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I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



AMENDED AND RESTATED DECLARATION

OF

**PROTECTIVE COVENANTS
CONDITIONS AND RESTRICTIONS**

FOR

BETHANY VIEW ESTATES

Bethany View Estates Owners' Association

Mailing Address:

4804 NW Bethany Blvd

Suite I-2, PMB 155

Portland, Oregon 97229

After recording return to:

Bethany View Estates Owners' Association
4804 NW Bethany Blvd
Suite I-2, PMB 155
Portland, OR 97229

No Change in Tax Statements

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AMENDED AND RESTATED
DECLARATION OF
BETHANY VIEW ESTATES

This Amended and Restated Declaration of Bethany View Estates (“Amended and Restated Declaration”) is effective the 14th day of August, 2019 by Bethany View Estates Owners’ Association, an Oregon nonprofit corporation (the “Association”).

RECITALS

- A. Bethany View Estates is a community of owners established by the following documents recorded in the records of Washington County, Oregon (collectively, “Declarations”):
- i. Declaration of Bethany View Estates, recorded November 10, 1994, as document number 94102678;
 - ii. Declaration of Bethany View Estates, Protective Covenants Conditions And Restrictions recorded November 10, 1994 as document number 94102679
 - iii. Declaration of Bethany View Estates No. 2, recorded November 28, 1995, as document number 95087250; and
 - iv. Declaration of Bethany View Estates No. 3, recorded October 30, 1996, as document number 96097443.
- B. Association is the association of owners formed pursuant to the Declaration and incorporated as an Oregon nonprofit corporation under ORS Chapter 65 by the Articles of Incorporation filed August 4, 1998, in the office of the Oregon Secretary of State.
- C. As of January 1, 2002, Bethany View Estates is a Class II Planned Community and subject to the provisions of the Oregon Planned Community Act (ORS 94.550 to 94.783) as provided in ORS 94.572.
- D. The Association and owners wish to amend and restate the Declarations in their entirety.

NOW, THEREFORE, pursuant to ORS 94.590, the Association hereby amends and restates in their entirety the Declarations which are replaced and superseded by this Amended and Restated Declaration as set forth below.

ARTICLE 1 DEFINITIONS

When used in this Declaration, the following terms, whether or not capitalized, have the following meaning:

- 1.1 “**Architectural Review Committee**” means the committee constituted and acting pursuant to Article 10 below.
- 1.2 “**Act**” means the Oregon Planned Community Act, ORS 94.550 to 94.783.
- 1.3 “**Assessment**” means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to this Declaration, the Bylaws or the Act.
- 1.4 “**Association**” means the Bethany View Estates Owners’ Association, Inc., an Oregon nonprofit corporation, formed pursuant to Article 5 below.
- 1.5 “**Board**” or “**Board of Directors**” means the Board of Directors of the Association elected as provided in the Bylaws.
- 1.6 “**Bylaws**” means the Bylaws of the Association described in Article 5.2 below as they may be amended from time to time.
- 1.7 “**Common Areas**” means the areas designated as Common Areas in Article 4.1 below.
- 1.8 “**Common Expenses**” means expenditures made by or financial liabilities incurred by the Association, more particularly described in this Declaration and the Bylaws.
- 1.9 “**Common Property**” means any real property or interest in real property within the Planned Community which is owned, held or leased by the Association. Common Property includes Common Areas defined under Article 1.7 above.
- 1.10 “**Declaration**” means this Amended and Restated Declaration as the same may hereafter be amended.
- 1.11 “**Design Guidelines**” means Architectural Design Guidelines promulgated from time to time by the Board of Directors or the Architectural Review Committee under Article 10.3 below.
- 1.12 “**Easements**” means easements in, on and over the Property designated as such on the Plat and in this Declaration which are reserved for a specific limited use or enjoyment.
- 1.13 “**Improvement**” means every structure or improvement of any kind, including but not limited to buildings, landscaping and any fence, wall or driveway, swimming pool, tennis court, light fixture, entry gate, storage shelter or other product of construction efforts on or in respect to the Property.
- 1.14 “**Living Unit**” means a building located upon a Lot and designated for separate residential occupancy.
- 1.15 “**Lot**” means a numerically designated and platted lot on the Plat (including the Living Unit located thereon), but does not include Common Property.
- 1.16 “**Mortgage**” means a mortgage or 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.
- 1.17 “**Nonprofit Act**” means the Oregon Nonprofit Corporation Act, ORS chapter 65.
- 1.18 “**Owner**” means the person or persons owning any Lot (including the holder of a vendee’s interest

under a land sale contract), but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot (including the holder of a vendor's interest under a land sale contract).

1.19 **"Percent of Owners" or "Percentage of Owners"** means the percent of the voting rights allocated under Article 6.2, below.

1.20 **"Planned Community"** means the property described on the Plat.

1.21 **"Plat"** means the plat of "Bethany View Estates", recorded November 10, 1994 in Book 93, Page 43-45, "Bethany View Estates No. 2" recorded November 28, 1995, in Plat Book 100, Pages 50-52, and "Bethany View Estates", recorded October 30, 1996 in Book 107, Page 29-30, Plat Records of Washington County, Oregon, as may be supplemented by replats thereof recorded from time to time.

1.22 **"Property"** means the property described in the Plat.

1.23 **"Voting Rights"** means the portion of the votes allocated to a Lot under Article 6.2, below.

1.24 **Incorporation by Reference.** Except as otherwise provided in this Declaration, unless the context clearly requires otherwise, each term used in this Declaration that is defined in ORS 94.550 has the meanings set forth in ORS 94.550.

1.25 **Other Definitions.** Terms which are not defined in this article but are defined elsewhere in this Declaration, whether or not capitalized, have the respective meanings given them in the provision of this Declaration.

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION CLASSIFICATION OF PLANNED COMMUNITY

2.1 **Property Subject to this Declaration.** The Association hereby declares that all of the property described on the Plat shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

2.2 **Description of Property.** The Property includes the land so described, all buildings, improvements and structures, all easements, and rights and appurtenances located on, or belonging to or used in connection with the land.

2.3 **Classification of Planned Community.** The Property is a Class II Planned Community and subject to the provisions of the Act as provided in ORS 94.572 and this Declaration.

ARTICLE 3 PROPERTY RIGHTS IN LOTS

3.1 **Use and Occupancy.** Except as otherwise expressly provided in this Declaration, the Bylaws or in the Plat, the Owner of a Lot is entitled to the exclusive use and benefit of the Lot. Each Lot is bound by, and the Owner shall comply with, the restrictions contained in Article 8 below and all other provisions of this Declaration, the Plat and the Bylaws for the mutual benefit of all Owners.

3.2 **Restriction on Lot Division.** Owners may not divide any Lot.

3.3 **Lot Line Adjustments.** The Owners of adjoining Lots may elect to adjust the property line between the Lots as may be permitted by Washington County in accordance with any applicable city or county ordinances or regulations. If the property line adjustment results in the elimination of a Lot, the voting rights and assessment obligations of the eliminated Lot no longer exist and the Common Expenses and profits of the Planned Community must be reallocated among all remaining Lots in accordance with Article 6.1 below.

3.4 **Easements Shown on the Plat.** Lots and Common Areas are subject to the easements shown on the Plat.

3.5 **Easements: Encroachments.** In addition to the easements shown on the Plat, or provided for under this Declaration, the Bylaws or law, Lots are subject to the following easements for the benefit of the Owners and the Board of directors on behalf of Association:

(a) Right of Entry.

(1) Lots. The Board of Directors and authorized representatives of the Board may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of or Improvements on the Lot are then in compliance with this Declaration. The entry may not be deemed to constitute a trespass or conversion or otherwise create any right of action in the Owner of the Lot.

(2) Requests for Entry. Requests for entry must be made in advance and at a time convenient to the Owner, except in the case of emergency, when the right is immediate.

(b) Easements Restrictions.

(1) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Within 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.

(2) The easement area of each Lot and all Improvements therein shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

(3) Each Lot Owner is responsible for removal of any fencing or vegetation in the easement area in the event a utility company makes such a request.

