

FINAL Footnoted

**PROPOSED
2019 AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR WEST HILL ESTATES**

Note to owners:

To the extent there are any typos, formatting or style errors, the Board may authorize such corrections after the vote and before recording. No substantive changes will be made after the vote.

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FINAL

**2019 AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR WEST HILL ESTATES²**

This 2019 Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for West Hill Estates (“**Declaration**”) is made as of the date below, by West Hill Estates Homeowners Association, an Oregon nonprofit corporation (“**Association**”).

RECITALS³

- A. West Hill Estates is a Planned Community, located in Polk County, Oregon. West Hill Estates consists of ten phases of development, governed by five separate declarations of covenants, conditions and restrictions as set forth below. West Hill Estates was created and is governed by the following documents, recorded in the records of Polk County, Oregon:
1. The *Covenants, Conditions and Restrictions for West Hill Estates Subdivision, Phase I*, recorded on September 12, 1991 in Book 245, Page 1471, as supplemented by the *Covenants, Conditions and Restrictions for West Hill Estates Phase 2*, recorded March 9, 1993 in Book 265, Page 0446 (“**Phase 1-2 Declaration**”).
 2. The *Covenants, Conditions and Restrictions for West Hill Estates Subdivision, Phase 3*, recorded November 5, 1993 in Book 276, Page 1016 (“**Phase 3 Declaration**”).
 3. The *Covenants, Conditions and Restrictions for West Hill Estates Subdivision, Phases 4 & 5*, recorded on November 16, 1994 in Book 296, Page 0170, as supplemented by the *Covenants, Conditions and Restrictions for West Hill Estates Phase 6*, recorded June 17, 1996 in Book 319, Page 0404 (“**Phase 4-6 Declaration**”).
 4. The *Covenants, Conditions and Restrictions for West Hill Estates Subdivision, Phases 7, 8 & 9*, recorded June 27, 1997 in Book 337, Page 0242 (“**Phase 7-8 Declaration**”) (The Phase 9-10 Declaration below applies to Phase 9 by the *Agreement that Certain Covenants, Conditions and Restrictions Do Not Apply to West Hill Estates Subdivision, Phases 9 & 10*, recorded December 5, 2000 as document no. 200013102).
 5. The *Covenants, Conditions and Restrictions for West Hill Estates Subdivision*,

² This footnoted version of the draft Amended and Restated Declaration highlights important differences from the original Declarations and amendments that currently govern Phases 1-10 of West Hill Estates. In these footnotes, I refer to the declarations listed in Recital A collectively as the “Original Declarations.” Where language replaces the language of the Original Declarations, I have noted a cross reference if you would like to compare the language. Note that the numbering of the Phase 9-10 Declaration is different from the other declarations.

³ These recitals outline the various Declarations and amendments that have been adopted over the years. These recitals are provided in order to inform the reader why the documents are being amended and restated and to explain clearly which documents are being amended.

Phases 9 & 10, recorded December 21, 2000 as document no. 200013683 (“**Phase 9-10 Declaration**”).

6. *Bylaws of West Hill Estates Homeowners’ Association*, recorded November 16, 2004 as document number 2004-018380 in the records of Polk County, Oregon (“**Initial Bylaws**”).
7. The Plats of West Hill Estates Phases 1-10 as shown in the attached Exhibit A.

B. The documents under Recital A above were amended by the following documents recorded in the records of Polk County, Oregon:

1. The Phase 1-2 Declaration was amended by the *Amendment to Declarations of Covenants, Conditions and Restrictions for West Hill Estates Subdivision (Applicable to Phases 1 & 2)*, recorded August 6, 2013 as document no 2013-008573.
2. The Phase 3 Declaration, Phase 4, 5 & 6 Declaration, the Phase 7-8 Declaration and Phase 9-10 Declaration was amended by the *Amendment to Declarations of Covenants, Conditions and Restrictions for West Hill Estates Subdivision (Applicable to Phases 3, 4, 5, 6, 7, 8, 9, 10)*, recorded June 10 ,2013 as document no. 2013-006268.
3. The Phase 4-6 Declaration was amended by the *Amendment to Declarations of Covenants, Conditions and Restrictions for West Hill Estates Subdivision (Applicable to Phases 4, 5, 6)*, recorded July 22, 2014 as document no. 2014-005941.
4. The Phase 1-2 Declaration was amended by the *Amendment to Declarations of Covenants, Conditions and Restrictions for West Hill Estates Subdivision – 2017 Amendment to Phase 1-2 Declaration*, recorded on September 26, 2017 as document no. 2017-011535.
5. The Phase 3 Declaration was amended by the *Amendment to Declarations of Covenants, Conditions and Restrictions for West Hill Estates Subdivision – 2017 Amendment to Phase 3 Declaration*, recorded on September 26, 2017 as document no. 2017-011536.
6. The Phase 4-6 Declaration was amended by the *Amendment to Declarations of Covenants, Conditions and Restrictions for West Hill Estates Subdivision – 2017 Amendment to Phase 4-6 Declaration*, recorded on September 26, 2017 as document no. 2017-011537.
7. The Phase 7-8 Declaration was amended by the *Amendment to Declarations of Covenants, Conditions and Restrictions for West Hill Estates Subdivision – 2017 Amendment to Phase 7-8 Declaration*, recorded on September 26, 2017 as document no. 2017-011538.

8. The Phase 9-10 Declaration was amended by the *Amendment to Declarations of Covenants, Conditions and Restrictions for West Hill Estates Subdivision – 2017 Amendment to Phase 9-10 Declaration*, recorded on September 26, 2017 as document no. 2017-011539.
- C. The Association is the West Hill Estates Homeowners Association, an Oregon nonprofit corporation, formed pursuant to the governing documents specified under Recital A above and Articles of Incorporation filed February 22, 1995, in the office of the Oregon Secretary of State, Corporation Division.
- D. Under ORS 94.590 and Section 20 of the Phase 1-2 Declaration, Phase 3 Declaration, Phase 4-6 Declaration, Phase 7-8 Declaration and Section 19 of the Phase 9-10 Declaration the Association and the owners may adopt amendments to the declarations with the approval of two-thirds of all members of the Association.
- E. By vote of the entire membership of the Association, the owners and the Association wish to fully amend and restate the Phase 1-2 Declaration, Phase 3 Declaration, Phase 4-6 Declaration, Phase 7-8 Declaration and the Phase 9-10 Declaration, along with any amendments or supplements thereto. It is intended that this Declaration supersede any prior declarations, amendments or supplements applicable to West Hill Estates.
- F. The President and Secretary of the Association by signing below certify that this Declaration was adopted by the membership pursuant to ORS 94.590 and the governing documents and that the requisite approval from the membership was obtained.

DECLARATION

NOW, THEREFORE, the Association hereby amends and restates in its entirety the Phase 1-2 Declaration, Phase 3 Declaration, Phase 4-6 Declaration, Phase 7-8 Declaration and the Phase 9-10 Declaration, along with any amendments or supplements thereto, including amendments and supplements set forth in the Recitals above.

ARTICLE 1 DEFINITIONS⁴

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

- 1.1 “**Act**” means the Oregon Planned Community Act, ORS 94.550 to 94.783, as it may be amended from time to time.

⁴ Article 1 contains a list of defined terms used throughout the Declaration and Bylaws. These are defined terms also found in the Oregon Planned Community Act, which governs planned communities like West Hill Estates. The Original Declarations contained definitions throughout the documents, but those definitions were not organized in a single article. We have attempted to place all the defined terms here in Article 1 for easy reference and for consistency throughout both the Declaration and Bylaws. Most of the defined terms below are new. I have made notes below where appropriate to explain the reason for the addition.

