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Lincoln City, OR 97367**

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**2009-05943**

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Dana W. Jenkins, Lincoln County Clerk



# BELHAVEN

Declaration Of Protective Covenants,  
Conditions, Restrictions And Easements  
For Lots 1 Through 35

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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR LOTS 1 THROUGH 35, BELHAVEN  
IN LINCOLN COUNTY, OREGON**

**THIS DECLARATION** is made this 19<sup>th</sup> day of May, 2009, by Belhaven LLC ("Declarant").

Declarant owns all the real property and improvements thereon located in an unincorporated area of Lincoln County, Oregon, described on Exhibit "A" (the "Property"). All capitalized terms used herein shall have the meanings attributed to them in Article 1 hereof.

Declarant intends to develop the Property as a Class I planned community, which shall be called Belhaven, and to impose mutually beneficial covenants, conditions, restrictions, easements, assessments and liens on the Property under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and the Common Area within Belhaven. Belhaven is a planned subdivision of thirty-five (35) Lots with Common Area.

Declarant deems it desirable for the preservation of the values and amenities in Belhaven to create a nonprofit corporation, to which shall be delegated and assigned the powers and authority to own, maintain and administer the Association, the common Area, and certain facilities; to administer and enforce the covenants, conditions, and restrictions of this Declaration; and to collect and disburse the assessments and charges hereinafter imposed.

NOW, THEREFORE, Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to The Oregon Planned Community Act ORS 94.550 - 94.783 and subject to the following covenants, conditions, restrictions, easements, charges and liens, which shall run with the land, which shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, and which shall inure to the benefit of the Association and each Lot Owner.

**ARTICLE 1**

**DEFINITIONS**

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

1.1 "Architectural Review Committee" or "ARC" shall mean and refer to Declarant until the Turnover Meeting, as defined in Section 8.2 hereof, has been held and thereafter shall refer to the Board of Directors unless the Board has

appointed a separate body or architectural firm to carry out the functions described in Article 6 hereof, in which case "Architectural Review Committee" or "ARC" shall refer to the body so appointed.

1.2 "Articles" shall mean the Articles of Incorporation of Belhaven Homeowners' Association, an Oregon nonprofit corporation, as filed with the Oregon Corporation Commissioner.

1.3 "Association" shall mean and refer to Belhaven Homeowners' Association, an Oregon nonprofit corporation, its successors and assigns.

1.4 "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association, which shall be recorded in the Lincoln county Oregon Deed Records.

1.6 "Common Area" shall mean and refer to that area of land on the recorded Plat, which area has been subjected to this Declaration, including any improvements thereon, which is entitled to be devoted to the common use and enjoyment of Members.

1.7 "Declarant" shall mean and refer to Belhaven LLC, its successors and assigns, or any successor or assign to all or the remainder of its interest in the development of the Property.

1.8 "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration of Covenants, Conditions and Restrictions for Belhaven Homeowners' Association.

1.9 "General Plan of Development" shall mean Declarant's general plan of development of the Property, as approved by appropriate governmental agencies, as such plan may be amended from time to time.

1.10 "Home" shall mean and refer to any portion of a structure situated on a Lot, which portion is designed and intended for use and occupancy as a residence by a single family or household.

1.11 "Living Unit" shall mean and refer to any portion of a structure situated on a Lot or Lots, which portion is designed and intended for use and occupancy as a residence by a single family or household.

1.12 "Lot" shall mean and refer to each and any lot which is shown on the Plat and which is subject to this Declaration. Provided, however, that "Lot" shall not include any lot or tract that is designated for use as Common Area on the Plat or in the Declaration.

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1.13 "Members" shall mean and refer to Owners, who by virtue of their ownership of a Lot, are members of the Association.

1.14 "Occupant" shall mean and refer to the occupant of a Home who shall be either the Owner, a lessee or any other person authorized by the Owner to occupy the premises.

1.15 "Owner" shall mean and refer to the owner of record, whether one (1) or more persons or entities, of the fee simple title to any Lot or to a purchaser in possession under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

1.16 "Plat" shall mean and refer to the plat for Belhaven, which has been recorded in Lincoln County and which depicts the Lots and Common Area and including the plat or plats for any additional phases, which may be added in the future by annexation .

1.17 "Property" shall mean and refer to all real property that is subject to this Declaration, including Lots, the Common Area and all improvements located thereon, as more particularly set forth on Exhibit "A", and any additional property which may subsequently be annexed to Belhaven.

1.18 "Rules and Regulations" shall mean and refer to the documents containing rules, regulations and policies adopted by the Board of the Association or the ARC, as such documents may be from time to time amended.

1.19 "Tracts" or "Common Area Tracts" shall mean and refer to those parcels of land that are designated as a Tract or Common Area on the Plat.

1.20 "Belhaven" shall mean the Lots and Common Area described on the Plat.

1.21 "Belhaven Homeowners' Association" is an Oregon nonprofit corporation, membership in which is held by all Owners of Homes in Belhaven.

## **ARTICLE 2**

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

2.1 Initial Development. Declarant hereby declares that the real property that is described in Exhibit "A", which is attached hereto and incorporated by this reference herein, is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration.

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The real property described in Exhibit "A" together with other real property from time to time annexed thereto and made subject to these covenants pursuant to Section 2.2, shall constitute Belhaven.

2.2 Annexation of Subsequent Developments. Declarant may from time to time in its sole discretion annex to Belhaven, any adjacent real property now or hereafter acquired by it, and may also from time to time and in its sole discretion, permit other holders of real property in the vicinity of the initial development, to annex any portion of such real property owned by them to these covenants. The annexation of any such real property shall be accomplished as follows:

2.2.1 Method of Annexation. The holder or holders of such real property shall record a declaration which will be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish any additional or different limitations, restrictions, covenants and conditions, which were intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to these covenants.

2.2.2 No Limitation on Declarant's Annexation Rights. There is no limitation on the number of lots or units which Declarant may create or annex to the planned community and there is no limitation on the right of Declarant to create or annex common property.

2.2.3 Allocation of Voting Rights After Annexation. Allocation of voting rights to new lots shall be in accordance with Paragraph 7.3 of this Declaration.

2.2.4 Assessments After Annexation. Upon annexation, the additional lots will be assessed fees for common expenses in the same manner of the original lots unless an alternate manner of assessment is set forth in the Declaration of Annexation . If lots are created or annexed during the fiscal year, said lots will pay a pro-rata share of the common expenses unless an alternate form of the assessment is set forth in the Declaration of Annexation for that portion of the fiscal year remaining.