(c) Encroachments. As provided in ORS 94.733:

(1) If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the Planned Community, an easement for the encroachment exists to the extent that any Lot or Common Property encroaches on any other Lot or Common Property.

(2) An easement continues for maintaining the encroachment so long as the encroachment exists.

(3) Nothing in this Article 3.5(c) relieves an Owner of liability in the case of the Owner's willful misconduct or failure to adhere to the Plat.

ARTICLE 4 PROPERTY AND USE RIGHTS IN COMMON PROPERTY

4.1 **Designation of Common Area.** Tracts A and B as shown on the Plat, and all other common areas designated on the Plat, are Common Area for the purposes of this Declaration:

4.2 **Title to Common Area.** Fee title to the Common Area designated in Article 4.1 above, including all improvements, is vested in the Association.

4.3 **Owner Easement of Use and Enjoyment.** Subject to the provisions of this article, every Owner and his or her invitee have an easement through the Common Property as provided in ORS 94.733 which easement is appurtenant to and passes with the title to every Lot.

4.4 **Extent of Owners' Rights.** The rights of use and enjoyment in the Common Area and other Common Property are subject to the provisions of the Plat, this article and all other provisions of this Declaration and the Bylaws.

(a) Use of Common Property.

(1) Except as otherwise provided in this Declaration, the Common Property is reserved for the exclusive use and enjoyment of all Owners and no private use may be made of the Common Property.

(2) The Board of Directors may adopt rules under Article 8.16 below which designate specific areas of the Common Property that may be used by persons other than Owners or persons delegated the right to use the Common Property under Article 4.5 below and prescribe restrictions regarding the use of the areas.

(3) The Common Property and any facilities thereon must be used for the purposes for which the same are reasonably intended, and their use, operation and maintenance may not be obstructed, damaged or unreasonably interfered with by any Owner.

(4) Nothing in this Declaration prevents the placing of a sign or signs upon the Common Property identifying Bethany View Estates or identifying items of interest, including directional signs, or signs relating to traffic or parking provided the signs comply with any applicable city or county sign ordinances.

(5) The Board of Directors has authority to abate any trespass or encroachment upon the Common Property at any time, by any reasonable means with or without having to bring legal proceeding.

(b) Alienation of Common Property.

(1) Subject to Article 4.4(b)(2), the Association may not by act or omission seek to abandon, partition, subdivide, encumber, create a security interest therein, sell or transfer the Common Property owned directly or indirectly by the Association for the benefit of the Lots unless Owners representing at least eighty percent (80%) of the votes have given their prior written approval in accordance with ORS 94.665.

(2) The prior approval specified in Article 4.4(b)(1) does not apply to the easements described in Article 4.4(a) and Article 4.4(d).

(c) Limitation on Use. Use of the Common Property by the Owners is subject to the provisions of this Declaration, the Bylaws, the Act, other applicable laws and to the right of the Association to adopt, amend and to repeal Rules and Regulations as provided in Article 8.16 below.

(d) Easements in Favor of Municipalities and Utilities. The Association may (and to the extent required by law, shall) grant or assign easements on Common Property to municipalities or other utilities performing utility services and to communication companies, and may grant free access over the Common Property to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

4.5 Delegation of Use. An Owner may delegate his or her right of enjoyment to the Common Property to other occupants, tenants, or contract purchasers who reside on the Property, whose use of the Common Property is subject to this Declaration, the Bylaws and all rules and regulations adopted pursuant thereto.

ARTICLE 5 ASSOCIATION OF OWNERS

5.1 Organization.

(a) An association of Owners has been organized to serve as the means through which the Owners may take action with regard to administration, management and operation of the Planned Community including the administration of this Declaration according to its terms and the promulgation of rules, regulations, guidelines and standards.

(b) The Association has been organized as a nonprofit corporation under the Oregon Nonprofit Act (ORS Chapter 65). The name of the association is "Bethany View Estates Owners' Association."

(c) 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 as provided in the Bylaws.

5.2 Bylaws. The Association has adopted and recorded Bylaws in the records of Washington County, Oregon, to govern the operation and management of the Association. The Bylaws may be amended as provided therein.

5.3 Membership: Board of Directors.

(a) The Owner of each Lot is automatically a member of the Association. The membership commences, exists, and continues by virtue of the ownership, and expires automatically upon termination of the ownership. Membership need not be confirmed or evidenced by any certificate or acceptance of the membership.

(b) The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.

5.4 Powers, Duties and Obligations. The Association has such powers and duties as may be granted to it or imposed by the Act, including each of the powers and duties set forth in ORS 94.630 as the statute may be amended to expand the scope of associations duties and powers, together with such additional powers and duties afforded by this Declaration, the Bylaws and the Nonprofit Act.

ARTICLE 6 COMMON PROFITS AND EXPENSES: VOTING RIGHTS

6.1 **Allocation of Common Profits and Expenses.** The common profits derived from and the common expenses of the Planned Community shall be allocated equally among all Lots.

6.2 **Voting Rights.**

(a) **Allocation of Voting Rights.** Each Lot is allocated one (1) vote in the affairs of the Association. If an Owner owns more than one Lot, the person has one (1) vote for each Lot owned. The Board of Directors is entitled to vote on behalf of any Lot which has been acquired by or on behalf of the Association. However, the Board of Directors is not entitled to vote any Lot in any election of directors. The method of voting is as specified in the Bylaws.

ARTICLE 7 ARCHITECTURAL AND LANDSCAPING RESTRICTIONS

7.1 **Structures Permitted.**

(a) Except to the extent expressly provided in this Declaration, no Improvement may be erected or permitted to remain on any Lot except Improvements containing one Living Unit and Improvements normally accessory thereto. Accessory Improvements may include a storage unit for personal use, or other similar outbuilding, provided the Improvement:

- (1) Is in conformance with the other provisions of this Declaration and applicable City and County regulations, agreements, or land use approvals;
- (2) Is compatible in design and decoration with the Living Unit constructed on the Lot;
- (3) Does not obstruct or infringe on the view from or privacy or solar access of any Living Unit located on another Lot; and
- (4) For so long as it exists is in compliance with requirements of the Architectural Review Committee under Article 10 below.

(b) No manufactured home or mobile home may be constructed or placed on any Lot under any circumstances.

(c) No basements may be constructed under any Living Unit, except that the Architectural Review Committee may (but need not) permit a basement if the basement can be constructed in such a manner that sewage lines, drainage lines, window wells, and other affected criteria are functional and accounted for to the satisfaction of the Architectural Review Committee.

(d) No heat pump, heating, ventilating, or air conditioning equipment, or other equipment, the operation of which produces noise at a level higher than 80 decibels, is allowed on or in any Lot or Living Unit, except equipment used for initial construction of a Living Unit.

7.2 **Exterior Plans, Materials and Finish.** Exterior plans, materials and colors must be approved for use in advance by the Architectural Review Committee in accordance with the provisions of Article 10 below.

7.3 Setback, Maximum Height and Minimum Yard Requirements.

(a) Each Lot is subject to:

(1) The setback, maximum and minimum side and rear yard requirements shown on the Plat which are established by the County or other governmental entity with jurisdiction over the Lots.

(2) Any land use review procedure established by the County or other governmental entity with jurisdiction over the Lot for review and approval of variance from the requirement described in Paragraph (1) of Article 7.3(a).

(3) Any setback, maximum height or minimum side and rear yard requirements as are established in this Declaration or from time to time by the Board of Directors or Architectural Review Committee in the Design Guidelines.

(b) No Improvement may be constructed or maintained in violation of any setback, maximum height, or minimum yard requirement, except with the written consent of the Board or the Architectural Review Committee and any applicable City or County approvals.

7.4 Fencing.

(a) As used in Article 7.4, Article 10 below, and other provisions of this Declaration, unless the context clearly requires otherwise, fencing means any fence, barrier, hedge or wall.