- 1.2 **“Architectural Control Committee” or “ACC”** means the committee constituted and acting under Article 8 below.
- 1.3 **“Architectural Standards and Guidelines”** means written guidelines adopted by the ACC.
- 1.4 **“Articles of Incorporation”** means the Articles of Incorporation of the Association as they may be amended or restated from time to time.
- 1.5 **“Assessment”** means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the provisions of this Declaration, the Bylaws or the Act, including Association Common Expense Assessments and Individual Assessments as provided in Article 10 below.
- 1.6 **“Association”** means West Hill Estates Homeowners Association, an Oregon nonprofit, and its successors and assigns.
- 1.7 **“Annual Assessment”** means an assessment imposed by the Association under Section 10.5 below.
- 1.8 **“Board of Directors” or the “Board”** means the board of directors of the Association elected as provided in the Bylaws.
- 1.9 **“Bylaws”** means the 2019 Amended and Restated Bylaws of West Hill Estates Homeowners Association recorded concurrently with this Declaration, as they may be amended from time to time.
- 1.10 **“Common Expense”** means expenditures made by or financial liabilities incurred by the Association, including expenses specified in Section 10.4 below.⁵
- 1.11 **“Common Maintenance Area”** means the area land for which the Association is responsible for maintenance under Section 9.1 below.
- 1.12 **“Common Property”** means any real property or interest in real property, including any improvements located thereon, that is owned or leased or later annexed by the Association, but Common Property does not include any individual Lots later owned by the Association.⁶

⁵ The term Common Expense is a new definition which was not stated in the Original Declarations.

⁶ The Original Declarations used the term “Common Areas.” “Common Property” refers to the same property and is used in the Planned Community Act. I added an exception for individual lots owned by the Association. The only way this would likely happen is in a foreclosure action where the Association becomes the owner. In order to sell a lot in that situation, we don’t want that lot subject to the same restrictions as Common Property would be, such as restrictions on sale.

- 1.13 **“Declaration”** means this 2019 Amended and Restated Declaration of Covenants, Conditions and Restrictions for West Hill Estates, as it may be amended from time to time as provided under this Declaration.
- 1.14 **“Dwelling”** means a building or portion of a building located on a Lot and designated for separate occupancy as a residence, together with any attached deck.
- 1.15 **“Improvement”** means every structure or improvement of any kind, including, without limitation, landscaping, and any Dwelling, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property. “Improvement” does not mean any exterior antenna or satellite dish authorized in accordance with Section 7.8 below.
- 1.16 **“Individual Assessment”** means an assessment imposed by the Association under Section 10.7 below.⁷
- 1.17 **“Lot”** means a numerically designated and platted lot on the Plat (including the Dwelling located thereon) but does not include any Common Property.
- 1.18 **“Majority” or “Majority of Owners”** means more than fifty percent (50%) of the voting rights allocated to the Lots under Section 5.3 below.⁸
- 1.19 **“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.
- 1.20 **“Oregon Nonprofit Corporation Act”** means ORS Chapter 65.
- 1.21 **“Owner”** means the person or persons owning any Lot (including the holder of a vendee’s interest under a land sale contract, unless otherwise stated in the 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, unless otherwise stated in the contract).
- 1.22 **“Percent of Owners” or “Percentage of Owners”** means the percent of the voting rights allocated under Section 5.3 below.
- 1.23 **“Planned Community,” “Property,” “Properties” or “Subdivision”** mean the property described on the attached Exhibit A and on the Plat.⁹

⁷ The term “Individual Assessment” is a new term that covers fines and other charges levied against an individual lot owner as provided in this Declaration.

⁸ The term “Majority” is new and is intended to avoid misunderstandings about what voting threshold is generally required at owners’ meetings to take action.

⁹ The Original Declarations used the term “subdivision” but it was not clear what that meant. Here, all the terms in Section 1.22 mean the properties on Exhibit A which are subject to the Declaration.

1.24 **“Plat”** means the following plats recorded in the Plat Records of Polk County, Oregon:

- (a) *West Hill Estates Phase 1*, recorded on August 28, 1991 in Volume 9, Page 27;
- (b) *West Hill Estates Phase 2*, recorded on November 25, 1992 in Volume 009, Page 0038;
- (c) *West Hill Estates Phase 3*, recorded on November 5, 1993 in Volume 004, 0048;
- (d) *West Hill Estates Phase 4*, recorded on October 27, 1994 in Volume 010, Page 0017;
- (e) *West Hill Estates Phase 5*, recorded on December 6, 1994 in Volume 010, Page 0018;
- (f) *West Hill Estates Phase 6*, recorded on July 16, 1996 in Volume 010, Page 043;
- (g) *West Hill Estates Phase 7*, recorded on May 9, 1997 in Volume 011, Page 0007;
- (h) *West Hill Estates Phase 8*, recorded on December 23, 1998 in Volume 011, Page 0035;
- (i) *West Hill Estates Phase 9*, recorded on January 2, 2001 in Volume 012, Page 0005;
- (j) *West Hill Estates Phase 10*, recorded on October 2, 2001 in Volume 12, Page 16.

Additionally, the term “Plat” shall include any recorded plat that is annexed into West Hill Estates according to the procedures established in this Declaration.¹⁰

1.25 **“Rules and Regulations”** means those policies, procedures, rules and regulations adopted by the Board of Directors or Owners pursuant to the authority granted in this Declaration, the Bylaws or the Act.

1.26 **“Voting Rights”** means the portion of the votes allocated to a Lot under Section 5.3 below.

1.27 **“West Hill Estates”** means the West Hill Estates Planned Community described in the attached Exhibit A.

1.28 **Additional Definitions.**

- (a) **Incorporation by Reference.** Except as otherwise provided in this Declaration, unless the context clearly requires otherwise, terms used in this Declaration, whether or not capitalized, that are defined in ORS 94.550 have the meanings set forth in ORS 94.550.

¹⁰ We included a list of all the subdivision plats subject to the Declaration so that all owners know what property is subject.

- (b) **Other Definitions.** Terms that 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 provisions of this Declaration.

ARTICLE 2
PROPERTY SUBJECT TO DECLARATION;
DESCRIPTION AND CLASSIFICATION
OF PLANNED COMMUNITY¹¹

- 2.1 **The Property.** The Association hereby declares that all of the property described in attached Exhibit A shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions, restrictions and charges, described in this Declaration run with the Property and are binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and inure to the benefit of the Association and each Owner.¹²
- 2.2 **Land Classifications.** The Planned Community currently consists of Lots shown on the Plat..
- 2.3 **Classification of Planned Community; Application of Act.** The Property is a Class I Planned Community formed before January 11, 2002 that was not created under the Planned Community Act. The Property is subject to the provisions of the Act only to the extent provided in ORS 94.572.

ARTICLE 3
PROPERTY RIGHTS IN LOTS

- 3.1 **Use and Occupancy.** Except as otherwise expressly provided in this Declaration or the Bylaws, 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 7 below and all other provisions of this Declaration and the Bylaws for the mutual benefit of all Owners.
- 3.2 **Restriction on Lot Division and Rezoning.** Subject to Section 3.3 below, Owners may not subdivide, partition or otherwise divide or change the property line of any Lot. No Lot may be rezoned without the written consent of the Board of Directors.¹³
- 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 the City of Salem and Polk County, Oregon, in accordance with any applicable 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

¹¹ The provisions in Article 2 are required to be included by the Planned Community Act.

¹² See Original Declarations, Section 2. Substantively this language is the same as the original.

¹³ Compare Original Declarations, Section 10. We changed this language to allow for Lot Line Adjustments, and to give the Board the authority to approve changes to zoning.

Community must be reallocated among all remaining Lots in accordance with Sections 10.3 below.

3.4 **Easements.**¹⁴ 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 Owners and the Association:

- (a) **Orchard Heights Road.** The Association retains an easement over all Lots which abut Orchard Heights Road NW for the purpose of maintaining landscaping, entrance monuments, and the walls along the property line adjacent to the road. The Association may affix and maintain signs and markers to the surface of the walls which face the road.
- (b) **Utilities, Drainage Facilities and Other Easements.** Easements for the installation and maintenance of utilities, drainage facilities, recreation facilities, and other facilities are reserved as shown on the Plat of the subdivision. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the purpose of the easement or obstruct the flow of waters in any drainage channel or pipeline. The easement areas under this Section of each lot and all improvements in them shall be maintained continuously by the owner of the lot except for those improvements for which a public authority, utility company, or the Association may be responsible.