2.2.5 Property Annexed Subject to these Covenants. The property included by any such annexation shall thereby become a part of Belhaven, the declaration with respect thereto shall become a part of these Covenants, and Declarant and the Association shall have and shall accept and exercise administration of these Covenants with respect to such property. However, annexed properties may not be subject to all of the conditions or have the benefit of all of the Planned Unit Development findings and conditions of approval set forth in Lincoln County final order.

2.2.6 Land Classifications After Annexation. The declaration with respect to any annexed area will protect the existing land classifications in the initial development and may place different, or more stringent classifications or more restrictive limitations or covenants on the development of such annexed property.

## ARTICLE 3

### OWNERSHIP AND EASEMENTS

3.1 Nonseverability. The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by any Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference thereto in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and agrees that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interest in the Common Area and Lots described in this Article 3 shall be subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and thenceforth shall be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Belhaven.

3.2 Ownership of Lots. Title to each Lot in Belhaven shall be conveyed in fee to an Owner. If more than one (1) person and/or entity owns an undivided interest in the same Lot, such person and/or entity shall constitute one (1) Owner.

3.3 Ownership of Common Areas. Title to any Common Area shall be conveyed to the Association not later than sixty (60) days after seventy-five percent (75%) of the Lots shown on the Plat have been conveyed to purchasers or seven (7) years from the date of this Declaration, whichever is earlier.

3.4 Easements. Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article 3.

3.4.1 Easements on Plat. The Common Area and Lots are subject to any easements and rights of way shown on the Plat.

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3.4.2 Easements for Common Area. Every Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot.

3.4.3 Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, in, upon, under and across the Common Areas to carry out sales activities necessary or convenient for the sale of Lots. In addition, Declarant hereby reserves to itself and to Owners of Lots shown on any recorded Plat pertaining to any additional property annexed to the Association and subjected to this Declaration, the Articles, and the Bylaws, a perpetual easement and right of way for access over, in, upon, under and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property or other real property owned by Declarant in such a way as not to interfere unreasonably with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his or her family, tenants, employees, guests and invitees.

3.4.4. Additional Easements. Notwithstanding anything expressed or implied to the contrary on the Plat, the Bylaws or herein, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of Belhaven. No structure, planting or other material that may damage or interfere with the installation or maintenance of utilities, that may change the direction of flow of drainage channels in the easement areas, or that may obstruct or retard the flow of water through drainage channels in the easement areas shall be placed or permitted to remain within any easement area. The easement area of each Lot and all improvements thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, a utility company or the Association is responsible.

3.4.5 Association's Easements. Such easements as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws and Articles, as the same may be amended or supplemented, hereby are reserved to the Association and its duly authorized agents and representatives. In using the easements affecting Owners' Lots, the Association shall try to interfere in the Owners' use of their Lots as little as reasonably practicable and shall restore or

repair any easement area on a Lot to its prior condition if any damage arises from use of it.

3.4.6 Easement to Governmental Entities. A nonexclusive easement over the Common Area hereby is reserved and granted to all governmental and quasi-government entities, agencies, and their agents for the purposes of performing their duties within Belhaven.

## ARTICLE 4

### LOTS AND HOMES

4.1 Residential Use. The Lots shall be used for only residential purposes.

4.2 Rental of Homes. An Owner shall be entitled to rent or lease his or her residence for any length of time the Owner wishes, including nightly rentals, provided that the tenant or renter complies with all provisions of the Declaration, Bylaws and Rules and Regulations of the Association.

4.2.1 Waiver of Remonstrance. By purchasing a home in Belhaven, every owner consents, agrees, accepts and acknowledges that homes in Belhaven may be rented nightly. No owner or tenant may remonstrate or object to the nightly rental of a home in Belhaven. However, any such nightly rental must be operated in full compliance with all Belhaven rules and regulations. Each Owner for his or her own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action to contest nightly rental of homes in Belhaven and agrees that no such action in the state courts or before a local governmental body shall be instituted, prosecuted or reduced to judgment.

4.2.2. Limitation on Number of Rentals. An owner in Belhaven may operate only one home in Belhaven as a vacation rental to be consistent with the City of Lincoln City Vacation Rental Dwelling Ordinance. If the City of Lincoln City regulations are revised or interpreted to allow owners to own more than one vacation rental home in the City, these CC&R's may be amended to be consistent with the revised City of Lincoln City Regulation. If Belhaven is annexed to the City of Lincoln City, any owner who wishes to rent their home nightly may also need a permit from the City of Lincoln City.

4.2.3. Rental Agency. Any owner who operates their home as a nightly rental for more than 15 days in a calendar year must have a local representative consisting of a rental agency with a physical office located within two (2) miles of Belhaven and staffed with at least one person. The agent/agency must be available on call 24 hours a day. The

agent/agency must comply with all Belhaven rules and regulations and be pre-approved by the Declarant and or the Board of Directors. The Declarant and/or Board of Directors may adopt rules and/or approval standards for the agencies and will maintain a list of approved agents/agencies.

4.3 Planned Development Conditions of Approval. The following conditions of approval in Paragraphs 4.3.1 through 4.3.6 may not be revised without specific written approval of the Lincoln County Planning Commission; or other appropriate governmental entity with jurisdiction over the development:

4.3.1 Declarant, or its representative, or its successor or assigns, shall pave NE 56<sup>th</sup> Drive in accordance with the approved plan.

4.3.2 Unless a Consulting Arborist (with membership in the American Society of Consulting Arborists) or Certified Arborist (with certification by the International Society of Arboriculture) provides written documentation that specific tree retention creates a dangerous condition, the following trees which are depicted on the revised and approved tentative plan shall be retained: the 6 mature spruce trees in the open space located south of Lot 19.

4.3.3 The maximum height for any building on the site shall be 35 feet, measured in the customary manner applicable to developments in Lincoln County.

4.3.4 Building Heights, for lots 16 through 21, shall be measured from the average preconstruction grade to the peak of the roof and shall not exceed a height of 35 feet.

4.3.5 The number of lots in the development shall not exceed 35, unless additional land area is annexed or additional phases are added to the development.

4.3.6 The enforcement of parking restrictions and prohibitions, and the maintenance of roads, utilities, drainage systems and other common improvements shall be the responsibility of the homeowners association.

4.4 Construction of Homes. No construction, reconstruction or exterior alterations shall occur on a Lot unless the approval of the ARC is first obtained pursuant to Article 6 hereof. Declarant shall adopt architectural and landscaping guidelines for the ARC and shall act as the ARC until the Turnover Meeting. Considerations such as siting, shape, size, color, design, height, solar access, or material may be taken into account by the ARC in determining whether or not to consent to any proposed work.