(b) All fencing must conform to Article 7.4 and the Design Guidelines and must be approved in advance by the Architectural Review Committee under Article 10 below.

(c) All fencing installed by an Owner must be wood fencing at least six feet in height, unless otherwise approved by the Architectural Review Committee.

(d) No fencing may extend past the front of the Living Unit or into any required street setback.

(e) All fencing must conform to applicable City or County regulations for fences in residential areas. The regulations may include specific standards and conditions which may be more or less restrictive than those within the Design Guidelines. In either event, the more restrictive standard applies.

7.5 Construction of Improvements.

(a) The construction of any Owner's Living Unit or any other building, including painting, all exterior finish, and hard surface driveways must be completed within eight months from the beginning of construction so as to present a finished appearance when viewed from any angle.

(b) In the event of undue hardship due to extraordinary weather conditions, the eight month completion period may be extended for a reasonable length of time upon written approval from the Board.

(c) The building area and streets must be kept tidy, clean and in workmanlike order during the construction period. The Owner of each Lot is responsible for any and all damage to curbs, streets and utilities during construction. All construction activities shall be in conformance with construction rules that may be adopted from time to time by the Board or Architectural Review Committee under Article 10 below.

7.6 **Landscaping.** The Owner of each Living Unit shall be responsible for maintenance and replacement of all landscaping on the Lot.

(a) **Tree Removal.** No trees with a diameter of six inches or more, measured at a height of six feet above ground level, may be removed from any Lot without the prior approval of the Architectural Control Committee. Each Owner shall supply to the Architectural Control Committee together with the plans and specifications for any proposed Improvement a drawing showing the intended location of such Improvement on such Owners' Lot and of all trees thereon, so that necessary tree removal can be readily determined.

(b) **Exterior Lighting.** Any exterior lighting which is visible from any Lot or street, or any part of the Public Open Space, shall be compatible with its surroundings and approved by the Architectural Control Committee prior to installation. No lighting shall produce excessive glare or excessive illumination or unreasonably interfere with the use of any other portion of the Property. No flashing or blinking shall be permitted.

ARTICLE 8 RESTRICTIONS AND REQUIREMENTS ON USE

The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration and the Bylaws:

8.1 Residential Use.

(a) Lots and Living Units shall be used for residential purposes in accordance with, and subject to, the other provisions of this Declaration, the Bylaws and rules and regulations adopted pursuant to the documents.

(b) Except as provided in this Article 8.1(b), no trade, craft, business, profession, commercial or similar activities of any kind may be conducted on any Lot, Living Unit or in any other portion of the Planned Community without the consent of the Board of Directors in accordance with Article 8.1(c) except activities relating to the rental or sale of Lots. However, nothing in this Article 8.1 may be construed so as to prevent or prohibit:

(1) An Owner from maintaining his or her professional personal library; keeping his or her personal business or professional records or accounts; handling his or her personal business or professional telephone calls; or occasionally conferring with business or professional associates, clients, or customers, in the Owner's Living Unit.

(2) The right of an owner to construct or alter a Living Unit on any Lot in accordance with Article 10 below and to store construction materials and equipment on the Lot or Building Site in the normal course of construction.

(3) Subject to compliance with applicable local ordinances, using a Living Unit as a "home office," provided that clients, customers, and employees do not regularly visit the "home office" and use of the Living Unit as a "home office" does not unreasonably disturb other Owners.

(4) An Owner from using their property as a business in the manner described by ORS 93.270 unless this ORS provision is changed or otherwise modified to permit the Association from restricting such use, in which case Article 8.1 would apply in its entirety.

(c) An owner may submit a written request to the Board of Directors for approval to conduct commercial activities not otherwise permitted under Article 8.1. The Board, in its sole discretion, may permit an activity only if clients, customers, vendors and employees do not regularly visit the Planned Community or the type of activity will not unreasonably disturb other owners or occupants of Living Units.

8.2 **Yard Areas.** No items of any kind may be placed in front yard areas or other areas of Lots so as to be visible from public view, except decorative landscaping items. In order to preserve the attractive appearance of the Planned Community, the Board of Directors, pursuant to rules and regulations adopted by the Board, may regulate the nature of items which may be placed in front yard areas and others areas of Lots so as to be visible from public view.

8.3 **Parking of Automobiles and Other Vehicles.**

(a) Restrictions on Vehicle Parking.

(1) Except as otherwise provided in this Declaration or the rules and regulations, boats, trailers, large commercial vehicles, trucks, other than light trucks (vehicles with single rear axles and single rear wheels which are operable), mobile homes, motor homes, campers, golf carts or other recreational vehicles or equipment may not be allowed on any part of the Property or on streets, except within the confines of a garage or other enclosed structure, approved by the Architectural Review Committee under Article 10 below, and screened from public view.

(2) Large Commercial Vehicles are vehicles to which have been added platforms, racks, or other equipment for the purpose of carrying goods other than the personal effects of passengers or a vehicle that has a gross vehicle weight rating (GVWR) of 10,000 pounds or more. No portion of the vehicle or equipment may project beyond the enclosed garage or other structure.

(b) No automobile may be parked or stored in any part of a Lot, except a driveway, garage or other area intended for the parking of vehicles. As used in Article 8.3, "automobile" means a light truck or car, sports utility vehicle, van and other similar passenger vehicles.

(c) Vehicles and equipment described in Article 8.3(a)(1) may be temporarily parked in a street, driveway or other area intended for the parking of vehicles for the purpose of loading and unloading and other purposes as may be permitted in rules and regulations adopted under Article 8.3(e).

(d) No automobile may be parked or stored in the driveway of a Lot if any portion of the automobile blocks the sidewalk.

(e) The Board of Directors shall adopt rules to govern the enforcement of Article 8.3 which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of Article 8.3 and the cost of any storage.

8.4 **Vehicles in Disrepair: Inoperable and Unlicensed Vehicles.**

(a) An Owner may not permit any vehicle which is in an extreme state of disrepair, inoperable or with an expired license to be abandoned or to remain parked upon any part of the Planned Community unless the vehicle is within a garage. A vehicle is deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of other Lots.

(b) If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair or a vehicle that

is inoperable or with an expired license within a reasonable time (which period must be specified in rules adopted under Article 8.16 below) after the date and time on which written notice is securely placed on the vehicle or delivered to the responsible Owner by the Board of Directors, the Board may cause the vehicle to be removed from the Planned Community and assess the Owner the expense of the removal and any storage.

8.5 **Signs.** Unless permitted under rules adopted by the Board of Directors or approved by the Architectural Review Committee under Article 10 below, no signs may be erected or maintained on any Lot except the following:

(a) **Political Signs.** The temporary placement of political signs on any Lot by the Owner not exceeding five (5) square feet in size.

(b) **Security System Signs.** Security systems signs not exceeding one (1) square foot in area and mounted on a wall, fence, or structure.

(c) **For Sale Signs.** One (1) “for sale” sign, not exceeding five (5) square feet in area, placed on a Lot on behalf of the Owner of the Lot

(d) **Street Address Signage.** A sign on an address column identifying the street address of the Living Unit, consistent in appearance with identification signage of other Living Units in the vicinity and at a location and in accordance with specifications approved by the Architectural Review Committee.

8.6 **Offensive Activities.** No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of car parts and appliances, or activities may be permitted on any Lot, Living Unit or other portion of the Planned Community, nor may anything be done in or placed upon any Lot, Living Unit or Common Property which interferes with or jeopardizes the enjoyment of other Lots, Living Units or the Common Property or which is a source of annoyance to residents or detracts from the value of the Planned Community.

8.7 **Unlawful Activities.** No unlawful use may be made of the Planned Community or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof must be observed.

8.8 **Rubbish and Trash.** No part of the Planned Community may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste, may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All incinerators or other equipment for the disposal of material must be kept in an area screened from public view. All incinerators, containers or other equipment for the storage or disposal of material must be kept in a clean and sanitary conditions and all waste and garbage must be promptly and periodically removed.