ARTICLE 4 COMMON PROPERTY AND ANNEXATION

4.1 **Common Property.** There is no Common Property owned by the Association within the West Hill Estates Phases 1-10. However, should any property be annexed into the West Hill Estates planned community and thereby be subject to the Association, the Declaration of Annexation shall specify the ownership and maintenance responsibilities of the Association or any owners with respect to any real property that is intended to be common property as defined by the Act.

4.2 **Annexation.**

- (a) **Annexation by Association.** The Association may annex additional lots to be subject to the Association by approval of two thirds of owners present at a meeting in person or by proxy. However, the Association shall have no obligation of any kind to annex any additional land to West Hill Estates.
- (b) **Eligible Property.** There is no limitation on the number of Lots, which the Association may annex to the Property, or the right of the Association to annex

¹⁴ Compare Original Declarations, Section 6. This language largely remains unchanged. However, we removed the language in Original Declarations, Section 7 which discussed the developer's right to build recreational facilities on the land east of Phase 1. That apparently has not happened and so that language is obsolete.

common property, except as may be established by applicable ordinances, agreements, or land use approvals.

- (c) **Consent or Joinder Not Required.** No consent or joinder of any other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.
- (d) **Declaration of Annexation.** Annexation shall be evidenced by a written Declaration of Annexation executed by the President, Secretary, and the owners of any property to be annexed, which shall set forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration with respect to any annexed property may:
 - (1) establish such new land classifications and types of Lots and such limitations, uses, restrictions, covenants and conditions with respect thereto as the parties may deem to be appropriate for the development of the annexed property;
 - (2) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect thereto as the parties may deem to be appropriate for the development of such annexed property; and/or
 - (3) contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.
- (e) **Establishment of Lot Types.** Without limitation of the meaning of the foregoing provisions of this Section, in any Declaration of Annexation the Association may, but shall not be obligated to, establish different types of Lots and have particular rights and obligations pertain to different types of Lots, establish easements particular to different Lots, establish assessments that pertain only to certain types of Lots, establish maintenance obligations of the Association or of Owners that vary in accordance with different types of Lots, establish insurance and casualty provisions that relate to certain types of Lots and not others, and establish limited common property that benefit particular Lots to the exclusions of other Lots and provisions particular to such limited common property.
- (f) **Voting Rights and Allocation of Assessments.** Upon annexation, additional Lots so annexed shall be entitled to voting rights and shall be responsible for payment of assessments as required for that fiscal year. At the beginning of the next fiscal year, assessments for the general common property shall be apportioned equally based upon the total number of Lots following such annexation.
- (g) **No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of the Association or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto. The Association is under no obligation to build Homes on any or all of the Lots contained in the original Plat.

**ARTICLE 5
GOVERNANCE OF THE PLANNED COMMUNITY**

The administration, management and operation of West Hill Estates shall be by the Association as provided in this article, the Articles of Incorporation and the Bylaws.

5.1 Association Organization.

- (a) **Incorporation.** The Association is organized as a nonprofit corporation under the Oregon Nonprofit Corporation Act. The name of the association is “West Hill Estates Homeowners Association.”
- (b) **General 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 powers and duties, together with such additional powers and duties afforded by this Declaration, the Bylaws and the Oregon Nonprofit Corporation Act.
- (c) **Bylaws.** The 2019 Amended and Restated Bylaws of West Hill Estates Homeowners Association, being recorded in the Records of Polk County, Oregon, govern the operation of the Association and West Hill Estates.
- (d) **Board of Directors.** The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.

5.2 Automatic Membership. Each Owner is automatically a member of the Association. The rights, obligations and other entitlements granted to or imposed upon an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of the ownership. However, termination of ownership does not discharge an Owner from obligations incurred prior to termination.

5.3 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 that 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 or removal of directors. The method of voting is as specified in the Bylaws.

**ARTICLE 6
ARCHITECTURAL AND LANDSCAPING RESTRICTIONS**

6.1 Dwellings and Improvements on Lots.

- (a) **Single Family Dwelling.** Subject to Subsection (c) of this section, no building may be erected, altered, placed or permitted to remain on any Lot in West Hill Estates

other than one detached single-family Dwelling. No duplexes or other multiple unit structures shall be built within the subdivision.

- (b) **Size of Structures.**¹⁵ No Dwelling shall be erected or placed upon any Lot which has an area of less than 1,500 square feet unless otherwise approved by the Board of Directors. Garages, porches, overhangs, outside steps, eaves and basements or cellar areas (including daylight basement areas) shall not be included in the calculation of square footage. No dwelling house shall be commenced, erected or completed which occupies fewer square feet of livable floor area than is specified in the following table:

One Story:	A minimum of 1,500 square feet, plus a two-car garage.
Two Stories:	A minimum of 1,800 square feet with no less than 1,200 square feet on the ground floor, plus a two-car garage.

For purposes of this Section, the term “Livable Floor Area” means all the space in all interior portions of the home, excluding garages, crawl spaces, and unfinished attics. A basement or garage, separate or in combination, does not constitute a “story.”

- (c) **City of Salem.** The height restrictions imposed under this subsection are defined in the City of Salem Ordinances.
- (d) **Inadvertent Violations.** The Board of Directors, upon application by an owner, may in its discretion waive any violation of Subsection (a) or (b) of this section it finds to have been inadvertent, provided the violation would not constitute violation of City of Salem ordinances for which no variance has been granted.

6.2 Location of Improvements.

- (a) **Setbacks.** No building shall be commenced, erected or completed of which any portion, other than the normal eaves or overhangs, is nearer to the property line on which it most closely abuts, than is specified in the following table:

Front Setback:	Twenty (20) feet
Side Setback:	Seven (7) feet
Rear Setback for Sheds:	Five (5) feet

¹⁵ Compare Original Declaration, Section 5. This language is taken directly from Section 5 and is unchanged. Section 15 of the Original Declaration contained

6.3 Building Materials.¹⁶

- (a) **Building and Roofing Materials.** All building materials to be incorporated into and visible as a part of the external structure of any building or other structure in the subdivision may be regulated by the Architectural Control Committee. In particular, all roofing material for any building or structure shall be of wood (shake or shingle), tile or 40-year minimum architectural composition roofing unless otherwise approved in writing by the Architectural Control Committee.
- (b) **Siding Materials.** All siding materials must be approved by the Architectural Control Committee as provided in Article 8 below. Acceptable materials shall be natural wood, fiber cement board, brick, and stone. No T1-11 or other vertical plywood type siding may be applied without express written approval. Other man-made lap siding materials may be used if approved in writing.

The following design requirements are to apply unless otherwise waived in writing by the Architectural Control Committee:

- (1) No metal clips, metal joints, or other easily visible fasteners may be used;
 - (2) The material must be nailed on no more than 16-inch centers;
 - (3) Twenty percent (20%) of the front of the home, excluding areas devoted to windows, entry doors, and garage doors, shall have a masonry finish. Masonry materials must be approved by the Architectural Control Committee.
- (c) **Stains and Paints.** Exterior finishes shall be paint, semi-transparent stain or solid stain in earth tone colors unless otherwise approved by the Architectural Control Committee.
 - (d) **Architectural Guidelines.** The Architectural Control Committee may, from time to time, provide written Architectural Standards and Guidelines to owners as provided in Article 8 concerning approved building materials and techniques. Architectural Standards and Guidelines may include a list of preapproved substitute materials for roofing and siding, together with the approved applications of those materials.
 - (e) **Existing Unapproved Materials.** To the extent that there are any completed dwellings with unapproved siding materials as of January 1, 2019, such dwellings shall not be required to remove and replace such materials. This section does not constitute a waiver or permission for any other lot to install unapproved materials of similar kind to those of any other home with unapproved materials. With the exception of the variance allowed in this Section, when an owner replaces

¹⁶ Compare Original Declarations, Section 8. This language remains unchanged.

unapproved materials on a dwelling, the owner shall be required to submit an application to the ACC and install materials that are approved under this Section.

