said Property and the Residences thereon.

## **ARTICLE XIV GENERAL PROVISIONS**

**Section 1. Compliance.** Each Owner, tenant or occupant of a Residence Location shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and to the extent applicable, Oregon's Planned Community Act. Failure to comply therewith shall be grounds for an action or suit maintainable by the Association or an aggrieved Owner.

**Section 2. Remedies.** Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right, in addition to any other rights set forth in this Declaration, the Bylaws or under law, to do any or all of the following after giving notice and an opportunity to be heard:

To enter the Residence Location which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass. provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished.

To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding.

To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Directors a copy of which has been delivered to each Owner, mailed to the mailing address of Lot or mailed to the mailing address designated by the Owner in writing to the Association.

To terminate the right of access to and use of recreational and service facilities of the Planned Community, until the correction of the violation has occurred; (or)

Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. **Section 3. Disputes Between Association and Owners.** In accordance with ORS 94.630(4), disputes between the Association and Owners shall be subject to this section.

Subject to Subsection (f) of this section, before initiating litigation or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within Clackamas County that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

If the party receiving the offer does not accept the offer within ten (10) days after receipt by written notice hand-delivered or mailed by certified mail, return receipt requested to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation or the administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute

resolution program.

If a qualified dispute resolution program exists within Clackamas County and an offer to use the program is not made as required under Subsection (a) of this section, litigation or an administrative proceeding may be stayed for thirty (30) days upon a motion of the non- initiating party. If the litigation or administrative action is stayed under this subsection, both parties must participate in the dispute resolution process.

Unless a stay has been granted under Subsection (c) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation or an administrative proceeding without regard to whether the dispute resolution is completed.

Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines or when arbitration is required under this Declaration.

**Section 4. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 5. Amendment** The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Residence Location subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date appearing on this Declaration, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, Any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended during the first twenty- five (25) year period by an instrument signed by members entitled to cast not less than ninety percent (90%) of the votes of each class of membership. and thereafter by an instrument signed by members entitled to cast not less than seventy-five percent (75%) of the total votes eligible to be cast. Easements herein granted and reserved shall not be amended except by instrument signed and acknowledged by one hundred percent (100%) of the Owners of the property concerned, and by the Architectural Committee. All such amendments must be recorded in the appropriate Deed Records of Clackamas County, Oregon, to be effective.

**Section 6. No Right of Reversion.** Nothing herein contained in this Declaration, or in any form of deed which may be used by Declarant, or its successors and assigns, in selling Said Property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or re-entry for breach or violation of any one or more of the provisions hereof

**Section 7. Right of Mortgagees Relating to Maintenance.** At any time that any part of the Cluster Recreational Zones or the Common Area, or any other part of Said Property or any residence or building or improvement located thereon is not properly maintained and kept in good order and repair by the Association or otherwise, to the extent reasonably necessary to protect and preserve the appearance and value thereof and the appearance and value of the remainder of Said Property, then the record Owner of any mortgage or deed of trust upon any part of Said Property or residence or



building thereon, upon giving written notice as hereinafter provided shall be entitled to exercise the rights of the owner-mortgagor of such property 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 said period of time such mortgagors shall be given notice of all regular and special meetings of the Association, the owner-mortgagor shall receive such notice also and may attend such meeting as an observer. Said notice shall quote this paragraph and shall be sent by Certified United States mail, return receipt requested, to the owner-mortgagor, a copy by regular mail to the Association, at last known address of each.

**Section 8. Insurance.** The Association shall at all time cause the various units and all other buildings and improvements to be insured with broad form fire and extended coverage insurance for the full replacement value thereof this insurance shall be payable to the Owner, any mortgagees, and to the Association, as their respective interests may appear. The Directors of the Association shall be the attorney in fact for all Owners for adjustment and settlement of any claim or loss under such insurance. The Association shall at all time provide liability insurances with limits of not less than \$200,000.00 for one person, \$500,000.00 for any one accident and \$50,000.00 for property, with the Association and Owners as joint insureds,

**Section 9. Repair or Rebuild Residence.** In order to protect and preserve the appearance and value of the entire Said Properties, each Owner is required to repair or rebuild his residence after each loss to it, notwithstanding the fact that there may be no proceeds available for such purpose, If an Owner does not promptly so repair or rebuild, then the Association may do so after fifteen (15) days written notice of its intent to so repair or rebuild if the Owner fails to commence the same within said period. All expenses incurred by the Association on behalf of said Owner shall become a lien upon the Owners residence and the Owner's residence location. If said expenses which have been paid by the Association are not repaid by the Owner within forty-five (45) days after completion of said repair or rebuilding, then the Association may foreclose upon said lien as provided by law.

**Section 10. Enforceability.** The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Association and the Owner or Owners of any portion of Said Property, and their heirs and assigns, and each of their legal representatives and failure by the Association or by any of the property Owners or their legal representatives, heirs, successors or assigns, to enforce any of such conditions, restrictions or charges herein contained shall in no event be deemed a waiver of the right to do so,

**Section 11. Attorney Fees.** In any legal proceeding involving the enforcement or the contesting of any provision of this instrument, including trial (or appeal therefrom), arbitration, mediation, or the enforcement and/or collection of any lien imposed hereunder, the prevailing party shall be entitled to reasonable attorney's fees incurred in connection therewith.

Except as provided above, the Declaration shall remain unmodified and in full force and effect.

Clackamas County Official Records

**2021-098249**

11/03/2021 09:17:02 AM

Clackamas County Official Records

**2021-098268**

11/03/2021 09:17:02 AM

IN WITNESS WHEREOF the undersigned President and Secretary hereby certify the foregoing Amendment was duly adopted in accordance with the procedures of the Association's governing documents and the Oregon Planned Community Act.

Dated: 11-2-2021

CHARBONNEAU HOMEOWNERS ASSOCIATION, an Oregon non-profit corporation

By: Barry Hendrix

Barry Hendrix, President

By: Randy Hitz

Randy Hitz, Secretary

STATE OF OREGON )

) ss.

November 2<sup>nd</sup>, 2021

County of Clackamas)

Personally appeared before me the above-named Barry Hendrix, as the President of Charbonneau Homeowners Association, and that said instrument was signed in behalf of said Association by authority of its Board of Directors; and acknowledged said instrument to be its voluntary act and deed.

SAI PULI

Notary Public for Oregon

STATE OF OREGON )

) ss.

November 2<sup>nd</sup>, 2021

County of Clackamas)

Personally appeared before me the above-named Randy Hitz, as the Secretary of Charbonneau Homeowners Association, and that said instrument was signed in behalf of said Association by authority of its Board of Directors; and acknowledged said instrument to be its voluntary act and deed.

SAI PULI

Notary Public for Oregon