8.9 **Increase in Insurance Cost.** Nothing may be done or kept within any Lot or other part of the Planned Community which will increase the cost of insurance to the Association or to other Owners. An Owner may not permit anything to be done or kept within his or her Lot or other part of the Planned Community which will result in cancellation of insurance on any Lot or Living Unit or any part of the Planned Community.

8.10 **Temporary Structures.**

(a) No outhouse of any kind, tent, shed or trailer or any other temporary structure, may be erected or

maintained on any Lot without prior approval of the Board. Backyard tents (for children) are allowed temporarily as long as they are dismantled in a timely manner and do not disrupt other property owners.

(b) No outhouse of any kind, tent, shed, trailer or other temporary structure or garage, barn or basement may be used for living purposes, either temporarily or permanently.

8.11 **Satellite Dishes.** Satellite dishes greater than one meter in diameter are not allowed. Subject to rules and regulations of the Federal Communications Commission, satellite dishes may be installed only on the rear or side elevations of a Living Unit, and may not be located on the front of a Living Unit. Any other location, or any dish in excess of one meter in diameter requires the prior approval of the Architectural Review Committee under Article 10 below.

8.12 **Animals.**

(a) No animals or livestock of any kind may be raised, bred, kept or permitted within any Lot or Living Unit, except dogs, cats, poultry, or other household pets provided they are not kept, bred, or maintained for any commercial purpose or in any unreasonable numbers. The Owner of any dog must keep the dog on a leash or keep it confined within the Lot. No dog, cat, poultry or other household pet may be allowed to run free in the Planned Community.

(b) Permitted animals may not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Planned Community. Any inconvenience, damage or unpleasantness caused by pets is the responsibility of the respective Owners and Owners shall be responsible for removal of wastes of their animals from other Lots or the Common Property.

(c) An Owner may be required to remove a pet upon receipt of a written notice from the Board of Directors given pursuant to a resolution adopted under Article 8.16 below relating to rules and regulations governing pets within the Planned Community and enforcement of such rules and regulations and provisions of Article 8.12.

8.13 **Noise Disturbance.**

(a) Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers and may not disturb other residents.

(b) No heat pump, heating, ventilating, or air conditioning equipment, or other equipment, the operation of which produces noise at a level higher than 80 decibels, is allowed on or in any Lot or Living Unit, except equipment used for initial construction of a Living Unit.

8.14 **Drainage Systems.**

(a) Owners may not allow excessive drainage onto an adjacent property and shall provide drainage as appropriate or required by local government authorities to a public or private storm drainage system, street or other location acceptable to the authorities.

(b) If a detrimental change in the natural pattern of drainage on the uphill lot has occurred, the uphill Property Owner is responsible for interception and piping or directing surface water to natural drainage areas or the storm drainage system.

8.15 **Leasing and Rental of Living Units.**

(a) Definitions. As used in this Article:

(1) “Renting or Leasing a Lot” or “To Rent or Lease a Lot” means to grant a right to use or occupy a Lot, the home or other dwelling unit on the Lot for a specific term or indefinite term whether or not in exchange for the payment of rent (money, property or other goods or services of value). “Renting or Leasing a Unit” or “To Rent or Lease a Unit” does not mean:

(A) Joint ownership of a Lot by means of joint tenancy, tenancy-in-common or other forms of co-ownership; or

(B) An agreement between the Owner and a roommate under which the Owner and another person or persons share joint use of the Lot.

(2) “Tenant” means a person who is granted the right to use or occupy a Lot as described in Article 8.15(a)(1) above.

(b) No Owner may lease or rent less than his or her entire Living Unit and no Owner may rent Owner’s Living Unit for transient or hotel purposes, or for a period of less than thirty (30) consecutive days. The Owner must give each tenant a copy of the Declaration, Bylaws, and Rules and Regulations of the Association. All leases or rentals shall be by written agreement, which shall provide that the terms of the lease or rental shall be subject in all respects to the provisions of the Declaration and Bylaws, and that any failure by the tenant to comply with the terms of such documents shall be a default under the agreement.

(c) Enforcement. If the Board of Directors finds that a tenant has violated any provision of the Declaration, these Bylaws or the rules and regulations, the Board may require the Owner to terminate such lease or rental agreement. The Board may adopt further rules and regulations to implement the provisions of this Article.

8.16 **Association Rules and Regulations.** In addition to the restrictions and requirements in this article, the Board of Directors from time to time may, by resolution, adopt, amend, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots, Living Units and other portions of the Planned Community as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Planned Community as provided in Article 7 of the Bylaws.

ARTICLE 9 MAINTENANCE, REPAIR, REPLACEMENT, CONDEMNATIONS, AND DAMAGE

9.1 **Maintenance. Repair and Replacement of Lots and Improvements.**

(a) **Improvements.** Each Owner shall maintain the Improvements located on the Owner’s Lot in a clean and attractive condition, in good repair and in such fashion as not to create a hazard of any kind. Maintenance includes, without limitation, painting and staining, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, surface water drainage, driveways, walks and other exterior improvements and class surfaces.

(b) **Landscaping.** Each Owner is responsible for maintenance and replacement of all landscaping on Owner’s Lot. Each Owner shall keep shrubs, trees, grass and plantings of every kind located on the

Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly materials.

(c) Specific Areas.

(1) Owners shall maintain in proper condition as described in Article 9.1(b), the area, if any, between the property lines of Owner's Lot and the nearest curb or improved street, including any sidewalks and street trees.

(2) Each Owner of a Lot bordering a local street shall maintain, prune, and irrigate the street trees or shrubs on the Owner's Lot or in the public right-of-way, in accordance with good horticultural practice. Trees, shrubs, and other landscaping shall not encroach on the public right of way including sidewalks and streets. Landscaping shall also be maintained to not obscure street and sidewalk lighting.

(3) The easement area of each Lot shown on the plat and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

(d) Failure to Maintain Improvements and Landscaping. If an Owner fails to maintain landscaping or Improvements located on Owner's Lot, the Board of Directors may cause the maintenance to be performed. Any cost incurred by the Association is an assessment collectable under Article 11 below.

(e) Damage to Lot. Damage to a Lot caused by fire, flood, storm, earthquake, riot, vandalism, or other causes is the responsibility of each Owner and must be repaired or restored within a reasonable period of time.

9.2 Maintenance, Repair and Replacement of Common Property. The Association is responsible for maintenance, repair and replacement of Common Area and any other Common Property and the Improvements located thereon. Unless otherwise provided in this Declaration, the cost of maintenance, repair and replacement of Common Property is a common expense as provided under Article 11 below.

9.3 Condemnation.

(a) The Board of Directors shall have the sole authority to negotiate with any public or private body or person having the power of eminent domain; and to sue or defend in any litigation, involving such bodies or persons with respect to the Common Property of the Planned Community.

(b) The Board shall assist any Owner whose property or a part thereof is the subject of any condemnation or eminent domain proceeding. However, nothing in this or any document or agreement relating to the Planned Community may be construed to give an Owner or any party priority over the rights of the first mortgagees of any Lots in the case of a distribution to the Owner of any condemnation awards for losses to or a taking of a Lot or the Common Property.

9.4 Damage or Destruction of Common Property.

(a) The Association shall be responsible for repairing, reconstructing or rebuilding all damage or destruction to the Common Property.

(b) If, due to the act or neglect of an Owner, or a member of the Owner's family or household pet or of a guest or other authorized occupant or visitor of the Owner, damage is caused to the Common Property or maintenance, repairs or replacements is required which would otherwise be a common

expense, then the Owner shall pay for the damage and such maintenance, repairs and replacements as may be determined by the Board of Directors. The amount is an assessment against the Lot and the Owner who caused or is responsible for the damage and is collectable as provided in Article 11 below.

ARTICLE 10 ARCHITECTURAL REVIEW COMMITTEE

In all cases which require Architectural Review Committee ("ARC") approval or consent pursuant to this Declaration, the provisions of this article apply.

10.1 Architectural Review.

(a) No Improvement may be commenced, erected, placed, altered (if the alteration would materially change the exterior appearance of any structure) or maintained on any Lot until an application and plans and specifications have been submitted to and approved in writing by the Architectural Review Committee as provided in this article.

