DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SOUTH POINTE ESTATES
A RESIDENTIAL COMMUNITY WITH COMMON FACILITIES

THIS DECLARATION, is made the 21st day of December, 2007 by ALLEN SPRINGER CONSTRUCTION INC. (the developer).

RECATALS:
A. Allen Springer Construction Inc., owner of the real property described in the declaration, desire to create a residential community with common facilities for the benefit of the community (South Pointe Estates Homeowner’s Association Inc.).

B. The Developer has deemed it desirable for the preservation of the values and amenities in the community to create an agency with the powers of maintaining, administering and enforcing the covenants and restrictions, and collecting and disbursing any assessments and charges created (South Pointe Estates Homeowner’s Association Inc.).

ARTICLE I
DEFINITIONS: The following definitions apply to this declaration.

Section 1. “Association” means South Pointe Estates Homeowner’s Association Inc., a non-profit corporation organized and existing under the laws of the State of Oregon.

Section 2. “Association of Members” means all the owners and other persons entitled to vote, acting as a group, in accordance with the Declaration and Bylaws.

Section 3. “Building” means any structure now existing or later to be built on the property.

Section 4. “Common Expenses” means the cost of administration, maintenance, repair or replacement of any private streets, common areas, landscaping (including all landscaping in the front yards), common storm drainage management facilities, expenses agreed upon as common by the owners, and expenses declared common by this Declaration, or the Bylaws of the Association.

Section 5. “Declaration” means this Declaration, including the covenants and restrictions, plus any subsequent amendments and supplements.

Section 6. “Lot” means a parcel of land designed as a lot in the recorded plat, including any improvements.

Section 7. “Member” means a person or entity having a voting right in the Association pursuant to this Declaration and the Articles of Incorporation.

Section 8. “Owner” means the record owner, or land sale contract purchaser, whether on or more persons or entities, of fee simple title to any Lot, but, notwithstanding any
applicable theory of the mortgage, shall not mean or refer to the mortgagee or holder of a trust deed unless such mortgagee or holder of the trust deed has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 9. “Property” or “Properties” means the lands, whether leasehold or in fee simple, all buildings, improvements and structures and all easements, rights and appurtenances, which are affected under this Declaration.

Section 10. “Private Commons” means property jointly owned by all owners in undivided interests, commons, structures, personal properties, and any and all other properties maintained by the Association for the common benefit and enjoyment of all the member of the Association.

Section 11. “Common-wall Home” means a building constructed on two lots, designed to be two dwellings, whose common wall is located along a portion of the common boundary line between the lots.

Section 12. “Common Storm Drainage Management Facilities” means that portion of Tract A shown on the plat as subject to a storm sewer easement and the storm water detention facility, with related landscaping, drains and pipes.

Article II.
Properties Subject to the Declaration

Section 1. Existing Property: The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to the Declaration is located in Yamhill County, Oregon, and is described on the attached Exhibit A (“existing property”).

Article III.
Membership and Voting Rights in the Association

Section 1. Membership: Every person or entity which is an Owner is a Member, and the Developer shall be a member until all Properties are sold. Acceptance of a deed to or vendee’s interest in a Lot shall be acceptance of membership.

Section 2. Voting Rights: The Association has two classes of voting membership:

Class A: Class A Members are all the lot owners. An Owner’s proportionate share of the revenue and expense associated with the Private Commons shall be equal to the Member’s proportionate voting share in the Association. Each Class A Owner shall have one vote per Lot owned, whether the Lot Owner is a corporation, an association, a partnership, a limited liability company, or a husband and wife. When more than one person or entity holds such an interest in any Lot, all such persons or entities shall vote as a unit; provided, however, if a voting dispute arises, a multi-person ownership shall not be entitled to vote unless the dispute be resolved as they, among themselves, decide.

Declaration for South Point Estates
CLASS B: The Class B Member shall be the Developer. The Class B Member shall be entitled to two votes for each Lot owned by the Developer. The Class B membership shall cease and become converted to Class A membership upon the happening of any of the following events: (a) When eighty percent (80%) of the lots set forth in this declaration have been sold; or (b) on the 31st day of December, 2010. After the happening of these events, whichever occurs earlier, the Class B Member shall become a Class A Member entitled to one vote for each Lot then unsold and in which the Developer holds the interest acquired for membership under this Declaration.