6.4 **Landscape, Hedges and Fences.**¹⁷

- (a) **Fences and Hedges.** No fence shall be erected, placed or permitted to remain on any lot unless approved by the Architectural Control Committee. Fences shall not exceed four (4) feet in height in front yards. Front yards are defined as that portion of a lot lying between the front lot line and the wall of the primary structure = closest to the front lot line. Fences located elsewhere on lots shall not exceed six (6) feet in height. Subject to the approval of the Architectural Control Committee, fences shall be well constructed of suitable materials and shall not detract from the appearance of the adjacent structures and buildings. Hedges are defined as consisting of closely spaced plantings which delineate property boundaries and are designed to restrict access or screen a portion of a lot. Hedges must be of an evergreen species.
- (b) **Lighting.** No high output exterior lighting, including but not limited to mercury vapor and halide lights, shall be installed without prior approval of the Architectural Control Committee. Under no circumstances may lights be directed into the windows of any neighboring dwelling.
- (c) **Walks and Drives.** Not less than seventy-five (75) percent of all walks and drives on any lot must be constructed of exposed aggregate concrete unless other materials are approved in advance by the Architectural Control Committee.
- (d) **Shrubs and Bushes.** Shrubs or bushes (but not trees or hedges) planted within lots, must be pruned, topped, or otherwise limited to grow no higher than the ridge line of the roof of the house located on the lot. The Architectural Control Committee may grant exceptions to this provision based on uniform application of written criteria adopted by the Board.
- (e) **Tree Removal.** No tree over ten feet (10') tall shall be removed without the approval of the Architectural Control Committee. All Owners shall comply with the planting of street trees as required by the City of Salem. No trees under the jurisdiction of the City of Salem may be removed from any Lot except in accordance with ordinances of the City of Salem, Oregon, governing tree removal.

6.5 **Completion of Construction.**¹⁸

- (a) Construction of any improvement on any Lot, including painting and all exterior finish, must be completed within one year from the beginning of construction so as

¹⁷ Compare Original Declarations, Section 8, along with the 2017 Amendments to the Declaration (Doc. Nos. 2017-011535, 2017-011536, 2017-011537, 2017-011538, 2017-011539). The language here is identical to the language contained in the five 2017 Amendments, which removed the tree height restriction from all phases in West Hill Estates by approval of two-thirds of all homeowners.

¹⁸ Compare Original Declarations, Section 14. The completion deadline for construction remains at 1 year.

to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, illness, death, natural disaster or other unforeseeable hardship, the time period may be extended by a reasonable length of time upon written approval from the Architectural Control Committee.

- (b) The building area shall be kept reasonably clean and in a workmanlike order during the construction period. The Lot shall be kept in a neat and orderly condition, free of brush, vines, weeds and debris. Any grass shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

6.6 **Landscape Completion.**

- (a) The installation or re-installation of any front yard or side yard landscaping outside the confines of fencing must be completed within four (4) months from the date new home construction is complete, or the existing landscaping is removed or otherwise destroyed. The installation or re-installation of any other side yard and back yard landscaping must be completed within one year from the date the new home construction is complete, or the existing landscaping is removed or otherwise destroyed.
- (b) In the event of undue hardship due to weather conditions, illness, death, natural disaster or other unforeseeable hardship, the time period specified in Subsection (a) of this section may be extended for a reasonable length of time upon written approval by the Architectural Control Committee.

- 6.7 **Temporary Structures.** No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding located on a Lot may be used at any time as a residence either temporarily or permanently. However, with the approval of the Architectural Control Committee, a temporary structure may be maintained during a period of construction or substantial reconstruction of a Dwelling approved by the ACC under Article 8 below.

ARTICLE 7 RESTRICTIONS ON USE¹⁹

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

- 7.1 **Residential Purposes; Commercial Activities Prohibited.** Lots may only be used for single family residential purposes. No trade, craft, business, profession, commercial or similar activities of any kind may be conducted on any Lot or in any other portion of West Hill Estates without the approval of the Board of Directors.

- (a) **Home Office.** This section may not be construed so as to prevent or prohibit an Owner from using the dwelling located on the Lot as a “home office” provided

¹⁹ Article 7 contains some similar use restrictions from the original Declarations but also some new ones that are suggestions as they are common in many planned communities.

clients, customers and employees do not regularly visit the “home office.”²⁰ For purposes of this section, a “home office” includes maintaining a professional or personal library, keeping personal business or professional records or accounts, handling personal business or professional telephone calls or conferring with business or professional associates, clients or customers, in the dwelling, so long as such activity is not observable outside of the dwelling, does not significantly increase parking or vehicular traffic, or is in violation of applicable local government ordinances.

- (b) **Commercial Activities.** The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the Dwelling and that the activities would not be in violation of applicable local government ordinances.

7.2 **General Condition and Maintenance of Lots.** Each Owner shall maintain the Owner’s Lot, including all improvements, in a clean and attractive condition, in good repair and in such manner consistent with Section 9.2 below and so as not to create a fire hazard.

7.3 **Offensive Activities.** No noxious or offensive activity may be carried on upon any Lot, Common Maintenance Area or any Common Property, nor may anything be done or placed upon any Lot, Common Maintenance Area or Common Property that interferes with or jeopardizes any Owner’s use and enjoyment of Owner’s Lot, Common Maintenance Area or Common Property within West Hill Estates.

7.4 **Animals.**

- (a) No animals, livestock or poultry of any kind may be raised, bred or kept, or permitted within a Lot except a reasonable number of dogs or cats or other household pets provided they are not kept, bred or raised for any commercial purpose. The term “household pet” means a tame, domesticated animal that is traditionally kept in the home and may be further defined according to rules adopted and approved by the Board.
- (b) Household pets may not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within West Hill Estates. Any inconvenience, damage or unpleasantness caused by pets is the responsibility of the respective Owners. Owners are responsible for removal of wastes of their pets from other Lots, Common Maintenance Area or the Common Property.
- (c) No pets shall be permitted to roam the neighborhood unattended, and all dogs shall be kept on a leash while off of the owner’s property.

²⁰ Compare Original Declarations, Section 12. Here we included an exception for a “home office.” Otherwise, commercial activities are prohibited.

- (d) The keeping of dogs, cats or other household pets within West Hill Estates is subject to all applicable laws and local ordinances, including, without limitation, any law or ordinance relating to the leashing of animals.

7.5 Signs and Flagpoles.

- (a) **Signs.** Unless permitted under rules adopted by the Board of Directors or approved by the Architectural Control Committee under Article 8 below, no signs²¹ may be erected or maintained on any Lot including without limitation any Common Maintenance Area except the following:
 - (1) **Real Estate for Sale or Rent Signs.** One (1) real estate “For Sale” or “For Rent” sign may be temporarily displayed on any Lot on behalf of the Owner of the Lot.
 - (2) **Political Signs.** The temporary placement of a reasonable number of political signs may be placed on any Lot by the Owner in accordance with any rules adopted by the Board of Directors under Section 7.14 below.
 - (3) **Community Signs.** Signs placed by the Board of Directors for community functions or other purposes necessary to conduct Association business are deemed approved.
- (b) **Flagpoles.** Unless permitted under rules adopted by the Board of Directors or approved by the Architectural Control Committee under Article 8 below, no flagpoles may be installed on any Lot. The Board may allow the installation of flagpoles solely for the purpose of displaying the American Flag in accordance with the Freedom to Display the American Flag Act of 2005. No other flags, signs or displays may be used on flagpoles. The Board may adopt rules relating to the installation of flagpoles, which may include a requirement that flagpoles be removable whenever the flag is not displayed. In addition, the Board may adopt any reasonable restriction pertaining to the time, place, or manner of displaying the flag. Owners must exercise extreme care not to allow any flagpole equipment to create unreasonable noise.