(b) The plans and specifications submitted under Article 10.1 (a) must include, without limitation, site plans, building plans (including elevations), grading plans and landscaping plan. The plans must include proposed exterior lighting and exterior color or exterior material samples showing the nature, shape, heights, materials, colors and proposed location of the Improvements.

10.2 Membership, Appointment and Removal.

(a) The Architectural Review Committee shall consist of between one and five persons (who need not be Owners), as determined by the Board from time to time, appointed, removed, and replaced by the Board. The members of the Architectural Review Committee shall be compensated by the Association in such amount, if any, as may be determined from time to time by the Board.

(b) If the Board of Directors does not appoint an Architectural Review Committee or the ARC does not perform as required under this article, the Board shall act as the Architectural Review Committee.

10.3 Architectural Design Guidelines.

(a) Adoption. The procedure and specific requirements for review and approval of an application required under 10.1 above or a consent otherwise required under this Declaration shall be set forth in Architectural Design Guidelines adopted from time to time by a resolution of the Board of Directors at its sole discretion.

(b) Provisions. The Architectural Guidelines shall interpret and implement Article 11 and other provisions of this Declaration for architectural review and guidelines for architectural design of Living Units and other Improvements to achieve a high standard of quality of workmanship and materials and to assure harmony of external design with existing Improvements and location with respect to topography and finished grade elevations.

10.4 Duties. The Architectural Review Committee shall consider and act upon the proposals submitted pursuant to this article.

10.5 Majority Action. A majority of the members of the Architectural Review Committee have the power to act on behalf of the Architectural Review Committee. The Architectural Review Committee may

render its decisions only by written instrument setting forth the action taken by the members consenting thereto.

10.6 ARC Decision.

(a) The Architectural Review Committee shall use all reasonable efforts to render its approval or denial decision on an application for approval of the design of an Improvement or any other proposal submitted to it for approval or consent within thirty (30) business days after it has received a complete written application. A complete application must specify the approval or consent requested and be accompanied by all materials reasonably required or desired by the Architectural Review Committee to make an informed decision on the application.

(b) If the Architectural Review Committee fails to render its decision of approval (which may include conditions) or denial in writing within thirty (30) business days after Architectural Review Committee has received a complete application, the application is deemed approved and the related provisions of this Declaration are deemed fully satisfied.

(c) As used in this article, “business days” means weekdays when major banks are open for business.

10.7 ARC Discretion.

(a) The Architectural Review Committee may, at its sole discretion, withhold approval of any proposed Improvement if the Architectural Review Committee finds the proposed Improvement would be inappropriate for the particular Lot or incompatible with the Design Standards that the Architectural Review Committee intends for the Property.

(b) Consideration of siting, shape, size, color, design, height, solar access, impairment of the view from other Lots within the Property, effect on the enjoyment of other Lots, disturbance of existing terrain and vegetation and any other factors which the Architectural Review Committee reasonably believes to be relevant, may be taken into account by the Architectural Review Committee in determining whether or not to approve or condition its approval of any proposed Improvement.

10.8 **Nonwaiver. Precedent and Estoppel.** Approval or denial by the Architectural Review Committee to any matter proposed to it or within its jurisdiction may not be deemed to constitute a precedent, waiver or estoppel impairing its right to withhold or grant approval as to any similar matter thereafter proposed or submitted to it.

10.9 Appeal.

(a) Any Owner adversely impacted by action of the Architectural Review Committee may appeal the action to the Board of Directors.

(b) Appeals must be made in writing within ten (10) days of the Architectural Review Committee action and must contain 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 the appeal. The determination of the Board is final.

10.10 **Effective Period of Consent.** The Architectural Review Committee’s approval given under this article is automatically revoked one (1) year after issuance unless construction or other work relating to the proposal has commenced or the Owner has applied for and received an extension of time from the Architectural Review Committee.

10.11 Determination and Notice of Compliance.

(a) Inspection. The ARC or any person authorized by the ARC at any reasonable hour after reasonable notice, may enter and inspect from time to time, all work performed and determine whether the work is in substantial compliance with the approval granted.

(b) Notice of Noncompliance. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice of noncompliance must specify the particulars of noncompliance and require the owner to remedy the noncompliance by a specific date.

10.12 Noncompliance.

(a) Notice of Hearing. If after receipt of a notice of noncompliance pursuant to Article 10.11 above, the Owner fails to diligently commence to remedy the noncompliance in accordance with the provisions of the notice of noncompliance, at the expiration of the third (3rd) day from the date of the receipt of notice, the ARC or Board of Directors shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing must be set not less than seven (7) or more than thirty (30) days from receipt of the notice of noncompliance.

(b) Hearing. At the hearing, if the ARC or Board of Directors finds that there is no valid reason for the continuing noncompliance, the ARC or Board shall determine the estimated costs of correcting the noncompliance and may fine the Owner for the noncompliance. After the determination, the ARC or Board shall require the Owner to remedy or remove the noncompliance within a period the ARC or Board determines reasonable.

(c) Continued Noncompliance. If the Owner does not comply with the ARC or Board of Director decision within the specified period or within any extension of the period as the ARC or Board, at its discretion, may grant, the ARC or Board may either remove the noncomplying improvement or otherwise remedy the noncompliance. The cost of any action shall be assessed against the Owner either before or after any remedied action as provided in Article 11 below.

10.13 Liability; Limitations.

(a) Neither the Architectural Review Committee nor any member thereof is liable to anyone submitting plans to them for approval, or to any Owner, occupant, builder or other person by reason of mistake in judgment, negligence or denial or failure to approve plans.

(b) The scope of the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering or other similar considerations, or of any compliance with applicable building codes, rules, laws or ordinances. The Architectural Review Committee's review and approval or denial of plans and specifications submitted under this article may not be relied upon by the Owner or any other person as an indication of sufficiency, structural soundness or in any other way. The review is made solely to assure that the Improvements contemplated are aesthetically compatible with the existing and planned Living Units in Bethany View Estates.

10.14 Estoppel Certificate.

(a) Within fifteen (15) business days after written request is delivered to the ARC by an Owner, and

upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide the Owner with a certificate executed by the chairperson, or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that as of the date either:

(1) All improvements made or done upon or within the Lot by the Owner that are subject to the requirements of this article comply with the Declaration and the Bylaws; or

(2) The improvements do not comply, in which event the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of the noncompliance.

(b) The Owner, Owner's heirs, devisees, successors and assigns are entitled to rely on the certificate with respect to the matters set forth. The certificate is conclusive as between and among the ARC, the Association and all Owners and the persons deriving any interest through any of them.

10.15 **Fees.** Pursuant to a fee schedule included in Design Guidelines or a separate resolution adopted by the Board, the Architectural Review Committee may charge a reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers, landscape architects and other consultants to advise the ARC concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. The fee shall be collectible as assessments pursuant to Article 11 below.

ARTICLE 11 ASSESSMENTS

11.1 Types and Purpose of Assessments.

(a) **Types of Assessments.** All Owners are obligated to pay the following types of assessments imposed by the Board of Directors on behalf of the Association pursuant to this Declaration and the Bylaws:

(1) Association Common Expense Assessments described in Article 11.6 below.

(2) Individual Assessments described in Article 11.7 below.

(b) **Purpose of Assessments.** Assessments levied on behalf of the Association by the Board of Directors under this Declaration, the Bylaws or the Act shall be used to promote the recreation, health, safety and welfare of the Owners and occupants of the Planned Community and for the improvement, operation and maintenance of Common Property as provided in this article and for any other purpose required or permitted under this article.

11.2 Obligation for Assessments.

(a) **Personal Liability.** An owner is personally liable for all assessments imposed on the Owner or assessed against the Lot.

(b) **Joint and Several Obligation.** In addition to constituting a lien on the Lot as provided under Article 12 below and the Act, each assessment is the joint and several obligation of the Owner of the Lot to which the same is assessed.