ARTICLE IV.
PROPERTY RIGHTS IN PRIVATE COMMONS

SECTION 1. MEMBER’S EASEMENT OF ENJOYMENT: Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in the Private Commons and this easement shall be appurtenant to and shall pass with the title to every lot.

SECTION 2. TITLE TO PRIVATE COMMONS: The title to the Private Commons shall be vested in the Association. Each Owner in South Pointe Estates Homeowner’s Association Inc. in the City of McMinnville, Yamhill County, Oregon, shall have right-of-way through the Private Commons of in South Pointe Estates Homeowner’s Association Inc.

SECTION 3. EXTENT OF MEMBER’S EASEMENT: The owners’ rights and easements of enjoyment shall be subject to:

a. The right of the Association, as provided in it’s Articles of Incorporation and Bylaws, to suspend the enjoyment of any Member for so long as any assessment remains unpaid, and for a period of not to exceed thirty (30) days for any infraction of its published rules and regulations;

b. The right of the Association or Developer to dedicate or transfer, subject to membership acceptance and acceptance and acceptance by the public entity, all or any part of the street right-of-way to the conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless an instrument signed by the Members entitled to cast two thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed agreement and action is sent to every Member at least ninety (90) days in advance of any action taken.

ARTICLE V.
COVENANT FOR MAINTENANCE ASSESSMENTS

DECLARATION FOR SOUTH POINT ESTATES
SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT:
Developer, for each Lot owned by it within the Properties, and each Owner of any Lot, by acceptance of a deed or vendee's interest therefore, whether or not it shall be so expressed in such deed or other conveyance, covenants and agrees to pay the Association (1) annual assessments or charges; (2) special assessments for capital improvements, replacements or repairs, such assessments to be established and collected monthly as provided in the Bylaws. The annual and special assessments, together with interest and costs of collection, shall be a charge on the land and shall be a continuing lien on the Property against which such assessment is made. Each assessment, together with interest and cost of collection, shall also be the personal obligation of the person who is the Owner of such Property as the time the assessment fell due. Such lien shall be enforceable in all manners consistent with provisions of Oregon law, which govern foreclosures generally. The prevailing party shall be entitled to attorney fees as provided by Article IX, Section 5.

SECTION 2. MAINTENANCE: The association shall maintain in an attractive fashion the landscaping areas within the common landscape maintenance easement set forth in the plat; the landscaping in Tract ‘A’ including the storm drainage management facilities; and, landscaping strip along Hill road in Yamhill County easement even though such strip lies within the right of way and is, therefore, owned by Yamhill County.

ARTICLE VI.
ARCHITECTURAL COMMITTEE

SECTION 1. An Architectural Committee shall be formed to insure the harmonious development of the properties. Initially, the Developer shall be responsible to appoint or remove members to the Architectural Committee. However, at such time as the Class B membership shall cease, the Association shall be responsible to appoint or remove members to the Committee. The Committee shall consist of as many persons, not less than three, as the Developer or the Association shall appoint. The Architectural Committee shall be responsible for the following:

SECTION 2. Lot Owners will not construct, alter or maintain any improvements on the premises until:

a. They have submitted to the Architectural Committee a complete set of plans and specifications satisfactory to the Committee, showing, where appropriate (1) the dimensions of the improvements, (2) the exterior design, (3) the location of the improvement on the site, (4) the location of driveways, and (5) the dimensions and location of any outbuildings.

b. Approval of these plans may be withheld if the Committee finds that any of the items in paragraph (a) above are not in compliance with the restrictions outlined in this Declaration.

DECLARATION FOR SOUTH POINT ESTATES
c. If the Lot Owner shall have submitted to the Committee plans and specifications and the Committee has not approved such plans and specifications within forty-five days from the date of submission not notified the Lot Owner of it’s objections within such period, then the plans and specifications shall be deemed to have been approved by the Committee. The same shall apply to action on any revised plans and specifications.

Upon completion of the improvement and notice to the Committee, the Committee shall have ten days from receipt of such notice to inspect the improvement to determine whether it complies with the plans and specifications approved. Within ten days thereafter, the Committee shall either approve the improvement or notify the Lot Owner of changes necessary to comply with the plans and specifications. If the Committee does not act within the ten (10) day period, the improvement shall be deemed to be satisfactory to the Committee. All communications to the Committee shall be delivered by hand or mail the Developer at its office in McMinnville, OR, or at a place specified in writing to the last known address of the member. All Notification to the Owner shall be deemed made when actually delivered to the owner or when deposited in the U.S. Mail, postage prepaid, to the address of the property, or the address to which property tax statements are mailed concerning the property.