7.6 Parking.

- (a) **Parking within the Property.** Except as provided in this subsection and subject to rules adopted by the Board of Directors, all boats, trailers, recreational vehicles, equipment, campers and the like must be parked off streets of the subdivision, and must be screened from public view, consistent with the other provisions herein, from the streets and adjoining lots.²²

²¹ Compare Original Declarations, Section 13(d).

²² Compare Original Declarations, Section 13. This language gives the Board control to make exceptions.

- (b) **Commercial Vehicles.** Except with prior written permission of the Board of Directors, no commercial vehicle, such as but not limited to log trucks, dump trucks, tractor trailer rigs, or any other vehicle except passenger automobiles (including pickups), shall be parked on any part of the planned community, including public streets, unless the vehicle is screened from public view. Law enforcement vehicles are exempt from this restriction. Nothing in this section is intended to prohibit or restrict the temporary daytime parking of a commercial vehicle at a residence where the owner or occupant is receiving residential services applied to his or her home or yard by or from a third-party business.
- (c) **Vehicles in Disrepair.** An Owner may not permit any vehicle that a reasonable person would consider to be in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on any Common Property or on any street within West Hill Estates.
- 7.7 **Rubbish and Trash.**²³ No Lot, Common Maintenance Area, or any Common Property, or any part of the Association easement along Orchard Heights Road NW may be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and screened from public view. Yard rakings and dirt and other material resulting from landscaping work may not be dumped onto streets, any Common Maintenance Area, any Common Property, or any Lot.
- 7.8 **Antennas and Service Facilities.** Subject to any regulations issued by the Federal Communications Commission (“FCC”) or any other applicable governmental authority, exterior antennas, satellite receiver and transmission dishes may not be placed on any Lot so as to be visible from another Lot, the street or any Common Property except in accordance with rules adopted by the Board of Directors under Section 7.14 below.²⁴
- 7.9 **Exterior Appliances.**²⁵ All heat pumps and condenser units or other utilities and devices commonly placed out of doors shall receive special consideration to provide visual screening and noise attenuation. Placement of all such devices shall be subject to Architectural Control Committee approval. Any passive solar systems may not reflect the sun or other lights onto other Lots.²⁶
- 7.10 **Clothes Lines and Clothing and Materials.** No clothes lines, clothes racks or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing may be located in West Hill Estates except within a Dwelling, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials may be allowed to hang from the windows or from any of the facades or any other part of a Dwelling unless in an area screened from public view.

²³ Compare Original Declarations, Section 13. The language remains the same.

²⁴ Compare Original Declarations, Section 13. This language needed to be updated in order to comply with new rules adopted by the FCC on satellite dishes.

²⁵ Compare Original Declarations, Section 13. The language remains the same.

²⁶ Compare Original Declarations, Section 13(a).

- 7.11 **Mailboxes and Newspaper Receptacles.**²⁷ All mailboxes and newspaper receptacles shall be of the standard design initially approved by the Architectural Control Committee. All replacements shall be of the same design. All mailboxes shall be in accordance with US Postal Service requirements.
- 7.12 **Unlawful Activities.** No unlawful use shall be made of West Hill Estates or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof must be observed.
- 7.13 **Leasing and Renting of Lots.** An Owner shall be entitled to rent or lease a Dwelling, subject to the following:
- (a) An Owner may not rent or lease less than the entire Dwelling on the Lot.
 - (b) A Lot may not be rented, leased or otherwise used for transient or hotel purposes.
 - (c) A Lot may not be rented or leased for a period of less than thirty (30) consecutive days.
 - (d) All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the Bylaws, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of the Declaration, the Bylaws or the rules and regulations, the Board may require the owner to terminate such lease or rental agreement.
 - (e) The owner shall provide the tenant with a copy of the Declaration, Bylaws, and any rules and regulations of the Association.
 - (f) The owner shall submit to the Board a copy of the lease agreement, or a portion thereof, to show that the lease agreement contains the language required under Subsection (d) above.
 - (g) Owners are responsible for the conduct of tenants, lessees, or other occupants of the Lot.
- 7.14 **Association Rules and Regulations.** In addition to the restrictions and requirements specified in this article and other provisions of this Declaration and the Bylaws, the Board of Directors from time to time may, by resolution, adopt, modify or revoke such rules and regulations consistent with the Declaration and Bylaws governing the conduct of persons and the operation and use of the Lots, Common Maintenance Area and Common Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and

²⁷ Compare Original Declarations, Section 16.

enjoyment of the Planned Community. The action is subject to the procedures prescribed in Article 9 of the Bylaws.

ARTICLE 8 ARCHITECTURAL REVIEW²⁸

8.1 Architectural Review.

- (a) No improvement may be commenced, erected, placed, maintained or altered (if the maintenance or alteration would materially change the exterior appearance of any Dwelling or other Improvement for which approval is required under this article) on any Lot until an application has been submitted to and approved in writing by the Architectural Control Committee as provided in this article.
- (b) The application required under Subsection (a) of this section shall be on a form adopted under Section 8.3 below and include:
 - (1) Construction plans and specifications showing the nature, kind, shapes, heights, materials, exterior colors and proposed location of Improvements or changes on the Lot.
 - (2) Any other information required by Architectural Guidelines adopted under Section 8.3 below.
- (c) In all cases in which approval of the ACC is required by this Declaration or the Bylaws, the provisions of this article apply.

8.2 Architectural Control Committee Membership; Appointment. The Architectural Control Committee shall consist of at least two members appointed by the Board of Directors. Each member must be an Owner. The term of office of each member of the ACC is one (1) year unless lengthened or shortened by the Board at the time of appointment. The Board may appoint any director to serve as a member of the ACC. The ACC must consist of at least one director. However, directors may not constitute a majority of the ACC except when the Board serves as the ACC.

8.3 Architectural Standards and Guidelines.

- (a) **Adoption.** The procedure and specific requirements for review and approval of an application required under Section 8.1 above, including fees charged under Section 8.10 below, must be set forth in design standards and guidelines (“Architectural

²⁸ Compare Original Declarations, Sections 3 and 4. This Article 8 contains much more detail on procedures for the ACC than was contained in the Original Declarations, which only provided for the creation of a committee. The developer did not provide any further details about ACC in the Original Bylaws. Thus, most of the provisions in this Article 8 is new. The goal here was to provide a clear procedures and guidelines for those serving on the ACC and set definite time frames for processing applications and making decisions.

Standards and Guidelines”) adopted from time to time by resolution of the Board of Directors at its sole discretion.

- (b) **Provisions.** The Architectural Standards and Guidelines shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design of Dwellings and other Improvements, exterior color schemes, exterior finishes and materials and similar features that may be used in the Planned Community and landscaping. Architectural Standards and Guidelines may not be in derogation of the minimum standards established by this Declaration.

8.4 **ACC Decision.**

- (a) The ACC shall render its approval or denial decision with respect to the proposal within thirty (30) business days after it has received all material required by it with respect to the application. The ACC will notify the applicant in a timely manner if the application is not complete, or if there is additional information required to process the application. If all required information has not been received within thirty (30) calendar days of the original application, the application may be denied. The ACC shall have sole discretion as to whether all required material has been received. Subject to Subsection (c) of this section, all decisions must be made by members of the ACC at a meeting of the ACC and must be put in writing.
- (b) A decision of approval by the ACC may include terms and conditions that the ACC determines appropriate.
- (c) If the ACC fails to render its decision of approval or denial in writing within thirty (30) business days of receiving all material required by it with respect to the proposal, the application is deemed approved.