(c) **Offsets Prohibited.**

(1) An Owner may not claim an offset against an assessment for failure of the Association to perform its obligations. An owner may not offset amounts owing or claimed to be owed by the Association to the owner.

(2) An owner by the owner's action may not claim exemption from Liability for contribution towards common expenses by waiver of owner's use or enjoyment of any Common Property or by abandonment by the Owner of the Owner's Lot.

(d) Voluntary Conveyances. Except as may be limited by a Statement for Prospective Purchasers described under Article 11.10(d) below, in a voluntary conveyance of a Lot, the grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Lot to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee.

(e) Liability When Lot Foreclosed: Deed in Lieu of Foreclosure. Unless otherwise provided by ORS 94.723 as it may be amended from time to time, when the purchaser of a Lot obtains title to the Lot as a result of foreclosure or deed in lieu of foreclosure of a first mortgage, the mortgagee and the subsequent purchaser are not liable for any assessments against the Lot which became due prior to the acquisition of title by the mortgagee or purchaser. The unpaid assessments are a common expense of all Lot Owners including the mortgagee or purchaser.

11.3 Budgets.

(a) Adoption of Budgets. The Board of Directors shall, from time to time and at least annually, estimate the common expenses determined under Article 11.5 below, expected to be incurred, take into account any expected revenue and any surplus available from the prior year's budget and prepare a budget for the Association (the "annual budget").

(b) Continuation of Prior Adopted Budget If the Board of Directors fails to adopt an annual budget, the last adopted budget continues in effect.

(c) Amended Budget. Subject to Article 11.4 below and Article 11.3(d), if all or any part of a budget adopted under Article 11.3(a) is or will become inadequate to meet common expenses incurred for any reason, the Board of Directors shall as soon as practicable determine the approximate amount of the inadequacy and adopt by resolution an amended budget, identifying the reason for the inadequacy.

(d) Special Budget. Subject to Article 11.4 below:

(1) If all or any part of a budget adopted under Article 11.3(a) is or will become inadequate to meet common expenses incurred for any reason, in lieu of adopting an amended budget under Article 11.3(c), the Board may adopt a special budget. The Board of Directors shall as soon as practicable determine the approximate amount of the inadequacy and adopt by resolution a special budget which includes the reason for the inadequacy.

(2) The Board of Directors shall adopt by resolution a special budget for common expenses to pay the cost of any construction, reconstruction, repair or replacement of any Improvement upon Common areas or for any other purpose deemed appropriate by the Board of Directors.

(e) Budget Summary. Within thirty (30) days after adopting the annual budget, an amended budget or special budget under Article 11.3, the Board of Directors shall cause a summary of the budget to be provided to all owners, and if requested, to the owner's mortgagee.

(f) Surplus Funds. If the sums estimated and budgeted, and being collected or already collected, at any time exceeds necessary funds, the Board of Directors may reduce the amount being assessed under the budget or apply existing funds (in excess of current needs and any reserves required under Article 11.8 below) against future Association Common Expense Assessments.

11.4 Determination of Common Expenses. Common expenses include, without limitation:

- (a) Expenses of administration of the Association and Planned Community.
- (b) Expenses of maintenance, repair, or replacement of Common Area and any other association Property and any other portions of the Planned Community required to be maintained by the Association pursuant to the Declaration or Bylaws.
- (c) Cost of insurance or bonds obtained in accordance with these Bylaws.
- (d) Reserve for major maintenance and replacements as set forth in Article 11.8 below.
- (e) Any deficit in common expenses for any prior period.
- (f) The cost of utilities for the Common Area and any other Common Property and other utilities that have a common meter or that are commonly billed.
- (g) Any other items properly chargeable as an expense of the Association.

11.5 Association Common Expense Assessments.

- (a) Annual Association Common Expense Assessment. At least annually, the Board of Directors shall by resolution levy an Annual Association Common Expense Assessment (“Annual Association Assessment” or “AAA”), based on the budget adopted under Article 11.3 above, against each Lot according to the allocation specified in Article 6.1 above (“Assessment Share”). The Assessment Share is payable as provided in Article 11.7 below.
- (b) Re-Computed Annual Association Assessment for Amended Budget. If the Board of Directors adopts an amended budget under Article 11.3(c) above, the Board shall by resolution levy a re-computed AAA (based on the amended budget) among the Owners according to the allocation specified in Article 6.1 above and re-compute the Assessment Share payable under Article 11.7 below.
- (c) Association Common Expense Assessments under Special Budget. If the Board of Directors adopts a special budget under Article 11.3(d) above, the Board shall by resolution levy a Special Budget Assessment (based on the special budget) among the Owners/Lots according to the allocations specified in Article 6.1 above. Special Budget Assessments are payable as provided below.
- (d) Notice of Association Common Expense Assessments. The Board of Directors shall cause notice of Association Common Expense Assessments to be given at least thirty (30) days before the assessments are payable under Article 11.7 below. The notice may accompany a copy of the budget summary required under Article 11.3(e) above.

11.6 Payment of Association Common Expense Assessments (Assessment Share).

- (a) Annual Assessments. Payment of the Annual Assessment Shares/Annual Association Common Expenses Assessments levied under Article 11.5(a) and 11.5(b) above is due within thirty (30) days of

billing. The Board may establish a different assessment schedule including a regular periodic payment.

(b) Special Budget Assessments.

- (1) Special Budget Assessments levied under Article 11.5(c) above for common expenses of a special budget are due and payable as prescribed in a resolution adopted by the Board of Directors.

11.7 Individual Assessments. The Board of Directors may levy Individual Assessments against, one (1) or more Lots and Owners as provided in Article 11.7

(a) Determination of Individual Assessments. Individual Assessments include:

- (1) Any Association Common Expense Assessment that the Board of Directors determines is the fault of the Owner and not paid by insurance.
- (2) Fines or other charges imposed pursuant to this Declaration, the Bylaws or the Act for violation of this Declaration, the Bylaws or any rules and regulations adopted pursuant thereto.
- (3) Amounts due to the Association from an Owner pursuant to other provisions of this Declaration, the Bylaws or the Act.
- (4) Improvements in infrastructure or services that the Board of Directors determines permitted businesses require for the safety or reasonable benefit of the Association.

(b) Allocation and Payment Unless otherwise provided in this Declaration Bylaws or a resolution adopted by the Board of Directors, Individual Assessments are:

- (1) Allocated equally against the Owners subject to the Individual Assessment.
- (2) Due thirty (30) days after the Board has given written notice of the assessment to the Owners subject to the Individual Assessment.

11.8 Reserve Account for Major Maintenance. Repair and Replacement.

(a) Establishment of the Reserve Account. The Association shall establish a reserve account for major maintenance and replacement of all items of the Common Area and other Common Property which will normally require replacement in more than three (3) and less than thirty (30) years, for exterior painting if the Common Area includes exterior painted surfaces, for other items, whether or not involving Common Property, if the Association has responsibility to maintain the items and for such other items as may be required by the Declaration or the Bylaws. The reserve account need not include those items:

- (1) That could reasonably be funded from assessments for operating expenses; or
- (2) For which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) The reserve account shall be funded by Association Common Expense Assessments as provided in Article 11.6 above.

(c) Determination of Reserve Account: Reserve Study.

(1) The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine reserve account requirements and may:

(A) Adjust the amount of payments as indicated by the study or update; and

(B) Provide for other reserve items that the Board of Directors, in its discretion, may deem appropriate.

(2) The reserve study shall include:

(A) Identification of all items for which reserves are to be established;

(B) The estimated remaining useful life of each item as of the date of the reserve study;

(C) An estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and

(D) A 30-year plan for the maintenance, repair and replacement of common property with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(3) The 30-year plan specified in Section 11.8(c)(2)(D) shall:

(A) Be appropriate for the size and complexity of the Common Areas and other Common Property.

(B) Address issues that include but are not limited to warranties and the useful life of the Common Areas and other Common Property.

(C) Include a maintenance manual (if applicable) defining how and when the maintenance should be performed.