ARTICLE VII.
BUILDING RESTRICTIONS

SECTION 1. DWELLING SIZE: The main floor (exclusive of porches and garage) shall be not less than 1,100 square feet for a one-level home. If there are two levels, at least one floor shall be at least 700 square feet. The total living area in a multi-level home shall be not less than 1300 square feet. All homes shall have a roof with eaves and a minimum pitch of 5 inch vertical to 12 inch horizontal.

SECTION 2. SETBACK REQUIREMENTS: Except as otherwise specified below, the minimum side yard setback shall be the setback required by the building or zoning codes of the City of McMinnville.

SECTION 3. FENCES: The location, material, and design of any fences constructed shall be approved by the Architectural Committee prior to construction. In addition, consent for fences must be obtained from the owner of the other half of the common-wall unit. Common-wall Owners shall not unreasonably withhold consent to fences for the neighboring common wall unit. In approving or disapproving any fence design, the committee shall evaluate whether the fence would be a significant detriment to the adjoining properties or the development as a whole. Fences in the front or exterior side yard must be approved by the City Planning Department and comply with City ordinances.
SECTION 4. ROOFING: Roofing materials shall be non-reflective. Acceptable materials include composition shingles, wood shingles, or tile. The roof color shall be compatible with the house color.

SECTION 5. SIDING: All siding material shall be brick, stone, cedar or concrete siding. Any changes are subject to approval of all Owners of common-wall building to be changed.

SECTION 6. DRIVEWAYS: All driveways shall be concrete.

SECTION 7. PLUMBING/ELECTRICAL: All homes shall meet structural and heating, as well as plumbing and electrical codes, as required by Uniform Building Code and State of Oregon.

SECTION 8. ELECTRICAL INSTALLATIONS: All electrical installations shall conform to National Electrical Code, as amended and adopted by the State of Oregon.

SECTION 9. PLUMBING: All plumbing installations shall conform to the Uniform Plumbing Code as amended and adopted by the State of Oregon. All plumbing lines above ground shall be protected against freezing.

SECTION 10. LANDSCAPING: The landscaping for the front yard of each Lot shall be completed by the Association who shall also undertake the maintenance. A landscaping firm shall be contracted for said maintenance by the Association and shall be paid by the members as part of the annual assessment. Every Lot shall be landscaped within eight (8) months after the home is built.

SECTION 11. ANTENNAE, ECT.: No television, radio aerials, or rotary beams shall be erected or placed on any Lot, any services must be underground.

SECTION 12. SIGNS: No signs shall be erected on any Lot except not more than one “For Sale” or “For Rent” sign placed by the Owner, the Developer, or by a licensed real estate agent. This restriction shall not prohibit the temporary placement of “political” signs on any Lot by the Owner, or the placement of a professional sign by the Developer or builder’s signs during construction.

SECTION 13. APPLICABLE LAW: Improvements on the property must also comply with other applicable law and governmental agency requirements.

ARTICLE VIII.
GENERAL RESTRICTIONS

SECTION 1. ANIMALS: No domestic animals shall be raised, kept, or permitted on the premises other than dogs, cats, birds (excluding fowl) and household animals which are not kept, bred or raised for commercial purposes or in unreasonable numbers, and which are reasonably controlled to avoid their being a nuisance to other Lot Owners.
SECTION 2. MAINTENANCE: All homes shall be maintained in good condition and repair and shall be kept painted to remain aesthetically compatible with all Common-wall Homes in the subdivision.

SECTION 3. CAMPERS, MOTOR HOMES, BOATS, TRAVEL OR OTHER TRAILERS: These must be stored in a closed garage or other entirely closed parking facility. For a period of three consecutive days or six days in any thirty day period, these vehicles may be left in the driveway, rear yard or the street to permit cleaning, loading or unloading.

SECTION 4. TRASH OR REFUSE: No garbage or trash will be allowed to accumulate on any property in the development. Failure to remove will result in the Association having such removed and charging the owner or tenant for removal.

SECTION 5. STORAGE BUILDINGS: No storage or accessory buildings shall be placed in the front yard.