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4.5 Maintenance of Lots and Homes . Each Owner shall maintain all portions of his or her Lot and all improvements on such Lot in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, and replacement of and care for roofs, gutters, down spouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the ARC. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on his Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. If plantings on any lot have died or are dying the Owner of the lot must replace/restore and properly care for and irrigate the plants and landscaping on the lot. If the owner of a lot neglects or fails to properly care for the plantings on any lot, the Homeowner's Association may replace the plantings and may assess the Owner for the cost as a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws. No trees, in excess of six feet in height, or four inches in diameter, may be removed without a tree cutting permit issued by the ARC. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner, and any Lot or improvement thereon that is so damaged shall be restored within a reasonable period of time.

4.6 Animals. No animals, livestock or poultry of any kind, other than four (4) household pets, which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance, shall be permitted within any Lot. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof. Dogs shall not be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside their owner's Lot. An Owner may be required to remove a pet upon the receipt of the third notice in writing from the Board of violation of any rule, regulation or restriction governing pets within the Property. Any dog which the Board of Directors reasonably determines is vicious or dangerous to Owners of Lots, their families and guests, shall be removed by the Owner thereof immediately upon written notice from the Board of Directors. At the owner's request after such removal, a hearing will be held by the Board of Directors to review its determination and affirm or reverse its previous determination. Any dog, which is considered vicious under any Lincoln County ordinance, shall be conclusively deemed a vicious dog, which the Board of Directors shall exclude from the Property.

4.7 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done or placed on any Lot which interferes with or jeopardizes the enjoyment of other Lots, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

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4.8 Parking. Parking of commercial vehicles, boats, trailers, motorcycles, trucks, truck campers or other recreational vehicle or equipment shall not be allowed on any part of the Property nor Common Area, except only if or within the confines of an enclosed garage or screened area, the plans of which shall have been reviewed and approved by ARC prior to construction, and no portion of the same may project beyond the screened area. No vehicle owned, rented, borrowed or under the control of the occupant of the dwelling located on the Lot and no vehicles owned by others who are guests of the occupants of the dwelling may be parked on the street roadway area for more than seven (7) days. On street parking is only permitted on NE 56<sup>th</sup> Drive and on the two way private street that has a 41 foot right of way.

4.9 Vehicles in Disrepair. No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Area for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the Owners or Occupants. A vehicle with an expired license or without one or more wheels is presumed to be in extreme state of disrepair. Should any Owner fail to remove such vehicle within five (5) days following the date on which the notice is mailed to him by the Association, the Association may have the vehicle removed from the Property and may charge the expense of such removal to the Owner.

4.10 Signs. No signs shall be erected or maintained on any Lot except a project sign, a permanent entrance sign and Declarant further reserves the right to place a freestanding sign on any lot owned by the Declarant or Oksenholt Construction Company, provided that such signs comply with the plan of development for Belhaven or Lincoln County sign ordinance standards.

4.11 Rubbish and Trash. No Lot, roadway, or part of the Common Area shall 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 out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto the Common Area or roadways. A reasonably sized compost area shall be permitted as long as it is not offensive to other Owners. Should any Owner fail to remove any trash, rubbish, garbage, yard raking's or any such materials from any Lot, any streets or Common Areas where deposited by him within five (5) days following the date on which notice is mailed to him by the Board, the Association may have such materials removed and may charge the expense of such removal to the Owner.

4.12 Landscape Completion. All landscaping must be completed within six (6) months from the date of final inspection by the governing authority for the dwelling unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of ARC. After completion, the owner must continually maintain the landscaping.



4.13 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently.

4.14 Manufactured Dwellings Excluded. No manufactured dwellings, as that term is defined in ORS Chapter 446 as of the date of this declaration, shall be used on any lot at any time as a residence either temporarily or permanently.

4.15 Fences. All fences, screens and similar structures shall not obstruct any Lot's view, and are subject to the ARC approval process.

4.16 Service Facilities. All telephone, power, natural gas, cable television and other communication lines shall be placed underground.

4.17 Antennas and Satellite Dishes. Exterior antennas and satellite receivers shall not be permitted to be placed upon any Lot or Improvement except as approved by ARC. Exterior satellite dishes with a surface diameter of twenty-four (24) inches or less may be placed on any Lot so long as they are not visible from the street or neighboring properties.

4.18 Plan and Exterior Color Approval. All exteriors of residences shall be constructed of natural cedar shingles, board and batten, or cedar beveled lap siding either left natural or painted or stained in shades or colors approved by the ARC. Complete plans, including landscape plans, grade elevations and exterior color, trim color, and exterior lighting selection must be submitted to ARC for approval prior to the start of construction. It is suggested that preliminary plans be submitted to ARC for preliminary approval prior to commencing working drawings.

4.19 Driveways. Driveways are to be constructed of crushed gravel or other non-impervious materials approved by ARC.

4.20 Roofing Materials. Roofs are to be constructed of materials approved by ARC.

4.21 Outdoor Lighting. The number, type, design and candle power of outdoor lighting shall be subject to the review of ARC. Outdoor lighting that is offensive to a neighbor may require change at the direction of ARC.

4.22 Grades, Slopes and Drainage. The established drainage patterns or systems over or through any Lot within Belhaven shall not be interfered with so as to affect any other lot or Common Area or any real property outside Belhaven unless adequate alternative provision is made for proper drainage and is approved by the ARC. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets naturally existing or designed and constructed for storm water run off.

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4.23 Damage or Destruction to Home and/or Lot. If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (i) restore the damaged improvements or (ii) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (i) above must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article 6 hereof are complied with by the Owner. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within six (6) months thereafter. In addition, Owners shall act in accordance with the provisions of any applicable party wall and maintenance agreement; provided, however, that in the event of a conflict between the provisions hereof and of such an agreement, the provisions hereof shall control.

4.24 Right of Maintenance and Entry by Association. If an Owner fails to perform maintenance and/or repair that he is obligated to perform pursuant to this Declaration and if the Board determines, after notice and a hearing (given pursuant to the provisions of the Bylaws), that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Belhaven, the Board may cause such maintenance and/or repair to be performed and may enter any Lot whenever entry is necessary in connection with the performance of such maintenance and/or repair that the Board is authorized to undertake. Entry shall be made with as little inconvenience to the Owner of the Lot as practicable and only after advance written notice of not less than forty-eight (48) hours, except in emergency situations. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot as a special assessment.