(4) Within thirty (30) days after conducting the reserve study the Board of Directors shall, provide to every owner a written summary of the reserve study and of any revisions to the 30-year plan adopted by the Board as a result of the reserve study.

(d) Use of Reserve Account

(1) The reserve account may only be used for the purposes for which the reserves have been established and must be kept separate from other funds.

(2) The Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds.

(3) Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment within a reasonable time of any unpaid borrowed funds.

(4) The reserve account may be invested by the Board of Directors subject to normal prudent investment standards.

(e) Reduction, Increase, or Elimination of Account. In addition to the authority of the Board of Directors under Section 11.8(c):

- (1) By an affirmative vote of at least sixty-five percent (65%) of the Owners, the Association may elect to reduce or increase future Assessments for the reserve account; and
- (2) The Association may, on an annual basis by a unanimous vote, elect not to fund the reserve account.

(f) Reserve Fund Association Property. Assessments paid into the reserve account are the property of the Association and are not refundable to Owners. Owners may treat their outstanding share of the reserve account as a separate item in any agreement for the sale of their Lots.

11.9 General Operating Reserve Account.

(a) Establishment of Account. The Board of Directors may establish and maintain a general operating reserve account by allocation and payment periodically of an amount determined by the Board of Directors to be appropriate.

(b) Use of Funds. The account may be used for the purposes the Board of Directors determines appropriate, including, but not limited to:

- (1) Expenses which exceed budgeted amounts.
- (2) Deductibles under property damage insurance required under Article 9 of the Bylaws.
- (3) Contribution to the Major Maintenance, Repair and Replacement Reserve Account established in accordance with Article 11.8 above.

11.10 Budget Summary and Statement of Assessments.

(a) Statement of Assessments Payable. The Board of Directors shall advise each Owner in writing of the amount of assessments payable by the Owner in accordance with Article 11.6 above. The Board shall promptly provide any Owner who makes a request in writing with a written statement of the Owner's unpaid assessments.

(b) Budget Summary. Within thirty (30) days after adopting the annual budget, an amended budget or a special budget under Article 11.3 above, the Board of Directors shall provide a summary of the budget on which assessments are based to all owners in accordance with Article 11.3 (e) above.

(c) Statement of Assessment Account

(1) Subject to Article 11.10(c)(2), within ten (10) business days of receipt of a written request by an owner, Board of Directors shall provide a Statement of Assessment Account which shall contain the following information:

(A) The amount of assessment due from the owner and unpaid at the time the request was received, including:

- (i) Regular and special assessments;
- (ii) Fines and other charges;

- (iii) Accrued interest; and
- (iv) Late payment charges.

(B) The percentage rate at which interest accrues on assessments that are not paid when due.

(C) The percentage rate used to calculate the charges for late payments or the amount of a fixed charge for late payment.

(2) The Association is not required to comply with Article 11.10(c) if the Association is involved in litigation.

(d) Statement for Prospective Purchasers. Upon request of an Owner or Owner's agent, for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case is not liable for any unpaid assessments against the grantor not included in the written statements

(e) Fee for Providing Information. Pursuant to rules adopted under Article 8.16 above, the Association may charge a fee for providing the information required under Article 11.10(c) and Article 11.10(d).

11.11 Assessments Property of Association. All sums received on account of assessments, including assessments paid into the reserved account required under section 11.9 above, belong to and are the property of the Association for the purposes provided under this Declaration. The sums are not refundable to owners. Owners may treat their outstanding share of the reserve account as separate items in any agreement for the sale of their Lots.

ARTICLE 12 COMPLIANCE AND ENFORCEMENT

12.1 Compliance.

(a) Owners, Occupants, and Tenants. Each Owner and occupant (including tenants) of a Lot shall comply with the provisions of this Declaration, the Bylaws, rules and regulations adopted pursuant to the documents and the Act. Subject to Article 12.8 below, failure to comply therewith is grounds for an action or suit maintainable by the Association or an aggrieved Owner. The Owner is responsible for obtaining the compliance by an occupant of the Lot and is liable for any failure of compliance by the persons in the same manner and to the same extent as if the failure had been committed by the Owner.

(b) Guests and Other Invitees. Guests, 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, the Bylaws and rules and regulations restricting or regulating the Owner's use, improvement or enjoyment of the Owner's Lot and other areas within the Property. The Owner is responsible for obtaining the compliance and is liable for any failure of compliance by the persons in the same manner and to the same extent as if the failure had been committed by the Owner.

(c) Joint Owners. When two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of the persons to comply with this Declaration and the Bylaws and any rules and regulations adopted pursuant thereto is a joint and several responsibility and the act or consent of any one or more of the persons constitutes the act or consent of the entire ownership

interest. A disagreement among joint owners as to the manner in which any vote or right of consent held by them is to be exercised with respect to a pending matter is governed by Article 3.10 of the Bylaws.

12.2 **Violation of General Protective Covenants.** Subject to Article 12.8 below, violation of any provision of this Declaration, the Bylaws, or any rules or regulations of the Association or any decision of the Association made by the Board of Directors made pursuant to the documents or applicable provisions of the Act gives the Board of Directors, acting on behalf of the Association, the right, in addition to any other rights set forth in this article or in any other provision of this Declaration, the Bylaws or under law, to do, any or all of the following, after giving notice and an opportunity to be heard:

(a) Subject to Article 10 above, to enter the Lot which or as to which the 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 the provisions of this Declaration, the Bylaws or rules and regulations adopted thereunder, and the Board of Directors may not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings must be instituted before any items of construction may be altered or demolished.

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

(c) 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 in accordance with ORS 94.630(1)(n).

(d) To terminate the right to receive utility services paid for out of assessments or the right of access to and use of recreational and service facilities of the Planned Community (not to exceed sixty (60) days) until the correction of the violation has occurred as provided in ORS 94.630(1)(m).

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules and regulations adopted pursuant to the documents.

(f) Do any of the actions specified in this Article 12.2 in conjunction with each other.

12.3 **Default in Payment of Assessments: Enforcement of Lien.** If an assessment levied by the Association is not paid within thirty (30) days after its due date (which shall be established by resolution of the Board of Directors), the assessment is delinquent and is subject to interest, late payment charges and collection costs as may be provided in a resolution adopted by the Board of Directors pursuant to ORS 94.630(n) and 94.709(5) and set forth in Article 12.5 below. In addition, the Association may exercise any or all of the following remedies:

(a) Association Lien.

(1) Whenever the Association levies any assessment against a Lot, the Association shall have a lien upon the Lot for any unpaid assessments as provided in ORS 94.709. Recording of the Declaration constitutes record notice and perfection of the lien for assessments. No further recording of a claim of lien for assessments or notice of a claim of lien is required to perfect the Association's lien.

(2) At any time any assessment or installment thereof is delinquent, the Association, by and through the Board of Directors, or any management agent, may record a notice of lien in the Deed Records of Washington County, Oregon which shall be in the form and include the information

specified in ORS 94.709. The Association must record a notice of lien before any suit to foreclosure may proceed as provided in Article 12.3(b).

(b) Foreclosure of Lien. The Association, by and through the Board of Directors, or any management agent, may file a suit to foreclose the lien, notice of which was recorded under Article 12.3 (a) as provided in ORS 94.709.

(1) In any suit brought by the Association to foreclose a lien on a Lot because of unpaid assessments, the owner may be required to pay a reasonable rental for the use of the Lot during the pendency of the suit; and the plaintiff in the foreclosure suit is entitled to the appointment of a receiver to collect the rental.

(2) The Board of Directors, acting on behalf of the Association, has the power to purchase the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to (except for the election of a director), convey, or otherwise deal with the Lot.

(c) Suit or Action. Subject to Article 12.8 below, the Association may bring an action to recover a money judgment for unpaid assessments under this Declaration or the Bylaws without foreclosing or waiving the lien described in Article 12.3(a). Recovery on any such action, however, operates to satisfy the lien, or the portion thereof, for which recovery is made.