SECTION 6. TEMPORARY STRUCTURES: No tent, shack, garage, or other outbuilding constructed or placed upon any portion of a Lot shall at any time be used as a temporary or permanent residence.

SECTION 7. NON-USABLE MOTOR VEHICLES: There shall not be stored, parked or kept upon said Lots any motor vehicle which is rusted, wrecked, junked or partially dismantled or inoperable or is in an abandoned condition unless it is completely enclosed within a building. No unlicensed vehicles shall be allowed on any Lot.

SECTION 8. NUISANCE: No noxious or offensive trade or activity shall be carried on upon any property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

ARTICLE IX.
LOT/ROAD MAINTENANCE

SECTION 1. LOT MAINTENANCE: The Lot must be kept free of debris and must be neat and maintained. Grass or ground cover may not exceed six inches in height. The landscaping for the front yard of each Lot shall be completed by the Association who shall also undertake the maintenance. A landscaping firm shall be contracted for said maintenance by the Association and shall be paid by the members as part of the annual assessment. After improvements have been constructed on a Lot, the Owner of the Lot shall maintain the balance of the landscaping in an attractive fashion. All improved Lots shall be maintained in an attractive landscaped condition.

SECTION 2. ROAD MAINTENANCE: Any private streets must be maintained by the property owners. Maintenance of any said streets shall be a common expense and, as such, shall be maintained by the Owners, and appropriate assessments may be made for the maintenance of said streets.

DECLARATION FOR SOUTH POINT ESTATES
ARTICLE X.
COMMON-WALL MAINTENANCE

SECTION 1. The cost of reasonable repair and maintenance to each common wall shall be shared equally by the owners whose lots abut the wall, except that damage other than ordinary wear and tear which is caused by the Owners to be paid for by the Owners of the unit causing the damage or with whose permission or for whose benefit the party causing the damage were on the property.

SECTION 2. Exterior wall and trim colors, as well as gutter and roof color and materials, shall be the same on both sides of the common wall unit and as agreed upon by both parties. If the parties cannot agree upon colors of paint or style or colors of gutter and roofing, color and/or style shall be substantially the same as the existing color or style.

SECTION 3. REPAIR AND MAINTENANCE: The cost of reasonable repair and maintenance of each common wall shall be shared equally by the owners whose lots abut the wall.

SECTION 4. DESTRUCTION: If a common wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it, and if another Owner thereafter makes use of the wall, that other owner shall contribute to the cost of restoration in proportion to the use without prejudice, however, to the right of either Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. An Owner who by negligent or willful act has caused the common wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against the elements. An Owner is also responsible for the actions of persons on the Owner’s lot with the Owner’s permission or for the benefit of the Owner. The right of an Owner to contribution from another Owner and the obligation of an owner to contribute to another owner shall be appurtenant to the land and shall pass to successors in title. Any dispute concerning a common wall which the owners are unable to settle shall be first mediated, but if mediation is not successful, shall be arbitrated. Each of the Owners shall choose one arbitrator, and the two arbitrators so chosen shall choose a third arbitrator, and the decision of a majority of the arbitrators shall be binding upon both parties.

ARTICLE XI.
GENERAL PROVISIONS

SECTION 1. DURATION: The covenants, easements and restrictions contained herein are to run with the land for the benefit of each Owner, shall pass with each Lot, and shall bind the respective Owners in interest of the present Owner. Except for the covenants, easements and restrictions concerning the common areas which shall be perpetual until or unless the governing body for the City of McMinnville consents to their termination, these covenants, easements, and restrictions shall remain in full force and effect for a period of twenty (20) years from the date of recording of this Declaration, at which time

DECLARATION FOR SOUTH POINT ESTATES
they shall automatically renew for successive periods of ten (10) years unless terminated by a vote of seventy-five percent (75) of the Lot Owners, with any such termination properly recoded.

SECTION 2. ENFORCEMENT: The Association, any Owner, or the owner of any recorded mortgage or recorded trust deed on any part of the property shall have the right to enforce by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or any Owner to Enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so there after. If an Owner rents the property, the owner remains primarily responsible to the association for obligations under this agreement whether or not the tenant is also legally responsible.

SECTION 3. SEVERABILITY: Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provision herein which shall remain in full force and effect.