4.25 Association Rules and Regulations. The Board from time to time may adopt, modify or revoke Rules and Regulations governing the conduct of persons and the operation and use of Lots and Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and Occupants of all Lots upon the date of delivery or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws.

4.26 Ordinances and Regulations. The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that local governmental ordinances and regulations are more restrictive or provide for a higher or different standard, such local governmental ordinances and regulations shall prevail.

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4.27 Construction Debris. Every contractor building any improvement upon any lot or the Common Area shall furnish trash containers and at all times shall keep the premises free from accumulation of trash and scrap caused by construction. Trash shall not be allowed outside a designated trash and scrap area and any that does intrude beyond shall be cleaned up immediately. Upon completion of the work, all remaining trash and scrap shall be disposed of legally. Tools, construction equipment, machinery, and surplus materials shall be removed from the site. The ARC or Declarant shall be entitled to enter upon any construction site within Belhaven and to clean up, remove and dispose of materials on-site, to charge the contractor for any costs incurred by the ARC or Declarant in performing such acts, and to recover such costs and attorneys' fees and court costs in a legal action against contractor.

4.28 Construction Activities and Noise. Construction activities shall not take place before noon on Sundays and Holidays. Holiday hours shall be announced by the Association. The ARC may impose additional restrictions on hours or days on which construction activity can take place and may place limits on noise levels. Pets shall not be permitted on any construction site.

4.29 Final Inspection. A final inspection and approval shall be obtained from the Lincoln County Building Department before any Home within Belhaven may be occupied or rented. If Belhaven is annexed to the City of Lincoln City, then after annexation the building permit approval and inspection shall be obtained from the City of Lincoln City.

4.30 Water Service/Consent to Annexation. The City of Lincoln City has agreed to extend water service to lots in Belhaven which will be served by sewer service from the Road's End Sanitary District. Availability of water taps is on the same basis as for property in the City of Lincoln City and subject to the same limitation of any legally enacted moratorium or other lawful restriction affecting water delivery or supply. The agreement with the City of Lincoln City for water service has been recorded and is binding on all owners in Belhaven and their successors and assigns. In addition, as a condition for entering into the master Water Service Agreement, the City has required that a standard Consent to Annexation and Water Service Agreement be filed for each lot in Belhaven prior to the sales of the lots. The City of Lincoln City has also required nonconforming use and Measure 37 waivers for all lots.

## **ARTICLE 5**

### **COMMON AREA**

5.1 Use of Common Areas. Use of Common Areas shall be subject to the provisions of the Declaration, Bylaws, Articles and Rules and Regulations promulgated by the Board. There shall be no use of the Common Area except by Owners and their invitees. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior written consent of the Board. No alterations or additions to the Common

Area shall be permitted without the prior written approval of the Board. Nothing that shall increase the rate of insurance on the Common Area shall be stored or kept in the Common Area without the prior written consent of the Board.

5.2 Maintenance of Common Area. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area, including, without limitation, any drainage systems, rip rap areas, pathways, alleys and the beach access. The Association shall keep the Common Area and improvements thereon in good condition and repair, shall provide for all necessary services and shall cause all acts that may be necessary or proper to assure the maintenance of the Common Area in first-class condition to be done.

5.3 Alterations to Common Area. Only the Association shall construct, reconstruct, or alter any improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an improvement may be made at any Board or Association meeting. The Board may adopt, reject or modify any such proposal, subject to the limitations contained in the Bylaws and this Declaration.

5.4 Funding. Expenditures for alterations, maintenance or repairs to an existing capital improvement for which a reserve has been collected shall be made from the reserve account. As provided in Section 10.5 hereof, the Board may levy a special assessment to fund any construction, alteration, repair or maintenance of an improvement for which no reserve account is insufficient to cover the cost of the proposed improvement.

5.5 Landscaping. All landscaping on any Lot or portion of the Common Area shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant or the ARC. The Association shall be responsible for all landscaping located in Common Areas. Noxious vegetation and invasive species may be removed from the open space areas. Landscaping performed in the open space areas shall utilize native vegetation other than in lawn areas as shown on the plan which may utilize non-native grasses. Any weeds or diseased or dead lawn, tree, ground cover or shrubs shall be removed or replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed.

5.6 Condemnation of Common Area. If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be received and expended by the Board in a manner that, in the Board's discretion, is in the best interest of the Association. The Association shall represent the interest of all Owners in any negotiations, suit or action or settlement relating to such matters.

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5.7 Damage or Destruction of Common Area. If any Common Area is damaged or destroyed by an Owner or any of his Occupants, guests, tenants, licensees, agents or members of his family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair the damage and restore the area in a workmanlike manner as originally constituted or otherwise, in the discretion of the Board. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is responsible for such damage.

5.8 Members' Easement of Enjoyment. Subject to the provisions of this Declaration, the Bylaws, and Rules and Regulations of the Association, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot. The members' easements of enjoyment created hereby shall be subject to the following;

5.8.1 Rules, Assessments and Fees. The right of the Association to establish reasonable rules and to charge reasonable assessments and fees for capital expenditures on the Common Property and the maintenance and upkeep of the Common Property and payment of all Association expenses.

5.8.2 Suspension of Right to Use Common Area. The right of the Association to suspend the right of an Owner or any Occupant of a Lot to use the Common Property and facilities for any period during which any assessment against such Owner or Occupant's Lot remains unpaid for more than thirty (30) days after notice of such nonpayment; the right of the Association to suspend the right of a member to use any Common Property for a period not to exceed sixty (60) days for any other infraction of the Declaration, Bylaws or the Rules and Regulations of the Association. Provided, however, that no such suspension pursuant to this Section 5.8.2 shall deprive an Owner of access to his Lot.

5.8.3 Association Shall Not Sell, Dedicate or Transfer Common Area. The Association shall not sell, dedicate or transfer any portion of the Common Property or to create a security interest therein, except as to the grant of easements for utilities and similar or related purposes.

## **ARTICLE 6**

### **ARCHITECTURAL REVIEW COMMITTEE**

6.1 Architectural Review. No improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specification showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by

the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and the harmony of exterior design with the existing improvements and landscaping. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations. Nor shall the ARC analyze structural, geophysical, engineering or other similar factors. Such compliance and analysis are the responsibilities of the Owners. The ARC may review the site plan to require compliance with the regulating plan for Belhaven Planned Development. The procedure and specific requirements for review and approval of construction may be set forth in design guidelines adopted from time to time by the ARC. In all cases in which the ARC's consent is required by this Declaration, the provisions of this Article 6 shall apply.