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

8.6 **Appeal to Board of Directors.** Unless the Board of Directors is serving as the ACC under Section 8.2 above, any Owner adversely impacted by action of the ACC may appeal the action to the Board of Directors in writing within 10 days of the ACC’s decision.

8.7 **Effective Period of Approval.** Unless otherwise provided in the ACC’s approval of any proposal or a decision of the Board of Directors under Section 8.9 below, the ACC’s approval or Board’s decision is automatically revoked six (6) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ACC.

8.8 **Liability.**

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

8.9 Certificate of Approval.

- (a) Within fifteen (15) business days after a written request is delivered to the ACC by an Owner, the ACC shall provide the Owner with a certificate executed by the chair of the ACC stating whether an improvement installed by the Owner is approved by the ACC. Upon investigation by the ACC, the certificate shall state one of the following:
 - (1) All improvements made or done upon or within the Lot by the Owner comply with the Declaration and any rules and regulations; or
 - (2) The improvements do not comply, in which event, the certificate must also identify the noncomplying improvements and explain the nature of the noncompliance.
- (b) The Owner and the Owner's successors in interest may rely on the statements in the certificate. The certificate is conclusive as between the Association and the Owner.

8.10 Fees; Plans.

- (a) **Fees.**
 - (1) Pursuant to a fee schedule included in Architectural Standards and Guidelines or a separate resolution adopted by the Board, the ACC may charge:
 - (A) A reasonable fee for issuance of a certificate of approval issued under Section 8.9 above.
 - (B) A reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the ACC to retain architects, attorneys, engineers, landscape architects and other consultants to advise the ACC concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. The fee is collectible as an Individual Assessment pursuant to

Article 10 below. The ACC will give notice to the Owner before incurring any consulting expenses so the Owner has the option to withdraw or modify the application and avoid the need for such expenses.

- (2) Fees and costs incurred under this subsection constitute assessments against the Owner and Lot as provided under Article 10 below.
- (b) **Plans.** A copy of the plans as finally approved must be retained as a permanent record of the Association.

ARTICLE 9²⁹
MAINTENANCE, REPAIR, REPLACEMENT,
CONDEMNATIONS, DAMAGE

The maintenance, repair and replacement of property in the Planned Community are governed by this article.

9.1 Responsibility of Association.

- (a) The Association is responsible for maintenance, repair and replacement of any Common Property and the improvements located thereon as provided in this subsection.
- (b) The Association is responsible for the landscaping and the stone retaining wall and partition and for the maintenance of all sidewalks along Orchard Heights Road NW, and for all “West Hill Estates” entrance monuments in the subdivision. Such areas shall be referred to as the “**Common Maintenance Area**”.
- (c) Maintenance shall be performed in accordance with a maintenance plan prepared and undated in accordance with ORS 94.595.

9.2 Responsibility of Owners.

- (a) **Maintenance, Repair and Replacement of Exterior of Dwellings and Lots.** Each Owner is responsible for all maintenance, repair and replacement of Owner’s Dwelling and Lot and any improvements thereon.
- (b) **Maintenance of Interior of Residential Dwellings.** Each Owner is responsible for maintaining and keeping in good order and repair the interior of the Dwelling and any other structure located on Owner’s Lot, to the extent that any interior is visible from another Lot or other part of the Property or when failure to perform

²⁹ The previous Declarations only provided for the Association to collect assessments to pay for common maintenance in Section 18 of the Original Declarations. The new provisions provide more direction for both the members and the Association regarding maintenance responsibility. These provisions give the Members clear instruction as to their maintenance responsibility and the consequences for failing to properly maintain.

the maintenance creates a nuisance, disturbance or danger to another Lot or occupants of other Dwellings.

- (c) **Landscaping Maintenance.** An Owner shall cause landscaping to be kept in a neat and orderly condition, free of debris, un-maintained vegetation or excessive weeds. Grass shall be cut or mowed at sufficient intervals to keep it at a height conducive to an even, uniform and clipped appearance.
- (d) **Easement Area Maintenance.** The utility easement and any other easement areas of each Lot and all improvements therein, as described in Article 3 above, shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company, or the Association is responsible.

9.3 **Failure of Owner to Maintain Improvements and Lot.** If an Owner fails to maintain landscaping or improvements located on Owner's Lot in accordance with Section 9.2 above, the Board of Directors may cause the maintenance to be performed pursuant to rules adopted by resolution under Article 9 of the Bylaws. The resolution shall comply with Section 11.2 below and provide that the maintenance may only be performed at reasonable hours on any day. Any cost incurred by the Association is collectable as an Individual Assessment pursuant to Article 10 below.

9.4 **Damage or Destruction Due to Act of Owners or Others.** 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 any improvements within the Common Maintenance Area or to any Common Property or maintenance, repairs or replacements are 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 reasonably determined by the Board of Directors. The amount shall be an assessment against the Lot and the Owner who caused or is responsible for the damage and is collectable as an Individual Assessment pursuant to Article 10 below.

ARTICLE 10³⁰ ASSESSMENTS

10.1 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:

³⁰ This section clarifies what type of assessments can be levied, how they are to be levied, and what rights and responsibilities the Association has in collecting the assessments and how they assessments can be collected and enforced against Members. This section also lays out the fiscal responsibilities of the Association to ensure proper funding. These sections contain the same substantive rights and duties of assessment, but provides additional detail on special and individual assessments. It also removes the subdivider/declarant language which is now obsolete.

- (1) Annual Assessments levied under Section 10.5 below.
 - (2) Special Assessments levied under Section 10.6 below.
 - (3) Individual Assessments levied under Section 10.7 below.
- (b) **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Dwellings, for the administration, management and operation of the Association and the Planned Community and for any other purposes required or permitted under this Declaration or the Bylaws.
- (c) **Assessments Property of Association.** All sums received on account of assessments, including assessments paid into a reserved account established under Section 11.3 of the Bylaws, belong to and are the property of the Association for the purposes designated under this Declaration and the Bylaws. The sums are not refundable to Owners.

10.2 **Obligation of Owners for Assessments.**

- (a) **Personal Obligation.** Each assessment, together with interest, late payment charges and collection costs as provided in section 11.6 below are the personal obligation of the Owner of the Lot and subsequent Owners as provided under ORS 94.712.
- (b) **Joint and Several Obligation.** In addition to constituting a lien on the Lot as provided under Section 11.3 below and the Act, each assessment is the joint and several obligation³¹ of the Owner or Owners of the Lot against which the assessment is levied.
- (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 Section 10.8 below, in a voluntary conveyance of a Lot,

³¹ "Joint and several" means that the obligation to pay assessments belongs to each owner individually and all the owners collectively. So, if there are 5 joint owners, the Association can collect the past due assessments against any or all of the joint owners until the assessment is paid in full.

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.³²

10.3 **Method of Allocation of Common Expenses and Profits.**

- (a) **Association Common Expenses.** Association Common Expenses specified in Section 10.4 below shall be allocated equally among all Lots, except:
 - (1) To the extent permitted under ORS 94.704, any common expense or any part of a common expense benefitting fewer than all the Lots may be assessed exclusively against the Lots benefitted as an Individual Assessment as provided under Section 10.7 below.
 - (2) If the Board of Directors determines that any loss or cost incurred by the Association is the fault of one or more Owners, the Association may assess the loss or cost exclusively against the Owners and Lots of the Owners determined at fault as an Individual Assessment.
- (b) **Surplus Funds.** If funds from assessments or other revenues at any time exceed the amount necessary to fund the budget, the Board of Directors may reduce the amount being assessed or apply the surplus to fund future budgets.
- (c) **Allocation of Profits.** Any common profits not governed under Subsection (b) of this section shall be allocated equally among all Lots.