SECTION 4. AMENDMENTS: Covenants and restrictions of this Declaration, except those which relate to the common areas and their repair and maintenance, may be amended by an instrument signed by not less than ninety percent (90) of the Lot Owners. The covenants and restrictions regarding the common areas may be amended by an instrument signed by not less than ninety percent (90) of the Lot Owners and the governmental governing body for the City of McMinnville. Any amendment must be properly recorded. Easements granted and reserved shall not be amended except by an instrument signed and acknowledged by one hundred percent (100) of the Owners of the Property, including the Developer so long the Developer owns any Lots or holds a security interest in any Lots, and the governing body of the City of McMinnville if the granting or release relates to the common areas.

SECTION 5. ATTORNEY FEES: In case suit or action is instituted to enforce any of the provisions of this Declaration, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney fees to be allowed the prevailing party in a suit or action, and if an appeal is taken from any judgment or decree, the losing party further promises to pay such sum as the appellate court may adjudge reasonable as prevailing party’s attorney fees on appeal.

SECTION 6. COMMERCIAL BUSINESS: No commercial business of any type shall be allowed to be established in or operated from the Property, unless such business shall have gained approval from appropriate zoning authorities.

SECTION 7. FINES: The Association shall have the right to assess fines against any Owner for violation of any rules promulgated by the Association as well as the rights referred to in Section 2 of this Article above. An Owner shall receive a copy of any rules enacted by the Association and any rule shall require a 75% vote prior to being effective. If an Owner rents property, the Owner remains primarily responsible for rule violations of their tenant, whether or not the tenant is also legally responsible.

DECLARATION FOR SOUTH POINT ESTATES
ALLEN SPRINGER CONSTRUCTION INC.

By: Allen J. Springer  
Member  

Date: 12-21-07

By:  
Member

Date:

County of Yamhill  
}{  
State of Oregon  
}{

This 21st day of December, 2007, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within named Allen J. Springer as President of Allen Springer Construction, Inc.

Notary Public for Oregon
SOUTH POINTE ESTATES

Located in the
SE 1/4 Section 19, T. 4 S., R. 4 W., WM.,
City of McMinnville, Yamhill County, OR.
City of McMinnville File No. 2C 2-07/5 02-07

Date: 20 November 2007

City Approvals:

City of McMinnville Planning Commission Chair
File No. 2C 2-07/5 02-07
City of McMinnville Community Development Director
City of McMinnville Water & Light Commission

County Approvals:

Yamhill County Tax Assessor
Yamhill County Tax Collector

DECLARATION

KNOW ALL MEN BY THESE PRESENTS that ALLEN SPRINGER CONSTRUCTION COMPANY, INC., is the owner of the land represented on the attached map and more particularly described in the Surveyor's Certificate, and has caused said lands to be platted into lots, streets, tracts, and easements as shown and noted on the attached map, and does hereby dedicate for the public use forever all streets rights of ways and grant all easements for the purposes shown and noted on the attached map.

ALLEN J. SPRINGER
President

Acknowledgement

STATE OF OREGON }
COUNTY OF YAMHILL }

On this 15th day of December, 2007, did personally appear ALLEN J. SPRINGER in the capacity shown in the above Declaration, who being duly sworn, said that he is the identical person named in the foregoing instrument and that he executed said instrument freely and voluntarily.

SURVEYOR'S CERTIFICATE

I, Matt Dunkel, do hereby certify that I have correctly surveyed and marked with proper monuments the land herein shown as SOUTH POINTE ESTATES, the boundary of which is described as follows:

Beginning at the southwest corner of that tract of land described in deed to AK-3 INVESTMENTS LLC to ALLEN SPRINGER CONSTRUCTION COMPANY, INC., said southwest corner is on record as being S01°37'25" from the southwesterly corner of that tract of land described in deed from H.H. APPLEDOT to JACK PARKER LEONARD and recorded November 13, 1968 in Film Volume 56 Page 415, Yamhill County Deed Records; thence N01°37'25"E 298.00' to the southeast corner of said SPRINGER tract; thence N05°56'29"E 230.00' to the SE corner of said tract; thence N00°00'49"W 297.17' to the northeast corner of said tract; thence S00°59'13"W 296.46' to the point of beginning.

Matt Dunkel
3745 Riverside Drive
McMinnville, Oregon 97128
Phone: 503-472-7904
Fax: 503-472-0367
Email: matt@dunkelassoc.com

This is an exact copy of the original plat of "SOUTH POINTE ESTATES"