6.2 Architectural Review Committee, Appointment and Removal . The ARC shall consist of no fewer than three (3) members and no more than five (5) members, unless an architect or an individual with an architectural degree or an architectural firm is appointed to serve as the ARC. Declarant reserves the right to appoint all members of the ARC and, from time to time, any replacements thereto until the Turnover Meeting, as defined in Section 8.2 hereof. Until the Turnover Meeting, Declarant may appoint an architect or architectural firm to serve as the ARC. After the Turnover Meeting, Declarant shall delegate the right to appoint and remove members of the ARC to the Board, which board may continue to utilize an architect or an individual with an architectural degree or an architectural firm as the ARC. The term of office for each member of the ARC shall be one (1) year unless lengthened by the Board at the time of appointment or entry into contract with architectural firm or unless the Board serves as the ARC, in which event the terms of ARC members shall be the same as their terms as Board members. The Board may appoint one (1) or more members who are not Owners but who have special expertise regarding the matters which come before the ARC to the ARC. In the sole discretion of the Board, such non-Owner members of the ARC may be paid.

6.3 Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

6.4 Duties. The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article 6. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features that may be used in

Belhaven; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

6.5 ARC Decision. The ARC shall render its approval or denial decision with respect to a construction proposal within thirty (30) working days after it has received all materials required by it with respect to the application. All decisions shall be in writing. In the event that the ARC fails to render its decision of approval or denial in writing within thirty (30) days of receiving all material required by it with respect to the proposal, the application shall be deemed approved.

6.6 ARC Discretion. The ARC may, at its sole discretion, withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC determines are appropriate for Belhaven. Siting, shape, size, color, design, height, solar access, effect on the enjoyment of other Lots or the Common Area, effect on an easement and any other factors which the ARC reasonably believes to be relevant may be taken into consideration by the ARC in determining whether to consent to any proposed work.

6.7 Nonwaiver. Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.8 Appeal. At any time after Declarant has delegated appointment of the members of the ARC to the Board pursuant to Section 6.2 hereof, any Owner adversely affected by action of the ARC may appeal such action to the Board. Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board is already acting as the ARC, the appeal shall be treated as a request for a rehearing, but in such case the Board must actually meet and receive evidence and argument. A final decision shall be made by the Board within fifteen (15) days after receipt of such notification. The determination of the Board shall be final.

6.9 Effective Period of Consent. The ARC's consent to any proposed work shall automatically be revoked six (6) months after issuance unless construction of the work has been commenced or the Owner has applied for and has received an extension of time from the ARC. Once commenced, any such work shall be completed in six (6) months.

6.10 Determination of Compliance. From time to time, the ARC shall inspect all work performed and shall determine whether it is in substantial compliance with the approval granted. 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 shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

6.11 Noncompliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an approval granted, and if the Owner fails to agree to and diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, then at the expiration of the third (3<sup>rd</sup>) day from the date of such notification, the ARC shall provide notice to such Owner of a hearing at which such Owner's continuing noncompliance shall be considered. The hearing shall be held not more than thirty (30) days after the date of the notice of noncompliance. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it. The ARC shall then require the Owner to remedy or remove the same within ten (10) days after the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or within any extension of such period as the ARC, at its discretion, may grant, the ARC may remove the noncomplying improvement, remedy the noncompliance, or file suit to compel compliance. The costs of such action, including all attorneys' fees and other costs incurred to enforce compliance, whether incurred before or after suit is filed, at trial or on any appeal or review therefrom, shall be assessed against the Owner and his Lot.

6.12 Liability. Neither the ARC nor any member thereof shall be liable to any Owner, Occupant, builder or Declarant for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided that the ARC or member has, in accordance with its or his actual knowledge, acted in good faith.

6.13 Estoppel Certificate. Within thirty (30) working 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 such Owner with a certificate executed by the chairman of the ARC and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof either: (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration and any Rules and Regulations promulgated by the Board or the ARC or (b) such improvements do not so comply, in which event, the certificate shall also identify the non-complying improvement and set forth with particularity the nature of such non-compliance. The Owner, his heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as among Declarant, the ARC, the Association and all Owners and such persons deriving any interest through any of them.

6.14 Approval of Contractors and Insurance. Contractors providing services in connection with the development or improvement of any Lot or Common Area shall be subject to the following requirements: Contractors shall



be approved by the ARC. General Contractors and subcontractors shall be licensed as required by local governmental ordinances and regulations. General contractors shall warrant all materials and workmanship to be of good quality and to remain in good condition for a period of one (1) year. A general contractor shall furnish to the Association evidence of public liability insurance in amounts reasonably acceptable to the ARC. Combined single limits of One Million Dollars (\$1,000,000) shall be deemed acceptable. The ARC may require the contractor to post a bond to assure that the interests of the Association are protected and the requirements of the Declaration and Bylaws are followed. The ARC may place limitations on the hours and days on which construction activity can take place. In addition, the ARC may impose restrictions on the noise or decibel level at construction sites. The ARC may adopt additional rules, regulations and guidelines for Contractors who are providing services in Belhaven.

6.15 Other Applicable Law. All improvements must be constructed in full compliance with all applicable governmental building codes. All ARC review and inspection procedures are intended to assure compliance only with aesthetic considerations, and the Belhaven regulating plan. Declarant, its affiliates, and the ARC are not responsible for design or construction defects or failure of the building to meet appropriate building codes.

6.16 Fees. The ARC may charge applicants a reasonable application fee and additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers, and other consultants to advise the ARC concerning any aspect of the applications and/or compliance with any appropriate architectural criteria or standards, including, without limitation, those pertinent to house siting and height. Such fees shall be collectible as assessments pursuant to Article 10.

6.17 Declarant and Oksenholt Construction Company Exempt from ARC. The Declarant and Oksenholt Construction Company shall be exempt from the requirement to submit and have plans approved by the ARC.

## **ARTICLE 7**

### **MEMBERSHIP IN THE ASSOCIATION**

7.1 Members. Each Owner, by virtue of ownership of a Lot, shall be a Member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Without any other act or acknowledgment, Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and Rules and Regulations and any amendments thereof.

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7.2 Proxy. Each Owner may cast his vote in person, pursuant to a proxy executed by the Owner, or by written ballot, as provided by ORS 65.222. An Owner may not revoke a proxy given pursuant to this Section 7.2 except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.