10.4 **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 improvements within the Common Maintenance Area or any Common Property and any other portions of the Planned Community required to be maintained by the Association pursuant to this Declaration or the Bylaws.
- (c) Cost of insurance or bonds obtained in accordance with the Bylaws.
- (d) Funding of the Reserve Account in accordance with Section 11.3 of the Bylaws.
- (e) A general operating reserve if established under Section 11.4 of the Bylaws.
- (f) Any deficit in common expenses for any prior period.

³² This section means that when a lot is under contract to sell, the buyer and seller are jointly and severally liable for the assessment. See Footnote above.

(g) Any other items properly chargeable as an expense of the Association.

10.5 **Annual Assessments.** The Board of Directors shall levy an Annual Assessment based on the budget adopted under Section 10.2 of the Bylaws.

(a) **Allocation.** Annual Assessment shall be allocated in accordance with Section 10.3 above.

(b) **Notice of Annual Assessment.** The Board of Directors shall cause notice of Annual Assessments to be given at least thirty (30) days before the assessments are payable under Section 10.6 below. The notice may accompany a copy of the budget summary required under Section 10.8 below.

(c) **Assessment Limitation.**

(1) Assessments levied under this section for the year may not exceed the assessments levied under this section for the prior year by more than twenty-five percent (25%) without a binding vote of a majority of the Owners.

(2) Notwithstanding the limitation imposed under Paragraph (1) of this subsection, the budget may exceed the maximum amount of assessments that may be levied under Paragraph (1) of this subsection to the extent surplus funds are available.

(d) **Payment of Annual Assessments.** Annual Assessments levied under Section 10.5 (a) and (b) above are due on the first day of each fiscal year. The Board may establish a different due date for Annual Assessments and may collect Annual Assessments on an annual, quarterly, or monthly basis.

10.6 **Special Assessments.** In addition to the assessments authorized by Section 10.5 above, the Association may levy in any assessment year a special assessment for the following purposes:

(a) To correct a deficit in the operating budget, by vote of a majority of the Board;

(b) To make repairs or renovations to the Common Maintenance Area or any Common Property if sufficient funds are not available from the operating budget or replacement reserve accounts by vote of a majority of the Board; or

(c) For the purpose of defraying any or part of the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the areas maintained by the Owners Association; provided, however, that such assessment must be approved by the vote or written consent of at least two-thirds of the membership; and the special assessment shall be made against each Lot on the Property equally. For purposes of this Section 10.6, the term "capital improvement" means the use of Association funds to construct or build an

addition to the Property, where such use of funds is optional under the Governing Documents, rather than mandatory, and is not otherwise required by Law. The maintenance, repair or replacement of improvements within the Property shall not be considered a "Capital Improvement," (notwithstanding that such expenditure or improvement may be considered a capital expenditure or capital improvement for tax purposes) if:

- (1) The Association is obligated to maintain the improvement; and
- (2) the Association uses materials:
 - (A) Of similar kind;
 - (B) That are required, either due to changes in building or fire codes or due to discontinued fabrication or unavailability; or
 - (C) That have a substantially similar or lower cost over the useful life of the material.

Special Assessments levied under this Section for common expenses of a special budget are due and payable as prescribed in a resolution adopted by the Board of Directors.

10.7 **Individual Assessments.** The Board of Directors may levy Individual Assessments against one or more Lots and Owners as provided in this section.

(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 Association insurance;
- (2) Fines or other charges imposed pursuant to this Declaration, the Bylaws or the Act for violation of this Declaration, the Bylaws or rules and regulations; and
- (3) Amounts due to the Association from an Owner pursuant to other provisions of this Declaration or the Bylaws.

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

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

- (c) **Distribution and Use of Individual Assessments.** Unless otherwise provided by resolution of the Board of Directors, fines, late charges, interest and other fees collected shall be allocated to the General Operating Account described under the Bylaws.

10.8 **Budget Summary; 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 Section 10.5 and 10.7 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 Section 10.2 of the Bylaws, the Board of Directors shall provide a summary of the budget on which assessments are based to all Owners and, if requested in writing, to the Owner's mortgagee.
- (c) **Statement of Assessment Account.**
 - (1) Subject to Paragraph (2) of this subsection, in accordance with ORS 94.670, within ten (10) business days of receipt of a written request by an Owner, the Board of Directors shall provide a Statement of Assessment Account that contains the information specified in ORS 94.670.
 - (2) The Association is not required to comply with Paragraph (1) of this subsection if the Association has commenced litigation.
- (d) **Statement for Prospective Purchasers.** In accordance with ORS 94.712, 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 or 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 statement.
- (e) **Fee for Providing Information.** Pursuant to rules adopted under Article 9 of the Bylaws, the Association may charge a fee for providing the information required under subsections (c) and (d) of this section.

ARTICLE 11³³ **COMPLIANCE AND ENFORCEMENT**

11.1 **Compliance.**

³³ This section provides Members with clear instructions as to their responsibilities to follow and help enforce the governing documents.

- (a) **Owners, Occupants and Tenants.** Each Owner and occupant (including tenants) of a Lot shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations and the Act. 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 occupying the Lot in the same manner and to the same extent were the Owner occupying the Lot.
- (b) **Guests and Other Invitees.** Guests, invitees, family members, contractors and other persons entering the Lot or other part of West Hill Estates under rights derived from the Owner shall comply with all the provisions of this Declaration, the Bylaws and rules and regulations restricting or regulating the Owner's use, improvement or enjoyment of Owner's Lot or other part of West Hill Estates. The Owner is responsible for obtaining compliance and is liable for any failure of compliance by the persons in the same manner and to the same extent were the noncompliance 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 to the documents 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 Section 3.6 of the Bylaws.

11.2 **Violations of Declaration or Bylaws.** The violation of any provision of this Declaration or of the Bylaws or rule or regulation gives the Board of Directors, subject to Section 11.8 below, acting on behalf of the Association, the right in addition to any other rights set forth in this Declaration or the Bylaws, to do any or all of the following after giving notice to the Owner and an opportunity to be heard:

- (a) To enter the Lot in which or as to which the violation exists and to correct the violation, at the expense of the Owner, and the entry shall not constitute a trespass;
- (b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceedings;
- (c) To levy reasonable fines in accordance with ORS 94.630(1)(n);
- (d) 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; and
- (e) To do any of the actions specified in this section in conjunction with each other.

11.3 **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, unless otherwise specified in this Declaration or Bylaws, 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 set forth in Section 11.6 below. In addition, the Association may exercise any or all of the following remedies:

- (a) **Acceleration of Assessment.** If any assessment or any portion of any assessment is delinquent, the Board may, after ten (10) days written notice to the Owner, declare all assessments of the Owner due immediately and interest thereafter accrues as provided under Section 11.6 below on the entire assessment until paid.
- (b) **Association Lien.**
 - (1) Whenever the Association levies any assessment against a Lot, the Association automatically has a lien upon the Lot for any unpaid assessments as provided in ORS 94.709 under the Act. 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 Polk County, Oregon. The notice of lien shall be in the form and include the information specified in under the Act. The Association must record a notice of lien before any suit to foreclosure may proceed as provided in Subsection (c) of this section.
- (c) **Foreclosure of Lien.** The Association, by and through the Board of Directors may file a suit to foreclose the lien, notice of which was recorded as provided in Subsection (b) of this section, as provided under the Act.
- (d) **Suit or Action.** Subject to Section 11.8 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 Subsection (b) of this section. Recovery on any such action, however, operates to satisfy the lien, or the portion thereof, for which recovery is made.
- (e) **Other Remedies.** The Association has any other remedy available to it by law or in equity.

11.4 **Priority of Lien; Prior Mortgages.** The priority of the lien of the Association against a Lot for assessments is governed by the Act.