(d) Suspension of Voting Rights. The Board of Directors may suspend an owner's right to vote on Association matters.

(e) Other Remedies. The Association has any other remedy available to it by law or in equity.

12.4 Priority of Lien: Prior Mortgages. The priority of the lien of the Association against a Lot for assessments is governed by ORS 94.709.

12.5 Interest. Late Payment Charge and Collection Costs.

(a) If any assessment imposed or levied by the Association pursuant to the provisions of this Declaration, the Bylaws or the Act is not paid within thirty (30) days after its due date, the Owner is obligated to pay:

(1) Interest from the due date of the assessment, or such other date as may be specified by resolution of the Board, at the rate of twelve percent (12%) per annum or at such greater rate, not to exceed the maximum lawful rate, if any, as may be established by a resolution of the Board of Directors, from time to time, after a copy of any adopted resolution has been delivered to owners.

(2) A late charge for each assessment not paid when due as may be established by a resolution of the Board of Directors, not to exceed ten percent (10%) of the unpaid assessment, after a copy of the resolution has been delivered to owners.

(3) All expenses incurred by the Association in collecting unpaid assessments including, without limitation:

(A) Attorney fees (whether or not an action is brought against the Owner or whether or not a suit to foreclose the lien upon the Lot granted by the Act is instituted, and at trial or any appeal therefrom).

(B) If a notice of lien is recorded under Article 12.3(b) above, the costs associated with the preparation and recording of the notice of lien.

(b) To the extent collected, all expenses are an individual assessment against the Owner and Owner's Lot as provided under Article 11.10 above.

12.6 Costs and Attorney Fees. If the Association brings any suit or action to enforce this Declaration, the Bylaws or the Rules and Regulations, 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 the suit or action, including a foreclosure title report, and the prevailing party in the suit or action shall recover such amount as the court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

12.7 Nonexclusiveness and Accumulation of Remedies. An election by the Association to pursue any remedy provided for violation of this Declaration or the Bylaws does not prevent concurrent or subsequent exercise of any remedy permitted under this Declaration or the Bylaws. The remedies provided in this Declaration are not exclusive but are in addition to all other remedies, including actions for damages and suits for injunctions and specific performance available under applicable laws.

12.8 Disputes Between Association and Owners. Litigation and administrative proceedings in which the Association and an Owner have an adversarial relationship are subject to ORS 94.630(4).

12.9 Disputes Among Owners.

(a) Referral to Board of Directors. Any dispute among Owners concerning the provisions of this Declaration, the Bylaws or any rule or regulation may be referred in writing to the Board of Directors.

(b) Action by Board of Directors. The Board of Directors, in its sole discretion, has the option to hear the dispute or to decline to hear the dispute; The decision of the Board of Directors not to hear a dispute is effective either upon written notice to the Owners involved or if no notice is given by the Board, thirty (30) days after receipt by the Board of the written referral. If the Board of Directors chooses to hear the dispute, any decision of the Board is binding upon the parties.

12.10 Action by Owners. Subject to Section 12.8 above, an aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

ARTICLE 13 AMENDMENT AND DURATION

13.1 How Proposed. Amendments to the Declaration must be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights delivering the proposed amendment to the Board for presentation to the Owners. The proposed amendment must be reduced to writing and included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment.

13.2 Approval Required. Except as otherwise provided in Section 13.3 below or by other provisions of this Declaration or by the Act, this Declaration may be amended if the amendment is approved by Owners holding at least seventy-five percent (75%) of the voting rights of the Planned Community.

13.3 **Additional Approval Requirements.** Unless the Owners of the affected Lots, unanimously consent to the amendment, no amendment may:

- (a) Change the boundaries of any Lot or the uses to which any Lot is restricted under section 8.1 (a) above.
- (b) Change the method of determining liability for Common Expenses, method of determining right to common profit, or the method of determining voting rights of any Lot.

13.4 **Execution and Recordation.** An amendment is not effective until the amendment is certified by the president and secretary of the Association as being adopted in accordance with this Declaration and the provisions of the Act, is acknowledged and is recorded in the Deed Records of Washington County, Oregon.

13.5 **Duration.**

- (a) This Declaration shall run perpetually 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.
- (b) This Declaration may be terminated upon approval by the vote or written consent of not less than ninety percent (90%) of all Owners. Any termination becomes effective only if a certificate signed by the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required in Article 13.5, is duly acknowledged and recorded in the Deed Records of Washington County, Oregon.

ARTICLE 14 MORTGAGEES

14.1 **Mortgagee Rights.** Each mortgagee has the following rights:

- (a) **Right to Examine Books and Records.** All mortgagees have the right to examine the books and records of the Association or the Planned Community property upon reasonable notice and at reasonable times in accordance with rules adopted by the Board of Directors under Article 11.6 of the Bylaws.
- (b) **Right to Annual Reports.** All mortgagees, upon request, are entitled to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.
- (c) **Right to Receive Written Notice of Meetings.** The Association shall give all mortgagees, upon written request, written notice of all meetings of the Association, and the mortgagees is permitted to designate a representative to attend all meetings.
- (d) **Notice in Event of Loss or a Taking.** Upon written request, the Association shall give all mortgagees written notice of any loss to, or taking of, the Common Property, or a Lot in the Planned Community if the loss or taking exceeds \$10,000 with respect to the Common Property, or \$1,000 with respect to any Lot.

14.2 **Request for Approval of Mortgagees.** Any mortgagee that receives a written request to approve amendments to the Declaration or Bylaws, or any other action to be taken by the Board of Directors, the

Association or Owners, is considered to have given the approval unless the mortgagee delivers or posts a negative response within thirty (30) days after receipt of the request.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 Severability; Number; Construction; Captions.

(a) Severability. The invalidity of any part of this Declaration does not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration.

(b) Number and Construction. As used in this Declaration, the singular includes the plural and the plural the singular and “may not” and “shall not” are equivalent expressions of an absolute prohibition. The masculine and neuter each include the masculine, feminine and neuter, as the context requires.

(c) Captions. All captions used in this Declaration are intended solely for convenience of reference and in no way limit any of the provisions of this Declaration.

15.2 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in this Declaration, the Bylaws or rules and regulations may be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same may not be deemed to constitute precedent or estoppel impairing the right of the Association or Owner as to any similar matter.

The President and Secretary of the Association hereby certify that the Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Bethany View Estates was adopted in accordance with the Declaration of Bethany View Estates, the Declaration of Bethany View Estates Phase 2, and the Declaration of Bethany View Estates Phase 3 recorded as indicated above, and in accordance with ORS 94.590 with the Owners of Lots approving this Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Bethany View Estates representing more than 75% of Owners of said Lots in Bethany View Estates.

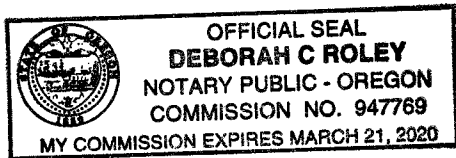
DATED EFFECTIVE August 14, 2019

Bethany View Estates Owners' Association

Philip R. Tavernier
By: Philip Tavernier, President

STATE OF OREGON)
County of Washington) ss.

This instrument was acknowledged before me on the 20th day of August 2019, by Philip Tavernier, President of Bethany View Estates Owners' Association, on behalf of said Association.



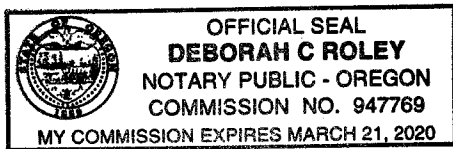
Deborah C. Rooley
Notary Public for Oregon
My Commission Expires: March 21 2020

Bethany View Estates Owners' Association

Mark L. Beuhler
By: Mark Beuhler, Secretary

STATE OF OREGON)
County of Washington) ss.

This instrument was acknowledged before me on the 20th day of August 2019, by Mark Beuhler, Secretary of Bethany View Estates Owners' Association, on behalf of said Association.



Deborah C. Rooley
Notary Public for Oregon
My Commission Expires: March 21 2020