7.3 Voting Rights. The Association shall have two (2) classes of voting members:

7.3.1 Class A. Class A members shall be all Owners of Lots other than Declarant, and each Class member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

7.3.2 Class B. Class B members shall be Declarant and its successors and assigns. Class B members shall have three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the earlier of the following dates:

7.3.2.1 The date on which seventy-five percent (75%) of the Lots shown on the Plat have been sold and conveyed to Owners other than Declarant; or

7.3.2.2 The date on which Declarant elects in writing to terminate Class B membership.

Thereafter, each owner, including Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots.

7.3.3 No Fractional Voting. When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event shall fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum.

7.4 Procedure. All meetings of the Association, the Board, the ARC, and Association committees shall be conducted pursuant to such rules of order as from time to time may be adopted by the Board. Notwithstanding which rule of order is adopted, the chairman shall be entitled to vote on all matters and not merely to break a tie vote. A tie vote shall not constitute a majority vote or approval of any motion or resolution.

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## ARTICLE 8

### DECLARANT CONTROL

8.1 Interim Board and Officers. Declarant hereby reserves administrative control of the Association, including, without limitation, the right and power, in its sole discretion, to appoint and remove members of an interim Board of Directors (the "Interim Board"), which shall manage the affairs of the Association and which shall be invested with all powers and rights of the Board. The Interim Board shall consist of from one (1) to three (3) members. Notwithstanding the provision of this Section 8.1, at the Turnover Meeting at least one (1) Director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all of the members of the Board.

8.2 Turnover Meeting. Declarant shall call a meeting for the purpose of turning over administrative control of the Association from Declarant to Class A members within one hundred twenty (120) days of the earliest of the following dates:

8.2.1 Upon Sale of Lots. The date on which Lots representing seventy-five percent (75%) of the total number of votes have been conveyed to persons other than Declarant. (For purposes of this calculation, the votes which would be attributable to annexable lots shall be counted as "Lots" owned by Declarant);

8.2.2 Declarant's Election. The date on which Declarant elects in writing to terminate Class B membership.

Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If Declarant does not call the meeting required under this Section 8.2, any Owner may do so.

## ARTICLE 9

### DECLARANT'S SPECIAL RIGHTS

9.1 General. Declarant is undertaking the work of developing Lots and other improvements within Belhaven. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. Until the Homes on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Areas and each Lot on the Property, Declarant shall have the special rights set forth in this Article 9.

9.2 Marketing Rights. Declarant shall have the right to maintain a sales office and model on one (1) or more of the Lots that Declarant owns, which sales office(s) and model(s) shall be staffed by the employees of Declarant or any

licensed real estate sales agents. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, the Common Area.

9.3 Declarant Easements. Declarant has reserved easements over, in, upon, under or across the Property as more fully described in Article 3 of this Declaration.

9.4 Appearance of Common Area . Declarant shall not be prevented from changing the exterior appearance of the Common Area, including the landscaping or any other matter directly or indirectly connected with Belhaven, in any manner deemed desirable by Declarant, provided that Declarant obtains any governmental consents required therefor by law.

## ARTICLE 10

### FUNDS AND ASSESSMENTS

10.1 Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners and Occupants, for the improvement, operation and maintenance of the Common Areas, for the administration and operation of the Association and for property and liability insurance.

10.2 Covenants to Pay. Declarant and each Owner covenants and agrees to pay the Association the assessments and any additional charges levied pursuant to this Article 10.

10.2.1 Funds Held in Trust. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of Belhaven as provided in this Declaration. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

10.2.2 Offsets. No offset against any assessment shall be permitted for any reason, including, without limitation, an offset based on any claim that the Association is not properly discharging its duties.

10.2.3 Right to Profits. Association profits, if any, shall be the property of the Association and shall be contributed to the current operating account.

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10.3 Basis of Assessment. Assessments are to be levied against all Lots whether or not such Lots have been improved with a substantially completed Home; provided, however, that Declarant shall be exempt from paying assessments on all unimproved Lots owned by it until after the Turnover Meeting. Completion shall be conclusively determined to have occurred when final inspection approval is issued by Lincoln County, notwithstanding that any portion of Lot finish work or Lot landscaping remains to be completed. Assessments for all Lots conveyed by Declarant to others shall begin on the first day of the month following the recording of the deed or land sale contract conveying or contracting to convey the Lot to the new Owner, unless the Declarant establishes a later date for initial imposition of the assessments.

10.4 Annual Assessments. Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. The initial annual assessment shall be determined by Declarant and shall be prorated on a monthly basis at the time of the closing of the first sale from Declarant. For proration purposes, any portion of a month shall count as a full month. Annual assessments shall be levied on a fiscal year basis. The fiscal year shall be the calendar year unless another year is adopted by vote of the Board members. Unless otherwise specified by the Board, annual assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration.

10.4.1 Budget. Each year, the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing: (i) estimated revenue and expenses on an accrual basis; and, if a reserve account is established: (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies; (iii) an itemized estimate for the remaining life of, and the methods of funding to defray repair or replacement of, or additions to, major components of the Common Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair or replacement of or additions to major components of the Common Area. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board annually shall prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, not less than thirty (30) days and not more than ninety (90) days before the beginning of the fiscal year.

10.4.2 Nonwaiver of Assessments. If, before the expiration of any fiscal year, the Association fails to fix the amount of annual assessments for the next fiscal year, the amount of annual assessments established for

the preceding year shall remain in effect until the Association fixes a new amount of annual assessments.

10.5 Special Assessments. The Board shall have the power to levy special assessments against an owner or all owners in the following manner for the following purposes:

10.5.1 Deficits in Operating Budget . To correct a deficit in the operating budget, by vote of a majority of the Board;

10.5.2 Breach of Documents . To collect amounts due to the Association from an owner for breach of the Owner's obligations under the Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

10.5.3 Repairs. To make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board; and

10.5.4 Capital Additions. To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

10.5.5 Reimbursement Assessments. The Association shall levy a reimbursement assessment against any Owner and such Owner's Lot if a failure to comply with this Declaration, Bylaws, Architectural Standards, or any Rules and Regulations has (a) necessitated an expenditure of monies by the Association to effect compliance or (b) resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot (a "Reimbursement Assessment"). A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least 10 days' written notice to the Owner being assessed. If, within said 10-day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct it not less than 10 nor more than 30 days after the request by the Owner, and shall make its decision within not more than 30 days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

10.6 Accounts.

10.6.1 Types of Accounts. Assessments collected by the Association may be deposited into two (2) separate accounts with a bank, which accounts shall be clearly designated as (i) the Current Operating

Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation levied under Section 10.4.1 hereof into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Special Assessments shall be deposited into one (1) of the two (2) accounts, whichever is deemed by the Board to be appropriate. Withdrawal of funds from the Association's Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and an officer of the Association who is not a Director.