11.5 **Deeds in Lieu of Foreclosure.** A deed in lieu of foreclosure accepted by the holder of a first mortgage or beneficiary of a first deed of trust with respect to a Lot has the effect specified in the Act.³⁴

11.6 **Interest, Late Payment Charge and Collection Costs.** 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 assessment is delinquent and the Owner is obligated to pay:

- (a) 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 other 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.
- (b) A late charge of thirty percent (30%) of the unpaid assessment, or such lower amount as may be established by resolution of the Board of Directors.
- (c) All expenses incurred by the Association in collecting unpaid assessments including, without limitation:
 - (1) Attorney fees incurred by the Association (whether or not legal proceedings are instituted and including attorney fees at trial, in arbitration or on appeal, or petition for review).
 - (2) If a notice of lien is recorded under Section 11.3(b) above, the costs associated with the preparation and recording of the notice of lien.

11.7 **Costs and Fees.** An Owner determined liable under this article is responsible to the Association for any reasonable administrative fee as established by the Board of Directors, and all costs and attorney fees incurred by the Association, whether or not legal proceedings are instituted and including attorney fees at trial, in arbitration or on appeal, or petition for review, together with any expense incurred by the Association in remedying the default, damage incurred by the Association or Owners, or fines so levied. The sums shall be levied against the Lot determined liable as an Individual Assessment under Section 10.7 above and enforced as provided in this article.

11.8 **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).

11.9 **Disputes among Owners.**

³⁴ A deed in lieu of foreclosure is basically a collection remedy for the Association where the Association can actually take title to a lot that has failed to pay assessments. Instead of going through a formal foreclosure action, the owner could agree to convey title to the association. This rarely happens but sometimes it does in the case of a very large assessment obligation. In that case, the Oregon Planned Community Act would control.

- (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 by both parties to the Board of Directors for resolution. However, the Board will not consider any referral unless the Board is satisfied in its discretion that the Owners involved in the dispute have made a good faith effort to resolve the dispute without the Board's involvement.
 - (b) **Action by Board.** The Board of Directors, in its sole discretion, has the option to hear the dispute or to decline to hear the dispute. The Board's decision 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 chooses to hear the dispute, any decision by the Board is binding upon the parties.
- 11.10 **Action by Owners.** Subject to Section 11.8 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.
- 11.11 **Non-exclusiveness 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 law.

ARTICLE 12³⁵
AMENDMENT AND DURATION

- 12.1 **How Proposed.** Amendments to the Declaration may only be proposed by either a majority of the Board of Directors or by Owners representing 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.
- 12.2 **Approval Required.** Except as otherwise provided in Section 12.3 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 two thirds (2/3) of the voting rights of the Planned Community.
- 12.3 **Additional Approval Requirements.** Unless the Owners of the affected Lots unanimously consent to the amendment, no amendment may change:

³⁵ This section provides for clearer guidance for amending the document, what steps have to be taken to amend. Helps clear up Section 18 in previous versions which had ambiguous language about amending in individual phases. This will be one unified declaration that will only be able to be amended by a vote of all owners in West Hill Estates. Use restrictions will no longer vary by individual phase.

- (a) The boundaries of any Lot or the use to which any Lot is restricted under Section 7.1 above.
- (b) The method of determining liability for Association Common Expenses or right to revenues under Section 10.3 above.
- (c) The method of determining voting rights for Association matters under Section 5.3 above.

12.4 **Execution and Recording.** An amendment is not effective until the amendment is:

- (a) Executed and acknowledged by the president and secretary of the Association;
- (b) Certified by the president and secretary of the Association as being adopted in accordance with this Declaration and the applicable provisions of the Act; and
- (c) Recorded in the office of the recording officer of Polk County, Oregon.

12.5 **Duration.**

- (a) This Declaration perpetually runs with the land and is and remains in full force and effect until July 29, 2021, after which the Declaration shall automatically be extended for successive periods of ten (10) years.
- (b) This Declaration may be terminated upon approval by the vote or written consent of not less than ninety percent (90%) of all Owners and the approval of the City of Salem. 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 this section, is duly acknowledged and recorded in the office of the recording officer of Polk County, Oregon.

ARTICLE 13³⁶ MORTGAGEES

13.1 **Mortgage Rights.** Each mortgagee has the following rights:

³⁶ Under the Original Declarations, Mortgagees had certain limited rights which need to be preserved in this new Declaration. This section helps give 3rd party mortgage holders clear instructions on how to protect their rights within the Association. Previous versions only allowed an amendment if a mortgage holder approved, the new provision provides an approval process to follow and a timeline that gives the Association the right to move forward when a mortgage holder is unresponsive to proposed changes.

- (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 upon reasonable notice and at reasonable times.
 - (b) **Right to Annual Reports.** All mortgagees, upon written 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 mortgagees are permitted to designate a representative to attend all meetings.
 - (d) **Amendments.** Notwithstanding any other provision in this section, any amendment of this Declaration which changes the ratio of assessment against lot owners shall require the written approval of all holders of mortgages or trust deeds on lots within West Hill Estates.
- 13.2 **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 sixty (60) days after receipt of the request.

ARTICLE 14³⁷
GENERAL PROVISIONS

14.1 **Severability; Number; Construction; Captions.**

- (a) **Severability.** The invalidity of any part of this Declaration by judgment or court order does not impair or affect in any manner the validity, enforceability or effect of the balance of this Declaration.
- (b) **Number; Construction.** As used in this Declaration:
 - (1) The singular includes the plural and the plural the singular as the context requires.
 - (2) “May not” and “shall not” are equivalent expressions of an absolute prohibition.
 - (3) The masculine, feminine and neuter each include the masculine, feminine, and neuter, as the context requires.

³⁷ These are general boilerplate provisions which help in interpreting the CCRs. The “Waiver” clause in 14.2 is an especially important provision for HOAs.

- (c) **Liberal Construction.** This Declaration shall be liberally construed as an entire document to effectuate its intended purposes.
 - (d) **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.
- 14.2 **Waiver, Precedent and Estoppel.** The failure to enforce any provision contained in this Declaration, the Bylaws or rules and regulations shall not be deemed a waiver by the Association or any Owner to enforce such provisions, irrespective of the number of violations or breaches thereof which may occur.
- 14.3 **Effect of Municipal Ordinances.** Police, fire and other public safety ordinances of any municipal corporation having jurisdiction over any portion of the Properties govern where more restrictive than the provisions of this Declaration.
- 14.4 **Conflicts.** Subject to ORS 94.770, if a conflict arises between or among the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and any rules and regulations, the provisions of the Declaration are paramount to those of the Articles, the Bylaws, and the rules and regulations; the Articles of Incorporation are paramount to the Bylaws and the rules and regulations and those of the Bylaws are paramount to the rules and regulations, except to the extent the Declaration, Bylaws and Articles of Incorporation are inconsistent with the Act.

EXHIBIT A
LEGAL DESCRIPTION

The property subject to the Declaration is all lots and tracts within the following plats:

West Hill Estates Phase 1, recorded on August 28, 1991 in Volume 9, Page 27, County of Polk, State of Oregon

West Hill Estates Phase 2, recorded on November 25, 1992 in Volume 009, Page 0038, County of Polk, State of Oregon

West Hill Estates Phase 3, recorded on November 5, 1993 in Volume 004, 0048, County of Polk, State of Oregon

West Hill Estates Phase 4, recorded on October 27, 1994 in Volume 010, Page 0017, County of Polk, State of Oregon

West Hill Estates Phase 5, recorded on December 6, 1994 in Volume 010, Page 0018, County of Polk, State of Oregon

West Hill Estates Phase 6, recorded on July 16, 1996 in Volume 010, Page 043, County of Polk, State of Oregon

West Hill Estates Phase 7, recorded on May 9, 1997 in Volume 011, Page 0007, County of Polk, State of Oregon

West Hill Estates Phase 8, recorded on December 23, 1998 in Volume 011, Page 0035, County of Polk, State of Oregon

West Hill Estates Phase 9, recorded on January 2, 2001 in Volume 012, Page 0005, County of Polk, State of Oregon

West Hill Estates Phase 10, recorded on October 2, 2001 in Volume 12, Page 16, County of Polk, State of Oregon