10.6.2 Reserve Account for Replacing Common Property. Declarant may establish a reserve account, in the name of the Association, which account shall be called the "Common Property Reserve Account," and which shall be kept separate and apart from all other funds of the Association. Except as provided in Section 10.6.2(a) below, the Common Property Reserve Account shall be used exclusively for replacement of items of property held by the Association that normally require replacement, in whole or in part, within three (3) to thirty (30) years after acquisition thereof ("Common Property") and not for regular or periodic maintenance and expenses. The assessment for this account shall begin to accrue after the reserve account is established.

10.6.2.1 Calculation of Reserve Assessment; Reserve Study. The Declarant, on behalf of the Homeowners Association, shall conduct an initial reserve study. Thereafter, the Board of Directors of the Association shall annually conduct a reserve study, or review and update an existing study, of the Common Area and Commonly Maintained Property to determine the reserve account requirements, if any. A reserve account shall be established for those items of the Common Area and Commonly Maintained Property all or part of which will normally require replacement in more than three and less than 30 years, for exterior painting, and for the maintenance, repair, or replacement of other items as may be required under the Declaration or Bylaws or that the Board of Directors, in its discretion, may deem appropriate. The reserve account need not include items that could reasonably be funded from operating assessments. The reserve study shall include:

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

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

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

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

10.6.2.2 Maintenance Plan. The Declarant shall prepare an initial Maintenance Plan and the Board of Directors shall thereafter review and update the Maintenance Plan for the maintenance repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under the Declaration or Bylaws or ORS Sections 94.550 to 94.783. The Maintenance Plan shall:

(a) Describe the maintenance, repair and replacement to be conducted;

(b) Include a schedule for the maintenance, repair and replacement;

(c) Be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association; and

(d) Address issues that include but are not limited to warranties and the useful life of the items for which the Association has maintenance, repair and replacement responsibility.

10.6.2.3 Loan From Common Property Reserve Account. After the Turnover Meeting described in Section 8.2, the Board of Directors may borrow funds from the Common Property Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet other temporary expenses. Funds borrowed to meet high seasonal demands or temporary expenses under this Subsection 10.6.2(b) must be repaid from special assessment or maintenance fees within six (6) months of the date on which such funds are borrowed.

10.6.2.4 Increase, Reduction, or Elimination of Common Property Reserve Account Assessment. At any time after the second year after the Turnover Meeting, future



assessment for the Common Property Reserve Account may be increased, reduced or eliminated by the vote of owners of Lots representing seventy-five percent (75%) of the votes computed in accordance with Section 7.3.

10.6.2.5 Investment of Reserve Account. Nothing in this Section 10.6 prohibits the prudent investment of reserve account funds, subject to any constraints imposed by the Board of Directors of the Association, the Bylaws or the Rules and Regulations.

10.6.2.6 Refunds of Assessments. Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers or Owners of Lots may treat their outstanding share of the Reserve Account balance as a separate item in the sales contract providing for conveyance of their respective Lot(s).

10.6.3. Current Operating Account. All other costs may be paid from the Current Operating Account.

#### 10.7 Default in Payment of Assessments, Enforcement of Liens.

10.7.1 Personal Obligation. All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligation of all owners of the Lot to which such assessment pertains. In a voluntary conveyance (that is, one other than through foreclosure or a deed in lieu of foreclosure), the grantees shall be jointly and severally liable with the grantor(s) for all Association assessments imposed through the recording date of the instrument affecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.

10.7.2 Association Lien. The Association shall have a lien against each Lot for any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof that is delinquent. Such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorney fees (whether or not suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Recording of the Declaration constitutes record notice and perfection of the lien. Said lien may be foreclosed at any time pursuant to the Planned Community Act. The Association shall record a notice of a claim of lien for assessments and other charges in the deed records of Lincoln County, Oregon, before any suit to foreclose may be filed. The lien of the

Association shall be superior to all other liens and encumbrances except property taxes and assessments, any first mortgage, deed of trust or land sale contract recorded before the Association's notice of lien, and any mortgage or deed of trust granted to an institutional lender that is recorded before the Association's notice of lien.

10.7.3 Interest; Fines; Late Fees; Penalties. The Board, in its reasonable discretion, may from time to time adopt resolutions to set the rate of interest and to impose late fees, fines and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, any Rules and Regulations, and any rules and regulations adopted by the ARC. The adoption of such impositions shall be communicated to all owners in writing not less than thirty (30) days before the effective date by a notice mailed to the assessment billing addresses of such owners. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violation of this Declaration, the Bylaws or any Rules or Regulations, other than late fees, fines or interest arising from an Owner's failure to pay regular or special assessments may not be imposed against an owner or his Lot until such owner is given an opportunity for a hearing, as elsewhere provided herein.

10.7.4 Acceleration of Assessments. If an Owner is delinquent in payment of any monthly assessment or any installment on a special assessment, the Association, upon not less than ten (10) days' written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

10.7.5 Association's Right to Rents; Receiver. In any foreclosure suit by the Association with respect to an Association lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his Lot or shall be entitled to the appointment of a receiver.

## ARTICLE 11

### GENERAL PROVISIONS

11.1 Records. The Board shall preserve and maintain minutes of the meetings of the Association, the Board and any Board committees. The Board also shall keep detailed and accurate financial records, including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and Board committees

and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

11.2 Indemnification of Directors, Officers, Employees and Agents . The Association shall indemnify any director, officer, employee or agent who was or who is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association), by reason of the fact that he is or was a director, officer, employee or agent of the Association or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of *nolo contendere* or its equivalent shall not of itself create a presumption that a person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, that a person did not have reasonable cause to believe that his conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association to recover such payments should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a director, officer, employee or agent shall have a right of contribution over and against all other directors, officers, employees or agents and members of the Association who participated in or benefitted from the acts which created said liability.

11.3 Enforcement; Attorney Fees. The Association and the Owners and any mortgagee holding an interest on a Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens, and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration (including without limitations, for the collection of assessments), the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event that is the subject of the suit or action, attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate

court. In addition thereto, the Association shall be entitled to its reasonable attorney fees and costs incurred in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed.

11.4 Severability. Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

11.5 Duration. The covenant, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date on which this Declaration is recorded, after which time they shall be automatically extended for successive periods of (10) years, unless rescinded by a vote of at least seventy-five percent (75%) of the Owners; provided, however, that amendments that do not constitute rescission of the planned community may be adopted as provided in Section 11.6 below.

11.6 Amendment. As provided by ORS 94.590, and except as otherwise provided in Sections 11.5 and 11.8 hereof and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes of each class of Members that are eligible to vote. Any amendment must be executed, recorded and certified as provided by law; provided, however, that no amendment of this Declaration shall affect an amendment of the Bylaws or Articles without compliance with the provisions of such documents and those of the Oregon Nonprofit Corporation Act; and provided further that, so long as Declarant owns any Lot, no amendment affecting the general plan of development or any other right of Declarant herein contained may be effected without the express written consent of Declarant or its successors and assigns. However, no amendment shall change any of the original conditions of approval as set forth in Lincoln County Board of Commissioners Final Order 9-05-285, dated September 14, 2005, without the approval of Lincoln County or other appropriate local governmental entity with jurisdiction over the project.

11.7 Release of Right of Control. Declarant may release its right of control in writing at any time by notice to the Association.

11.8 Unilateral Amendment by Declarant. Declarant may amend this Declaration to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots. Before the

Turnover Meeting, no such amendment shall require notice to or approval by any Class A member.

11.9 Private Agreement. This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Belhaven, and Lincoln County is under no obligation to enforce any of its provisions, except those special use and development restrictions set forth in paragraph 4.3 herein. Likewise, the ARC, the Association and Declarant are under no obligation or duty to enforce Lincoln County regulations or to warrant to Owners that proposed improvements comply with Lincoln County regulations, such being the sole and exclusive responsibility of the Owner. This Declaration does not restrict Lincoln County's authority to adopt or amend its development regulations. Lincoln County shall limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot or an improvement in Belhaven to know the requirements of this Declaration and the covenants and agreements contained herein. In the event that a Lincoln County regulation conflicts with a provision of this Declaration, any question regarding which provision controls shall be directed to the ARC. While the ARC lacks authority to authorize the Owner to violate a Lincoln County standard, it may require the Owner to meet standards that meet or exceed the County's standards. Lincoln County shall not be liable for any approvals or permits that are granted in compliance with Lincoln County regulations but that are not in compliance with this Declaration.

11.10 Right of First Mortgagee Relating to Maintenance. At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the owner of the Lot as a member of the Association to vote at all regular and special meetings for a one (1) year period, beginning as of the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this Section 11.10 shall quote this Section 11.10 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the owner with a copy by regular mail to the Association, directed to the last known address of each.

11.11 Resolution of Document Conflicts. In the event of a conflict among any of the provisions in the documents governing Belhaven, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration of Covenants, Conditions and Restrictions;
2. Articles of Incorporation;
3. Bylaws; and
4. Rules and Regulations.

The provisions of the Oregon Planned Community Act, ORS 94.550 et. seq., shall be paramount to the provisions in all of the above listed documents.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has executed this instrument this 19<sup>th</sup> day of ~~April~~ May, 2009.

BELHAVEN LLC

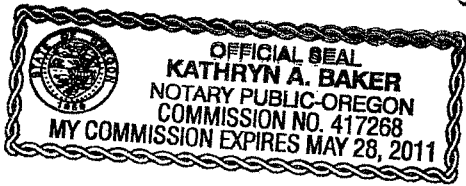
By: [Signature]  
Jon Oksenholt, Managing Member

STATE OF OREGON        )  
                                          ) ss.  
County of Lincoln        )

This instrument was acknowledged before me on this 19<sup>th</sup> day of ~~April~~ May, 2009, by Jon Oksenholt, as managing member of Belhaven LLC.

[Signature]  
Kathryn A. Baker

NOTARY PUBLIC FOR OREGON  
My Commission Expires: 28 May 2011



# **EXHIBIT A**

**Belhaven at Roads End, recorded February 18, 2008, in Plat Book 18,  
Pages 24, 24A-D, Lincoln County, Oregon.**

**AFTER RECORDING RETURN TO:**

E. Jon Oksenholt  
Oksenholt Construction Co  
2110 NE 36<sup>th</sup> Dr. Suite 1100  
Lincoln City, OR 97367

**ACKNOWLEDGMENT OF THE DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LOTS 1 THROUGH 35,  
BELHAVEN, IN LINCOLN COUNTY, OREGON**

The following entity, Oksenholt Construction Co, an Oregon corporation, Owner of the following described lots:

Lots, 6, 7, 8, 9 and 11, BELHAVEN AT ROADS END, in Lincoln County, Oregon.  
TOGETHER WITH easements for ingress, egress and utilities as delineated on the recorded plat.

does hereby acknowledge that the Declaration of Protective Covenants, Conditions, Restrictions and Easements relating to the Belhaven Planned Development, constitutes a covenant running with the above described lots with both benefit and burden thereof being appurtenant to the lots owned by Oksenholt Construction Co and every portion thereof, and being binding upon Oksenholt Construction Co and benefitting and burdening all persons claiming by, through or from Oksenholt Construction Co.

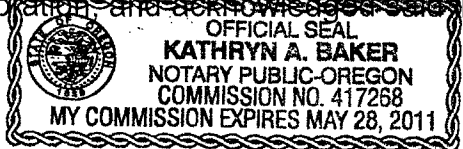
For the purpose of submitting Lots 6, 7, 8, 9 and 11 to the terms, provisions and requirements of the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Lots 1 through 35 of Belhaven, which Declaration of Covenants, Conditions, Restrictions and Easements was recorded on May       , 2009, in Book       , Page        of the Lincoln County records, Oksenholt Construction Co acting by and through its President and Secretary E. Jon Oksenholt does hereby execute this agreement and acknowledgment, stipulating and acknowledging that it has reviewed and agreed to have Lots 6, 7, 8, 9 and 11 subjected to the Covenants, Conditions, Restrictions and Easements referenced above.

IN WITNESS WHEREOF, and for the purpose of acknowledging said stipulation and agreement, Oksenholt Construction Co, does hereby execute this acknowledgment this 15 day of May, 2009.

*E. Jon Oksenholt for Oksenholt Construction Co*  
\_\_\_\_\_  
E. Jon Oksenholt, President and Secretary of  
Oksenholt Construction Co

State of Oregon        )  
                                  )ss  
County of Lincoln

On this 15<sup>th</sup> day of May, 2009, before me personally appeared E. Jon Oksenholt, the President and Secretary of Oksenholt Construction Co, an Oregon corporation, and signed the foregoing Acknowledgment of the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Lots 1 Through 35, Belhaven, in Lincoln County, Oregon on behalf of said corporation, and acknowledged said instrument to be its voluntary act and deed.



*Kathryn A Baker*  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 28 May 2011